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AND APPEALS

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DOCKET

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228-10-BZY

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229-10-BZY

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230-10-BZ

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231-10-BZ

430-440 Park Avenue, Between Kent Avenue and Franklin Avenue., Block 1898, Lot(s) (ten) 29, Borough of **Brooklyn, Community Board: 3**. Special Permit (§73-19) to allow a school, contrary to use regulations. M1-1 district.

232-10-A

59 Fourth Avenue, 9th Street & Fourth Avenue., Block 555, Lot(s) 11, Borough of **Manhattan, Community Board: 3**. An appeal challenging Department of Buildings determination to deny the issuance of a sign permit on the basis that a lawful adversting sign has not been established and not discontinued as per ZR Section 52-83. C1-6 Zoning District . R8-B district.

233-10-A

90-22 176th Street, Between Jamaica and 90th Avenues., Block 9811, Lot(s) 61 (tent), Borough of **Queens, Community Board: 12**. Appeal seeking a common law vested right to continued development commenced under the prior R6 Zoning District. R4-1 Zoning District. R4-1 district.

234-10-BZ

2115 Avenue K, North side 100' east of intersection of Avenue K & East 21st Street., Block 7603, Lot(s) 3, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR §23-141(a)) and less than the required rear yard (ZR §23-47). R-2 zoning district. R-2 district.

DOCKET

235-10-BZ

2363 Ralph Avenue, Northeast corner of Ralph Avenue and Avenue K., Block 8339, Lot(s) 1, Borough of **Brooklyn, Community Board: 18**. Variance (§72-21) to allow a commercial use in a residential zone, contrary to ZR 22-00. R3-2 zoning district. R3-2 district.

1-11-BZ

189-191 Atlantic Avenue, North side of Atlantic Avenue, 240 feet east of Clinton Street., Block 276, Lot(s) 7, Borough of **Brooklyn, Community Board: 2**. Variance (§72-21) to enlarge a pre-existing non complying commercial building, contrary to ZR 53-31. C2-3/R6 zoning district. C2-3/R6/LH-1 district.

2-11-BZ

117 Seventh Avenue South, Southeast corner of Seventh Avenue South and West 10th Street., Block 610, Lot(s) 16, Borough of **Manhattan, Community Board: 2**. Variance (§72-21) to allow for a residential and community facility enlargement to an existing commercial building, contrary to front setback (ZR 33-432) and open space regulations (ZR 23-14). C4-5 zoning district. C4-5 district.

3-11-BZ

1221 East 22nd Street, East 22nd Street between Avenue K and Avenue L., Block 7622, Lot(s) 21, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of a single family home contrary to floor area and open space (ZR §23-141) and less than the required rear yard (ZR §23-47). R-2 zoning district. R2 district.

4-11-BZ

1747-1751 East 2nd Street, Northeast corner of East 2nd Street and Quentin Road., Block 6634, Lot(s) 49, Borough of **Brooklyn, Community Board: 15**. Variance to allow the construction of a synagogue, contrary to bulk regulations. R5 (Opsubdis) 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

FEBRUARY 1, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 1, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

964-87-BZ

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

SUBJECT – Application October 18, 2010 – Extension of Term for the continued operation of (UG16) Gasoline Service Station (*Getty*) which expired on February 6, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on January 15, 2003; Amendment to the hours of operation and Waiver of the Rules.

C1-3/R6 zoning district.

PREMISES AFFECTED – 780-798 Burke Avenue, southwest corner of Burke and Barnes Avenue, Block 4571, Lot 28, Borough of Bronx.

COMMUNITY BOARD #12BX

217-96-BZ

APPLICANT – Eric Palatnik, P.C., for Silverbell Investment Company, Incorporated, owner; Enterprise Rent-A-Car, lessee.

SUBJECT – Application December 17, 2010 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) of a car rental facility (Enterprise) with accessory outdoor storage of cars which expired on July 12, 2010; waiver of the rules. C1-2/R-2 zoning district.

PREMISES AFFECTED – 165-01 Northern Boulevard, northeast corner of 165th Street and Northern Boulevard, Block 53340, Lot 8, Borough of Queens.

COMMUNITY BOARD #

10-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for D & M Richmond Realty LLC, owner; TSI Staten Island LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 25, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a physical culture establishment (New York Sports Club) which expired on October 26, 2009; Waiver of the Rules. M2-1 zoning district.

PREMISES AFFECTED – 300 West Service Road, northwesterly corner of West Service Road and Wild Avenue, Block 270, Lot 135, Borough of Staten Island.

COMMUNITY BOARD #3SI

328-04-BZ

APPLICANT – Goldman Harris LLC, for Rockaway Improvements, LLC, owner.

SUBJECT – Application December 21, 2010 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) of aUG2 six story residential building with twelve dwelling units which expired on November 21, 2010. M1-1 zoning district.

PREMISES AFFECTED – 108 Franklin Avenue aka 108-110 Franklin Avenue between Park and Myrtle Avenues, Block 1898, Lot (tent) 49, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEALS CALENDAR

70-08-A thru 72-08-A

APPLICANT – Eric Palatnik, P.C., for TOCS Developers Incorporated, owner.

SUBJECT – Application December 17, 2010 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously-granted vesting application under the Common Law which expired on January 11, 2011. R3A zoning district.

PREMISES AFFECTED – 215A, 215B, 215C Van Name Avenue, north of the corner formed by intersection of Van Name and Forest Avenues, Block 1194, Lot 42, 41 & 40, Borough of Staten Island.

COMMUNITY BOARD #1SI

73-08-A thru 75-08-A

APPLICANT – Eric Palatnik, P.C., for S. B. Holding, owner.

SUBJECT – Application December 17, 2010 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously-granted vesting application under the Common Law which expired on January 13, 2011. R3-A zoning district. R3-A current zoning district.

PREMISES AFFECTED – 345A, 345B, 345C Van Name Avenue, northeast of the corner formed by Van Name and Forest Avenues, Block 1198, Lot 42, 43, 44, Borough of Staten Island.

COMMUNITY BOARD #1SI

215-10-A

APPLICANT – James Chin et al, for Saint Mary's Hospital for Children, owner.

SUBJECT – Application November 20, 2010 – An appeal challenging the issuance of permits and approvals for the expansion of a hospital that allows violations of the Zoning Resolution sections related to use (ZR 22-14), floor area (ZR 24-111) and setbacks (ZR 24-34) . R2A Zoning District.

PREMISES AFFECTED – 29-01 216th Street, west of Cross Island Expressway, east of intersection of 29th Avenue and

CALENDAR

216th Street, Block 6059, Lot 1, Borough of Queens.
COMMUNITY BOARD #11Q

COMMUNITY BOARD #6SI

Jeff Mulligan, Executive Director

FEBRUARY 1, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 1, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

240-09-BZ

APPLICANT – T-Mobile Northeast LLC f/k/a Omnipoint Communications Inc., for 452 & 454 City Island Avenue Realty Corp., owner; T-Mobile Northeast LLC, lessee.

SUBJECT – Application August 10, 2009– Variance (§72-21) to construct a telecommunications facility on the rooftop of an existing building. The proposal is contrary to the height requirements of the Special City Island District (CD) (§112-103) and the C2-2 commercial overlay zone (§33-431) and the rear and side yard setback requirements (§§23-47 and 23-464, respectively). R3A/C2-2/CD districts.

PREMISES AFFECTED – 454 City Island Avenue, east side of City Island Avenue bound by Browne Street, south and Beach Street to the north, Block 5646, Lot 3, Borough of Bronx.

COMMUNITY BOARD #10BX

197-10-BZ thru 199-10-BZ

APPLICANT – Antonio S. Valenziano, AIA, for John Merolo, owner.

SUBJECT – Application October 26, 2010 – Variance (§72-21) to allow three residential buildings in a manufacturing district, contrary to use regulations ZR 42-10. M1-1 zoning district.

PREMISES AFFECTED – 59, 63 & 67 Fillmore Street, 491.88’ west of York Avenue, Block 61, Lot 27, 29, 31, Borough of Staten Island.

COMMUNITY BOARD #1SI

213-10-BZ

APPLICANT – EPDSCO, Inc., for 2071 Clove LLC, owner; Grasmere Bodybuilding Inc. (d/b/a Dolphin Fitness), lessee.

SUBJECT – Application November 9, 2010 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment (*Dolphin Fitness Center*). C8-1 zoning district.

PREMISES AFFECTED – 2071 Clove Road, Clove Road (Grasmere Commons Shopping Center) between Mosel Avenue and Hillcrest Terrace, Block 2921, Lot 6, Borough of Staten Island.

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**REGULAR MEETING
TUESDAY MORNING, JANUARY 11, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

200-24-BZ

APPLICANT – Stephen Ely, for Ebed Realty c/o Shelia Greco, owner.

SUBJECT – Application October 22, 2010 – Extension of Term (§11-411) for the continued operation of a UG6 bookstore and distribution center which expired on September 23, 2010. R8/C8-2 zoning district.

PREMISES AFFECTED – 3030 Jerome Avenue, 161.81' south of East 204th Street, Block 3321, Lot 25, Borough of 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term of a previously granted variance, which expired on September 23, 2010; and

WHEREAS, a public hearing was held on this application on December 7, 2010, after due notice by publication in the *City Record*, and then to decision on January 11, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Bronx, recommends approval of this application; and

WHEREAS, the site is located on an irregular-shaped through lot with frontage on Jerome Avenue and Villa Avenue, partially within an R8 zoning district and partially within a C8-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 25, 1924 when, 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; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, on April 17, 2001, the Board legalized the change of use from automotive repair (Use Group 16) to a retail food store (Use Group 6) and extended 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 July 25, 2006, 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 now seeks to extend the term for an additional ten years; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an 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 *reopens* and *amends* the resolution, dated March 25, 1924, so that as amended this portion of the resolution shall read: “to extend the term for ten years from September 23, 2010, to expire on September 23, 2020; *on condition* that any and all work shall substantially conform to the previously approved plans; and *on further condition*:

THAT the term of the grant shall expire on September 23, 2020;

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. 200608896)

Adopted by the Board of Standards and Appeals, January 11, 2011.

575-37-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Duffton Realty, Inc., owner; C & D Service Center, Inc., lessee.

SUBJECT – Application July 16, 2010 – Extension of Term (§11-411) for the continued operation of a gasoline service station (*Gulf*) which expired on February 14, 2008; waiver of the Rules. C1-3/R5B zoning district.

PREMISES AFFECTED – 60-93 Flushing Avenue, northwest corner of 61st Street, Block 2697, Lot 51, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

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For Applicant: Steven Sulfaro.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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 the continued operation of a gasoline service station, which expired on February 14, 2008; and

WHEREAS, a public hearing was held on this application on November 9, 2010, after due notice by publication in *The City Record*, with a continued hearing on December 7, 2010, and then to decision on January 11, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 5, Queens, recommends approval of this application; and

WHEREAS, the site is located on the northwest corner of Flushing Avenue and 61st Street, within a C1-3 (R5B) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 14, 1953 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by a gasoline service station with the parking of cars waiting to be serviced, for a term of 15 years; and

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

WHEREAS, most recently, on August 10, 1999, the Board granted a ten year extension of term, which expired on February 14, 2008; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, at hearing, the Board requested that the applicant confirm that the signage on the site is compliant with the previously approved plans; and

WHEREAS, in response, the applicant submitted a signage analysis which reflects that the signage at the site is in compliance with the previously-approved plans; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an 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 April 14, 1953, so that as amended this portion of the resolution shall read: “to extend the term for ten years from February 14, 2008, to expire on February 14, 2018; *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 16, 2010’ – (5) sheets; and *on further condition*:

THAT the term of the grant shall expire on February 18, 2018;

THAT the above condition shall appear on the certificate of occupancy;

THAT all conditions from the prior resolution not specifically waived by the Board 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. 420018796)

Adopted by the Board of Standards and Appeals January 11, 2011.

74-49-BZ

APPLICANT – Sheldon Lobel, P.C., for 515 Seventh Associates, owners.

SUBJECT – Application January 19, 2010 – Extension of Time to obtain a Certificate of Occupancy for an existing parking garage which expired on September 17, 2009; Waiver of the Rules. M1-6 (Garment Center) zoning district.

PREMISES AFFECTED – 515 Seventh Avenue, southeast corner of the intersection of Seventh Avenue and West 38th Street, Block 813, Lot 64, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Nora Martins

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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 obtain a certificate of occupancy for an existing parking garage; and

WHEREAS, a public hearing was held on this application on February 9, 2010, after due notice by publication in *The City Record*, with continued hearings on March 9, 2010, April 13, 2010, May 18, 2010, June 22, 2010, August 17, 2010, October 19, 2010 and November 23, 2010, and then to decision on January 11, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the southeast corner of the intersection at Seventh Avenue and West 38th Street, in an M1-6 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 29, 1949 when, under the

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subject calendar number, the Board granted a variance to permit the construction of a garage building for a term of 20 years; and

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

WHEREAS, most recently, on March 17, 2009, the Board granted an extension of term, to expire on June 28, 2019, an extension of time to obtain a certificate of occupancy, which expired on September 17, 2009, and an amendment to permit an increase in the number of parking spaces at the site through the use of mechanical lifts (“stackers”) on the roof; and

WHEREAS, a condition of the Board’s grant was that DOB review and confirm the structural capacity of the building to support the proposed roof-top parking with stackers and to review and confirm compliance of the proposed parking stackers with the Materials and Equipment Acceptance Division (“MEA”) requirements; and

WHEREAS, the applicant now requests an extension of time to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board questioned whether the site was in compliance with the conditions of the previous grant, particularly with regard to DOB’s review of the structural compliance of the roof and of the parking stackers’ compliance with MEA requirements; and

WHEREAS, in response, the applicant states that in order for DOB to inspect the site for compliance with the Board’s conditions regarding structural capacity and MEA approvals for the parking stackers, DOB instructed the applicant to file an Alteration Type II application reflecting the relocation of the stackers on the roof further from the parapet wall than what was previously approved by the Board; and

WHEREAS, the Board notes that the applicant submitted a copy of the Alteration Type II application that has been filed with DOB; and

WHEREAS, the applicant states that there are also a number of open DOB permit applications and violations which the applicant is working to close out in order to obtain a certificate of occupancy for the site; and

WHEREAS, the applicant represents that a certificate of occupancy will be obtained after DOB reviews and approves the Alteration Type II application in regards to structural capacity and MEA approvals, and after the applicant closes out the open DOB permit applications and violations; and

WHEREAS, based upon the above, the Board finds that the requested extension of time to obtain a certificate of occupancy 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 March 29, 1949, so that as amended this portion of the resolution shall read: “to grant a one year extension of time to obtain a certificate of occupancy, to expire on January 11, 2012; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT a certificate of occupancy shall be obtained by January 11, 2012;

THAT parking garage shall be limited to 360 parking spaces with 18 reservoir spaces;

THAT DOB shall review and confirm the structural capacity of the building to support roof-top parking with stackers;

THAT DOB shall review and confirm compliance of parking stackers with the Materials and Equipment Acceptance Division (“MEA”) requirements;

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

THAT the Department of Buildings must ensure compliance 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. 1024600089)

Adopted by the Board of Standards and Appeals January 11, 2011.

15-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker for Columbus Properties, Incorporated, owner; TSI 217 Broadway LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application August 18, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on June 15, 2009; waiver of the rules. C5-3 (LM) zoning district.

PREMISES AFFECTED – 217 Broadway, Northwest corner of Broadway and Vesey Streets. Block 88, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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 of a previously granted special permit for a physical culture establishment (PCE), which expired on June 15, 2009; and

WHEREAS, a public hearing was held on this application on November 9, 2010, after due notice by publication in *The City Record*, with a continued hearing on December 7, 2010, and then to decision on January 11, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and

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Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the PCE is located on the northwest corner of Broadway and Vesey Street, in a C5-3 zoning district within the Special Lower Manhattan District; and

WHEREAS, the site is occupied by a seven-story commercial building; and

WHEREAS, the PCE use occupies a total floor area of 12,490 sq. ft. on the first floor and second floor, with an additional 5,550 sq. ft. of floor space located at the cellar level; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 15, 1999 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on June 15, 2009; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

WHEREAS, at hearing, the Board requested that the applicant confirm that the signage on the site is compliant with the previously approved plans; and

WHEREAS, in response, the applicant submitted a signage analysis and revised plans which reflect that the signage at the site has changed but is in compliance with the underlying C5-3 zoning district; and

WHEREAS, based upon its review of the record, the Board finds 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, as adopted on June 15, 1999, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from June 15, 2009, to expire on June 15, 2019; *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, 2010’– (8) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 15, 2019;

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;

THAT the Department of Buildings must ensure compliance 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. 101854209)

Adopted by the Board of Standards and Appeals, January 11, 2011.

43-99-BZ

APPLICANT – Carl A. Sulfaro, Esq., for White Castle System Inc., owner.

SUBJECT – Application February 25, 2010 – Extension of Term of a Special Permit (§73-243) for the continued operation of a drive-thru accessory to an eating and drinking establishment (*White Castle*) which expired on December 7, 2009; Waiver of the Rules. C1-2/R4 zoning district.

PREMISES AFFECTED – 88-02 Northern Boulevard, southwest corner of 88th Street, Block 1436, Lot 001, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Steven Sulfaro.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
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 for a drive-through facility at an existing eating and drinking establishment, which expired on December 7, 2009; and

WHEREAS, a public hearing was held on this application on November 9, 2010, after due notice by publication in *The City Record*, with a continued hearing on December 7, 2010, and then to decision on January 11, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 3, Queens recommends approval of this application; and

WHEREAS, the site is located on the southwest corner of Northern Boulevard and 88th Street, within a C1-2(R4) zoning district; and

WHEREAS, the subject site 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 seven accessory parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 7, 1999 when, 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; and

WHEREAS, most recently, on May 16, 2006, the Board granted a five year extension of term, which expired on December 7, 2009, and an amendment to permit the installation of an amplified menu board and the reconfiguration of accessory parking; and

WHEREAS, the applicant now seeks an additional five year extension of term; and

WHEREAS, at hearing, the Board questioned whether

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the site is in compliance with the conditions from the previous grant; and

WHEREAS, in response, the applicant confirmed that the site complies with all conditions from the previous grant; 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 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, 2009, to expire on December 7, 2014; *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 25, 2010'-(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on December 7, 2014;

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;

THAT the Department of Buildings must ensure compliance 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. 420125509)

Adopted by the Board of Standards and Appeals, January 11, 2011.

132-58-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms Inc., owner.

SUBJECT – Application July 9, 2010 – Extension of Term (§11-411) of a previously approved automotive service station (UG 16B) (*Gulf*) with accessory uses which expired on June 18, 2010. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 17-45 Francis Lewis Boulevard, aka 17-55 Francis Lewis Boulevard, east side of Francis Lewis Boulevard, between 17th Road and 18th Avenue, Block 4747, Lot 31, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to February 8, 2011, at 10 A.M., for continued hearing.

1095-64-BZ

APPLICANT – Garo Gumusvan, R.A., for 605 Apartment Corporation, owner; Park & 65 Garage Corporation, lessee. SUBJECT – Application August 31, 2010 – Extension of Term of an approval pursuant to the Multiple Dwelling Law for transient parking spaces, which expired on March 9, 1980. R8B/R-10 zoning district.

PREMISES AFFECTED – 605 Park Avenue, south east corner of Park Avenue and East 65th Street, Block 1399, Lot 74, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Garo Gumusvan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 1, 2011, at 10 A.M., for decision, hearing closed.

433-65-BZ

APPLICANT – Andrea Claire/Peter Hirshman, for 15 West 72 Owner Corporation, owner; Mafair Garage Corporation, lessee.

SUBJECT – Application July 22, 2010 – Extension of Term of an approval pursuant to the Multiple Dwelling Law for transient parking, which expired on June 22, 2010. R8B/R10A zoning district.

PREMISES AFFECTED – 15 West 72nd Street, 200'-2½ west of Central Park West 72nd Street, Block 1125, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Peter Hirshman.

ACTION OF THE BOARD – Laid over to February 8, 2011, at 10 A.M., for continued hearing.

749-65-BZ

APPLICANT – Sheldon Lobel, P.C., for Henry Koch, owner.

SUBJECT – Application October 14, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG16 Gasoline Service Station (*Getty*) with accessory uses which expired on November 3, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on December 19, 2002; Waiver of the Rules. R3X zoning district.

PREMISES AFFECTED – 1820 Richmond Road, southeast

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corner of Richmond Road and Stobe Avenue, Block 3552, Lot 39, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to February 8, 2011, at 10 A.M., for continued hearing.

230-98-BZ

APPLICANT – Mitchell S. Ross, Esq., for JC's Auto Enterprises, Limited, owners.

SUBJECT – Application July 22, 2010 – Extension of Term of a previously granted Variance (§72-21) for an automotive repair shop and car sales which expired on June 22, 2010. R-5 zoning district.

PREMISES AFFECTED – 5820 Bay Parkway, northwest corner of 59th Street, Block 55508, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to February 1, 2011, at 10 A.M., for adjourned hearing.

276-02-BZ

APPLICANT – Eric Palatnik, P.C., for Elad Ryba, owner.

SUBJECT – Application September 13, 2010 – Extension of Time to Complete Construction and an Amendment to a previously approved Special Permit (§73-622) to an existing one family dwelling, contrary to lot coverage and floor area (§23-141) and side yard (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 160 Norfolk Street, west side, 300' north of Oriental Boulevard and south of Shore Boulevard, Block 8756, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to February 15, 2011, at 10 A.M., for continued hearing.

119-07-BZ

APPLICANT – Sheldon Lobel, P.C., for SCO Family of Services, owner.

SUBJECT – Application November 15, 2010 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (§72-21) permitting a four-story community facility building (UG4A) which expires on January 27, 2011. M1-2 zoning district.

PREMISES AFFECTED – 443 39th Street, rectangular mid-block lot with 35' of frontage on the north side of 39th Street, 275' west of 5th Avenue, Bloc 705, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Nora Martins.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 1, 2011, at 10 A.M., for decision, hearing closed.

238-07-BZ

APPLICANT – Goldman Harris LLC, for OCA Long Island City LLC; OCAII & III c/o O'Connor Capital, owner.

SUBJECT – Application July 1, 2010 – Amendment of a previously approved Variance (§72-21) to permit a residential/commercial building and community facility/dormitory building. The amendment will divide the project into two separate buildings and allow the construction and occupancy of one building prior to the construction and occupancy of the other. M-4/R6A (LIC) and M1-4 zoning districts.

PREMISES AFFECTED – 5-11 47th Avenue, 46th Road at north, 47th Avenue at south, 5th Avenue at west, Vernon Boulevard at east. Block 28, Lot 12, 15, 17, 18, 21, 38. Borough of Queens

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Howard Goldman.

For Opposition: Kenneth Greenberg, William Garrett, Janet Belden and Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 15, 2011, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

114-10-BZY and 115-10-BZY

APPLICANT – Nikolaos Sellas, for HX Holdings LLC, owner.

SUBJECT – Application June 24, 2010 – Extension of time (§11-331) to complete construction of a major development commenced under the prior R6 zoning district. R6B zoning district

PREMISES AFFECTED – 26-58 & 26-60 30th Street, north side of 30th Street, 540.78' and 565.80' west of corner formed by Astoria Boulevard and 30th Street, Block 597, Lots 223 and 124, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Nikolaos Sellas.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

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Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5
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 foundations of a major development under construction;
and

WHEREAS, a public hearing was held on this
application on November 23, 2010, after due notice by
publication in *The City Record*, with a continued hearing on
December 14, 2010, and then to decision on January 11, 2011;
and

WHEREAS, Community Board 1, Queens, recommends
approval of this application; and

WHEREAS, the premises and surrounding area had site
and neighborhood examinations by Chair Srinivasan,
Commissioner Montanez, and Commissioner Ottley-Brown;
and

WHEREAS, the subject site is located on a single zoning
lot consisting of two contiguous tax lots, located on the north
side of 30th Street between Astoria Boulevard and Newtown
Avenue, and has a combined lot area of 5,010 sq. ft.; and

WHEREAS, Lot 124 corresponds to 26-60 30th Street
and Lot 223 corresponds to 26-58 30th Street; and

WHEREAS, the two tax lots are the result of a
subdivision of a larger preexisting tax lot; and

WHEREAS, each tax lot is approximately 25 feet wide
by 100 feet deep; and

WHEREAS, each tax lot is proposed to be developed
with a four-story eight-family semi-detached residential
building, for a total of 16 dwelling units (the “Proposed
Development”); and

WHEREAS, on April 28, 2010, the Department of
Buildings (“DOB”) issued NB Permit No. 420116840-01-NB
for the building on Lot 124, and on April 30, 2010 DOB issued
NB Permit No. 420116831-01-NB for the building on Lot 223
(collectively, the “NB Permits”);

WHEREAS, when the NB Permits were issued and when
construction commenced, the site was within an R6 zoning
district; and

WHEREAS, the Proposed Development complies with
the former R6 zoning district parameters; specifically the floor
area ratio (“FAR”) of 2.13 (2.2 FAR was the maximum
permitted for residential buildings), and the street wall height of
44’-2” (45 feet was the maximum street wall base height) for
each of the two respective buildings; and

WHEREAS, however, on May 25, 2010 (the “Enactment
Date”), the City Council voted to adopt the Astoria Rezoning,
which rezoned the site to R6B; and

WHEREAS, because the site is now within an R6B
zoning district, the Proposed Development would not comply
with the new zoning provisions regarding FAR (2.0 FAR is the
maximum permitted for residential buildings) and street wall
height (40 feet is the maximum permitted street wall base
height) for each of the two respective buildings; and

WHEREAS, the applicant now applies to the Board to
reinstate the NB 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 requirement in this
application is that the Permit is valid; and

WHEREAS, ZR § 11-31(a) provides that “[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;” and

WHEREAS, the record indicates that on April 28, 2010
and April 30, 2010, the NB Permits were issued by DOB
authorizing construction of the Proposed Development; and

WHEREAS, by letter dated September 20, 2010, DOB
states that the NB Permits were lawfully issued; and

WHEREAS, thus, the Board finds that the NB Permits
were lawfully issued by DOB on April 28, 2010 and April 30,
2010, respectively; and

WHEREAS, accordingly, the Board finds that the record
contains sufficient evidence to satisfy the findings set forth in
ZR § 11-31(a) and that a decision may be rendered provided
the other findings are met; and

WHEREAS, because the proposed development
contemplates construction of two buildings on a single zoning
lot, it meets the definition of a major development; and

WHEREAS, since the proposed development is a
major development, the Board must find that excavation was
completed and substantial progress was made as to one of
the required foundations; and

WHEREAS, the applicant states that excavation began
on May 10, 2010 and was completed on May 17, 2010, and
that substantial progress was made on the foundations of
both buildings as of the Enactment Date; and

WHEREAS, further, an affidavit of the contractor
states that the entire site was excavated as of the Enactment
Date; and

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WHEREAS, the Board finds that the excavation performed at the site for the foundation of the Building is complete for vesting purposes under ZR § 11-331; and

WHEREAS, as to substantial progress on the foundation, the applicant represents that the foundations for both buildings were 69 percent complete as of the Enactment Date; and

WHEREAS, specifically, the applicant states that as of the Enactment Date, 100 percent of shoring, wood lagging, drywell installation, steel reinforcement bar installation, and formwork was complete, and the only work that remains to be performed on the foundations is the pouring and waterproofing of concrete; and

WHEREAS, in support of this statement, the applicant has submitted the following: construction contracts; dated photographs of the site; a construction timeline; affidavits from the contractor describing the completed work; dated invoices; and copies of cancelled checks; and

WHEREAS, the applicant notes that the foundation work completed at the time of the rezoning, including the steel reinforcement bar installation and formwork, accounted for \$73,000 out of the total foundation cost of \$106,000, or 69 percent, as evidenced by the construction contract; and

WHEREAS, the Board notes that while all the concrete was poured after the rezoning, the completion of the steel reinforcement bar installation and formwork nonetheless represents substantial progress on the foundations based on the significant cost and complexity of the work; and

WHEREAS, at hearing, the Board questioned whether the applicant had completed all formwork for the foundations; and

WHEREAS, in response, the applicant submitted a letter from the contractor stating that all formwork was completed as of the Enactment Date and dated photographs reflecting that all formwork had been completed prior to the rezoning; and

WHEREAS, the Board notes that only the work that was performed after the NB Permits were issued and before the Enactment Date has been considered in its analysis under ZR § 11-331; and

WHEREAS, the Board finds all of the above-mentioned submitted evidence sufficient and credible; 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, accordingly, based upon its consideration of the arguments made by the applicant 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 ZR § 11-331 and is entitled to the requested reinstatement of the NB Permits, and all other related permits necessary to complete construction.

Therefore it is Resolved that this application to renew New Building Permit Nos. 420116840-01-NB and 420116831-01-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 July 11, 2011.

Adopted by the Board of Standards and Appeals, January 11, 2011.

274-09-A

APPLICANT – Fire Department of New York, for Di Lorenzo Realty, Co, owner; 3920 Merritt Avenue, lessee.

SUBJECT – Application September 25, 2009 – Application to modify Certificate of Occupancy to require automatic wet sprinkler system throughout the entire building.

PREMISES AFFECTED – 3920 Merritt Avenue, aka 3927 Mulvey Avenue, 153' north of Merritt and East 233rd Street, Block 4972, Lot 12, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application from the Fire Commissioner, requesting to modify the certificates of occupancy of the subject premises to reflect additional requirements related to fire safety, in conjunction with certain modifications to be undertaken at the three-building complex to improve fire safety conditions; and

WHEREAS, the Fire Commissioner proposes to issue the following order to the property owner:

“BSA Appeals Application #123-10-A – 3931 Mulvey Avenue

C of O # 200444849 to be modified – Remove current description of ‘manufacture of plastic products’ and replace with ‘woodworking.’

BSA Appeals Application #124-10-A – 3927 Mulvey Avenue

C of O # 52543 to be modified – The following restriction to be added, ‘No use of stationary or bench mounted woodworking machinery or equipment permitted.’

BSA Appeals Application # 274-09-A – 3920 Merritt Avenue

C of O # 71956 to be modified – The following restriction to be added, ‘No use of stationary or bench mounted woodworking machinery or equipment permitted;’” and

WHEREAS, the Board notes that the first iteration of the Fire Department's proposed order, under BSA Cal. No. 274-09-A, which only concerned the building located at 3920 Merritt Avenue, required that automatic wet sprinklers be installed throughout the building, pursuant to Administrative Code § 27-4265; and

WHEREAS, as discussed below, during the course of the

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hearings the Fire Department amended its application to the current proposal; and

WHEREAS, a public hearing was held on this application on April 13, 2010, after due notice by publication in the *City Record*, with continued hearings on May 25, 2010, June 22, 2010, August 17, 2010, September 21, 2010, October 21, 2010, and December 7, 2010, and then to decision on January 11, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; the site inspection was conducted by a committee of the Board with a representative of the Fire Department and the building owner in attendance; and

WHEREAS, representatives of the building owner (hereinafter, the "Owner"), provided testimony in opposition to the application; and

WHEREAS, the subject premises is located on the east side of Merritt Avenue and the west side of Mulvey Avenue, north of East 233rd Street, within an M1-1 zoning district; and

WHEREAS, the subject site is occupied by three interconnected buildings operated primarily as an advertising display manufacturing establishment (the "Building Complex"); and

WHEREAS, the building located at 3920 Merritt Avenue (BSA Cal. No. 274-09-A) is occupied as the assembly and packaging area for the Building Complex, where finished components of the displays, made of various materials such as wood, plastic, metal and paper are stored, assembled and packaged; in addition, the building is also occupied by accessory offices and a paint storage room, and limited spot welding operations are performed in connection with assembly operations; and

WHEREAS, the building located at 3927 Mulvey Avenue (BSA Cal. No. 124-10-A) is occupied as a woodworking area for the Building Complex; and

WHEREAS, the building located at 3931 Mulvey Avenue (BSA Cal. No. 123-10-A) is also occupied as a woodworking area for the Building Complex, with a mezzanine used as a metal product fabrication area where limited spot welding operations take place; and

WHEREAS, as noted above, the Fire Department's initial application, under BSA Cal. No. 274-09-A, only concerned the building located at 3920 Merritt Avenue and requested that the certificate of occupancy for that building be modified to reflect a requirement for automatic wet sprinklers throughout the building, pursuant to Administrative Code § 27-4265; and

WHEREAS, the Fire Department subsequently modified its application to include, under BSA Cal. Nos. 123-10-A and 124-10-A, the buildings located at 3927 Mulvey Avenue and 3931 Mulvey Avenue, and to request that the certificates of occupancy for all three of the subject buildings be modified to reflect a requirement for automatic wet sprinklers throughout the entire Building Complex; and

WHEREAS, the Fire Department asserted that the proposed modifications to the certificates of occupancy were

necessary in the interest of public safety because fire protection within the subject buildings was deemed inadequate; and

WHEREAS, in support of its request for a modification of the certificates of occupancy to require sprinklers throughout the Building Complex, the Fire Department states that: (1) while the Building Complex technically consists of three separate buildings, the buildings are interconnected and operate as a single facility without proper compartmentalization; (2) the Building Complex includes non-fireproof construction; (3) the steel truss roof construction makes ventilation difficult; (4) there exist large amounts of stored combustible manufactured material such as wood, plastic acrylics, and inks; (5) a large amount of highly combustible wood dust is created during the woodworking process; and (6) spray painting is conducted in conjunction with the manufacturing process; and

WHEREAS, in response, the Owner argued that the installation of sprinklers should not be required at the site because the Building Complex consists of three independent buildings that are interconnected by fire-protected openings between them that were approved by the Department of Buildings ("DOB"), and because the buildings were lawfully constructed and are lawfully occupied in accordance with their respective certificates of occupancy; and

WHEREAS, additionally, the Owner represents that the installation of automatic wet sprinklers throughout the Building Complex would be cost prohibitive; and

WHEREAS, during the course of the hearing process, the Board directed the Fire Department to work with the Owner to explore whether there is an alternative to the installation of sprinklers throughout the Building Complex that would be acceptable to both parties; and

WHEREAS, in response, the Owner proposed to make the following modifications to the buildings in lieu of the requirement to install sprinklers: (1) the consolidation of woodworking operations, such that woodworking will only take place in the building located at 3931 Mulvey Avenue, and all woodworking machinery located in 3927 Mulvey Avenue will be removed from the Building Complex or relocated to 3931 Mulvey Avenue, thereby reducing the floor area available for woodworking to approximately 5,000 sq. ft.; (2) the installation of fireproof, self-closing swing doors at the openings between the three buildings to reduce the potential spread of smoke and fire; (3) the relocation of the metalworking operations presently in 3931 Mulvey Avenue to another portion of the Building Complex, in order to eliminate the chance that a spark caused by metalworking could act as a source of ignition of the combustible materials being stored and worked on in 3931 Mulvey Avenue; (4) the installation of additional roof ventilation and a means to control the mechanical ventilation through the roof above 3931 Mulvey Avenue from somewhere within the Building Complex other than 3931 Mulvey Avenue, in order to aid the Fire Department in ventilating the Building Complex in the event of a fire; (5) the installation of a voluntary central station alarm with smoke and fire detection capability in 3931 Mulvey Avenue, in order to provide direct notification to emergency responders and reduce response time in the event of a fire; and

WHEREAS, the Fire Department states that it is willing

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to accept the modifications proposed by the Owner in lieu of the installation of a full sprinkler system, with the following conditions: (1) all woodworking equipment currently located in 3920 Merritt Avenue also be removed or relocated to 3931 Mulvey Avenue; (2) Certificate of Occupancy No. 200444849 (3931 Mulvey Avenue) be modified to remove the current description of "manufacture of plastic products" and to replace it with "woodworking;" (3) Certificate of Occupancy No. 52543 (3927 Mulvey Avenue) be modified to add the restriction that "No use of stationary or bench mounted woodworking machinery or equipment permitted;" and (4) Certificate of Occupancy No. 71956 (3920 Merritt Avenue) also be modified to add the restriction that "No use of stationary or bench mounted woodworking machinery or equipment permitted;" and

WHEREAS, in response, the Owner argues that the modifications to the certificates of occupancy requested by the Fire Department are cost prohibitive, and request that the fire safety modifications proposed by the Owner be accepted without the requirement to modify the certificates of occupancy; and

WHEREAS, the Fire Department states that the requested modifications to the certificates of occupancy are necessary to insure that in the future the woodworking activities remain limited to 3931 Mulvey Avenue and that there exists a legal restriction on the buildings that would be enforceable by the City; and

WHEREAS, the Board agrees with the Fire Department that, given the use and construction of the buildings, the requested modifications to the certificates of occupancy are required, in addition to the fire safety improvements proposed to be installed by the Owner; and

WHEREAS, however, the Board notes that the property owner and the Fire Department may agree to modify the specifications for the fire safety improvements and the modifications to the certificates of occupancy, and the Board would not object to such mutual agreement; and

WHEREAS, the Owner requests that the Board acknowledge that any requirements it imposes on the subject buildings are specific to the current use of the buildings, and in the event that the Owner leaves the site and the buildings are occupied for a different use, the requirements imposed herein would not have to be implemented; and

WHEREAS, the Board notes that the proposed conditions are specific to the existing use of the buildings, and agrees that it may be appropriate to remove conditions on the certificates of occupancy if the use of the buildings changes; and

WHEREAS, thus, based on the evidence in the record, the Board finds that the modifications to the certificates of occupancy, as requested by the Fire Department, in conjunction with the fire safety improvements proposed by the Owner and approved by the Fire Department, are necessary to protect life and property at the premises in the event of fire.

Therefore it is Resolved that the applications of the Fire Commissioner, dated September 25, 2009 and July 6, 2010, seeking the modification of Certificate of Occupancy Nos. 200444849, 52543 and 71956 are hereby granted, on condition:

THAT all woodworking operations shall only take place in the building located at 3931 Mulvey Avenue, and all woodworking machinery located in 3927 Mulvey Avenue and 3920 Merritt Avenue shall be removed or relocated to 3931 Mulvey Avenue;

THAT fireproof, self-closing swing doors shall be installed at the openings between the three buildings;

THAT the metalworking operations located in 3931 Mulvey Avenue shall be relocated to another portion of the Building Complex;

THAT the Owner shall install additional roof ventilation and a means to control the mechanical ventilation through the roof above 3931 Mulvey Avenue from somewhere within the Building Complex other than 3931 Mulvey Avenue;

THAT a voluntary central station alarm with smoke and fire detection capability shall be installed in 3931 Mulvey Avenue;

THAT the Owner shall obtain the necessary approvals and permits to perform the required work by July 11, 2011;

THAT substantial construction shall be completed by January 11, 2012; and

THAT the change in use of any of the subject buildings shall render the above-mentioned fire safety requirements and the requirement to modify the certificate of occupancy inapplicable as to that building, provided the three subject buildings are operated separately and that the change of use is reviewed and approved by the Fire Department and the Department of Buildings.

Adopted by the Board of Standards and Appeals, January 11, 2011.

123-10-A & 124-10-A

APPLICANT – Fire Department of the city of New York

OWNER – DiLorenzo Realty Corporation

LESSESS – Flair Display Incorporated

SUBJECT – Application July 6, 2010 – Application to modify Certificate of Occupancy to require automatic wet sprinkler system throughout the entire building.

PREMISES AFFECTED – 3931, 3927 Mulvey Avenue, 301.75' north of East 233rd Street. Block 4972, Lots 60, 162(12). Borough of the Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application from the Fire Commissioner, requesting to modify the certificates of occupancy of the subject premises to reflect additional requirements related to fire safety, in conjunction with certain modifications to be undertaken at the three-building

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complex to improve fire safety conditions; and

WHEREAS, the Fire Commissioner proposes to issue the following order to the property owner:

“BSA Appeals Application #123-10-A – 3931 Mulvey Avenue

C of O # 200444849 to be modified – Remove current description of ‘manufacture of plastic products’ and replace with ‘woodworking.’

BSA Appeals Application #124-10-A – 3927 Mulvey Avenue

C of O # 52543 to be modified – The following restriction to be added, ‘No use of stationary or bench mounted woodworking machinery or equipment permitted.’

BSA Appeals Application # 274-09-A – 3920 Merritt Avenue

C of O # 71956 to be modified – The following restriction to be added, ‘No use of stationary or bench mounted woodworking machinery or equipment permitted;’” and

WHEREAS, the Board notes that the first iteration of the Fire Department’s proposed order, under BSA Cal. No. 274-09-A, which only concerned the building located at 3920 Merritt Avenue, required that automatic wet sprinklers be installed throughout the building, pursuant to Administrative Code § 27-4265; and

WHEREAS, as discussed below, during the course of the hearings the Fire Department amended its application to the current proposal; and

WHEREAS, a public hearing was held on this application on April 13, 2010, after due notice by publication in the *City Record*, with continued hearings on May 25, 2010, June 22, 2010, August 17, 2010, September 21, 2010, October 21, 2010, and December 7, 2010, and then to decision on January 11, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; the site inspection was conducted by a committee of the Board with a representative of the Fire Department and the building owner in attendance; and

WHEREAS, representatives of the building owner (hereinafter, the “Owner”), provided testimony in opposition to the application; and

WHEREAS, the subject premises is located on the east side of Merritt Avenue and the west side of Mulvey Avenue, north of East 233rd Street, within an M1-1 zoning district; and

WHEREAS, the subject site is occupied by three interconnected buildings operated primarily as an advertising display manufacturing establishment (the “Building Complex”); and

WHEREAS, the building located at 3920 Merritt Avenue (BSA Cal. No. 274-09-A) is occupied as the assembly and packaging area for the Building Complex, where finished components of the displays, made of various materials such as wood, plastic, metal and paper are stored, assembled and packaged; in addition, the building is also occupied by

accessory offices and a paint storage room, and limited spot welding operations are performed in connection with assembly operations; and

WHEREAS, the building located at 3927 Mulvey Avenue (BSA Cal. No. 124-10-A) is occupied as a woodworking area for the Building Complex; and

WHEREAS, the building located at 3931 Mulvey Avenue (BSA Cal. No. 123-10-A) is also occupied as a woodworking area for the Building Complex, with a mezzanine used as a metal product fabrication area where limited spot welding operations take place; and

WHEREAS, as noted above, the Fire Department’s initial application, under BSA Cal. No. 274-09-A, only concerned the building located at 3920 Merritt Avenue and requested that the certificate of occupancy for that building be modified to reflect a requirement for automatic wet sprinklers throughout the building, pursuant to Administrative Code § 27-4265; and

WHEREAS, the Fire Department subsequently modified its application to include, under BSA Cal. Nos. 123-10-A and 124-10-A, the buildings located at 3927 Mulvey Avenue and 3931 Mulvey Avenue, and to request that the certificates of occupancy for all three of the subject buildings be modified to reflect a requirement for automatic wet sprinklers throughout the entire Building Complex; and

WHEREAS, the Fire Department asserted that the proposed modifications to the certificates of occupancy were necessary in the interest of public safety because fire protection within the subject buildings was deemed inadequate; and

WHEREAS, in support of its request for a modification of the certificates of occupancy to require sprinklers throughout the Building Complex, the Fire Department states that: (1) while the Building Complex technically consists of three separate buildings, the buildings are interconnected and operate as a single facility without proper compartmentalization; (2) the Building Complex includes non-fireproof construction; (3) the steel truss roof construction makes ventilation difficult; (4) there exist large amounts of stored combustible manufactured material such as wood, plastic acrylics, and inks; (5) a large amount of highly combustible wood dust is created during the woodworking process; and (6) spray painting is conducted in conjunction with the manufacturing process; and

WHEREAS, in response, the Owner argued that the installation of sprinklers should not be required at the site because the Building Complex consists of three independent buildings that are interconnected by fire-protected openings between them that were approved by the Department of Buildings (“DOB”), and because the buildings were lawfully constructed and are lawfully occupied in accordance with their respective certificates of occupancy; and

WHEREAS, additionally, the Owner represents that the installation of automatic wet sprinklers throughout the Building Complex would be cost prohibitive; and

WHEREAS, during the course of the hearing process, the Board directed the Fire Department to work with the Owner to explore whether there is an alternative to the installation of sprinklers throughout the Building Complex that would be acceptable to both parties; and

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WHEREAS, in response, the Owner proposed to make the following modifications to the buildings in lieu of the requirement to install sprinklers: (1) the consolidation of woodworking operations, such that woodworking will only take place in the building located at 3931 Mulvey Avenue, and all woodworking machinery located in 3927 Mulvey Avenue will be removed from the Building Complex or relocated to 3931 Mulvey Avenue, thereby reducing the floor area available for woodworking to approximately 5,000 sq. ft.; (2) the installation of fireproof, self-closing swing doors at the openings between the three buildings to reduce the potential spread of smoke and fire; (3) the relocation of the metalworking operations presently in 3931 Mulvey Avenue to another portion of the Building Complex, in order to eliminate the chance that a spark caused by metalworking could act as a source of ignition of the combustible materials being stored and worked on in 3931 Mulvey Avenue; (4) the installation of additional roof ventilation and a means to control the mechanical ventilation through the roof above 3931 Mulvey Avenue from somewhere within the Building Complex other than 3931 Mulvey Avenue, in order to aid the Fire Department in ventilating the Building Complex in the event of a fire; (5) the installation of a voluntary central station alarm with smoke and fire detection capability in 3931 Mulvey Avenue, in order to provide direct notification to emergency responders and reduce response time in the event of a fire; and

WHEREAS, the Fire Department states that it is willing to accept the modifications proposed by the Owner in lieu of the installation of a full sprinkler system, with the following conditions: (1) all woodworking equipment currently located in 3920 Merritt Avenue also be removed or relocated to 3931 Mulvey Avenue; (2) Certificate of Occupancy No. 200444849 (3931 Mulvey Avenue) be modified to remove the current description of "manufacture of plastic products" and to replace it with "woodworking;" (3) Certificate of Occupancy No. 52543 (3927 Mulvey Avenue) be modified to add the restriction that "No use of stationary or bench mounted woodworking machinery or equipment permitted;" and (4) Certificate of Occupancy No. 71956 (3920 Merritt Avenue) also be modified to add the restriction that "No use of stationary or bench mounted woodworking machinery or equipment permitted;" and

WHEREAS, in response, the Owner argues that the modifications to the certificates of occupancy requested by the Fire Department are cost prohibitive, and request that the fire safety modifications proposed by the Owner be accepted without the requirement to modify the certificates of occupancy; and

WHEREAS, the Fire Department states that the requested modifications to the certificates of occupancy are necessary to insure that in the future the woodworking activities remain limited to 3931 Mulvey Avenue and that there exists a legal restriction on the buildings that would be enforceable by the City; and

WHEREAS, the Board agrees with the Fire Department that, given the use and construction of the buildings, the requested modifications to the certificates of occupancy are required, in addition to the fire safety improvements proposed

to be installed by the Owner; and

WHEREAS, however, the Board notes that the property owner and the Fire Department may agree to modify the specifications for the fire safety improvements and the modifications to the certificates of occupancy, and the Board would not object to such mutual agreement; and

WHEREAS, the Owner requests that the Board acknowledge that any requirements it imposes on the subject buildings are specific to the current use of the buildings, and in the event that the Owner leaves the site and the buildings are occupied for a different use, the requirements imposed herein would not have to be implemented; and

WHEREAS, the Board notes that the proposed conditions are specific to the existing use of the buildings, and agrees that it may be appropriate to remove conditions on the certificates of occupancy if the use of the buildings changes; and

WHEREAS, thus, based on the evidence in the record, the Board finds that the modifications to the certificates of occupancy, as requested by the Fire Department, in conjunction with the fire safety improvements proposed by the Owner and approved by the Fire Department, are necessary to protect life and property at the premises in the event of fire.

Therefore it is Resolved that the applications of the Fire Commissioner, dated September 25, 2009 and July 6, 2010, seeking the modification of Certificate of Occupancy Nos. 200444849, 52543 and 71956 are hereby granted, on condition:

THAT all woodworking operations shall only take place in the building located at 3931 Mulvey Avenue, and all woodworking machinery located in 3927 Mulvey Avenue and 3920 Merritt Avenue shall be removed or relocated to 3931 Mulvey Avenue;

THAT fireproof, self-closing swing doors shall be installed at the openings between the three buildings;

THAT the metalworking operations located in 3931 Mulvey Avenue shall be relocated to another portion of the Building Complex;

THAT the Owner shall install additional roof ventilation and a means to control the mechanical ventilation through the roof above 3931 Mulvey Avenue from somewhere within the Building Complex other than 3931 Mulvey Avenue;

THAT a voluntary central station alarm with smoke and fire detection capability shall be installed in 3931 Mulvey Avenue;

THAT the Owner shall obtain the necessary approvals and permits to perform the required work by July 11, 2011;

THAT substantial construction shall be completed by January 11, 2012; and

THAT the change in use of any of the subject buildings shall render the above-mentioned fire safety requirements and the requirement to modify the certificate of occupancy inapplicable as to that building, provided the three subject buildings are operated separately and that the change of use is reviewed and approved by the Fire Department and the Department of Buildings.

Adopted by the Board of Standards and Appeals, January 11, 2011.

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121-10-A

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for 25-50 FLB LLC, owner.

SUBJECT – Application July 1, 2010 – An appeal challenging the Department of Buildings determination that a demolition permit signoff was required before issuance of an alteration permit, as per BC 28-105.3 of the NYC Building Code. R2A zoning district.

PREMISES AFFECTED – 25-50 Francis Lewis Boulevard aka 166-43 168th Street, southwest corner of Francis Lewis Boulevard and 168th Street, Block 4910, Lot 16, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, this appeal comes before the Board in response to a Notice of Objections originally issued April 23, 2009 and denied for reconsideration on June 23, 2010 by the Queens Borough Commissioner of the NYC Department of Buildings (“DOB”) (the “Final Determination”) with respect to DOB Application No. 402082919; and

WHEREAS, the Final Determination states, in pertinent part:

1. BC 28-110.1 Secure approval to protect existing occupancy of one family dwelling as per BC 28-118.1
2. BC 27-161...170 The approved plans do not show the nature and extent of existing conditions. The building does not comply with the approved plans
3. BC 28-105.3 Comply with requirements for applications for building alteration permits. Secure demolition sign off prior to permit as per BC 28-105.3; and

WHEREAS, a public hearing was held on this appeal on September 14, 2000, after due notice by publication in *The City Record*, with a continued hearing on November 9, 2010, and then to decision on January 11, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, State Senator Frank Padavan provided testimony in opposition to the appeal; and

WHEREAS, the Northeast Flushing Civic Association provided written and oral testimony in opposition to the appeal (the “Opposition”); and

WHEREAS, DOB and the Appellant have been represented by counsel throughout this appeal; and

WHEREAS, the site is located at the southwest corner of Francis Lewis Boulevard and 168th Street, partially within a

C1-2(R2A) zoning district and partially within an R2A (Lot 21) zoning district; prior to the April 22, 2009 adoption of the North Flushing Rezoning, the entire site was located within a C1-2(R4) zoning district; and

WHEREAS, the site comprises two lots: (1) Lot 16 at the northern portion of the site at the corner of Francis Lewis Boulevard and 168th Street, which was occupied by a two-story commercial building (the “Commercial Building”) and (2) Lot 21 at the southern portion of the site at the corner of 168th Street and 26th Avenue, which was occupied by a two-story single-family home (the “Home”); and

WHEREAS, the Appellant’s proposal reflects the enlargement of the Commercial Building into a single three-story eight-unit mixed-use commercial/community facility/residential building (the “Proposed Building”) on the site, without any trace of the Home, which is required to be demolished to complete the Proposed Building; and

WHEREAS, pursuant to DOB Application No. 402082919 (the “Alteration Permit”), the Appellant has performed construction at the site including the following: construction of a foundation and first floor walls for the Proposed Building around the perimeter of the Home, which remains and was occupied during the construction of portions of the Proposed Building around it; and

WHEREAS, the appeal concerns DOB’s determination that the Alteration Permit was not validly issued and remains revoked because: (1) the nature and extent of the scope of work was not provided in the drawings, as required by the Building Code and (2) a permit for the demolition of the Home was required prior to the issuance of the Alteration Permit; and

PROCEDURAL HISTORY

WHEREAS, on February 3, 2005, the Appellant filed an application to enlarge the Commercial Building on the portion of the site, which was then and remains occupied by the Home; and

WHEREAS, on November 27, 2006, DOB issued the Alteration Permit, under DOB Application No. 402082919 to allow for the proposed construction; the Appellant subsequently renewed the permit several times; and

WHEREAS, the Appellant asserts that the approved plans comply with the C1-2(R4) zoning district regulations in effect at the time of the issuance of the permit; and

WHEREAS, on March 27, 2009, DOB issued a Post Approval Amendment; and

WHEREAS, subsequent to the issuance of the Post Approval Amendment, construction commenced on the site; and

WHEREAS, on April 1, 2009, DOB issued a Notice of Violation and on April 6, 2009, DOB issued an Intent to Revoke Letter; and

WHEREAS, the objections which formed the basis for DOB’s actions include: (1) ZR § 32-421 related to upper stories with both residential and commercial uses; (2) parking requirements associated with community facility uses; (3) the base plane measurement; (4) the requirement for section

1 DOB and the Appellant disagree as to whether or not a zoning lot merger has been effectuated.

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drawings; (5) the requirement for a drawing of the existing building in elevation; (6) open space requirements; and (7) failure to identify the sprinkler work type; and

WHEREAS, on April 9, 2009, the Appellant pre-filed (filed portions of) DOB Application No. 420004603 for the demolition of the Home; DOB contends that the application remains incomplete in that the Appellant never submitted and it never reviewed plans for the demolition, a pre-demolition report was never filed with DOB, and the PW1: Plan/Work Application did not indicate whether the job would be reviewed by a DOB plan examiner; further, the Appellant has not requested a pre-demolition inspection and DOB has not issued a permit for demolition; and

WHEREAS, on April 14, 2009, the Appellant provided a response to DOB's Notice and Letter, which DOB accepted to resolve the related objections; and

WHEREAS, on April 22, 2009, City Council adopted the North Flushing Rezoning; and

WHEREAS, on April 23, 2009, DOB issued a Notice of Violation and a Stop Work Order; and

WHEREAS, on April 27, 2009, DOB issued an Intent to Revoke Letter and a Stop Work Order with a Notice of Objections; the objections which formed the basis for the letter include (1) a requirement for a demolition permit prior to the issuance of an Alteration Permit pursuant to Administrative Code ("AC") § 28-105.3; and (2) a requirement to show the nature and extent of the existing conditions on the approved plans associated with the application pursuant to AC § 27-161; and

WHEREAS, on May 12, 2009, the Appellant filed a response to address the April 27 actions; and

WHEREAS, on June 15, 2009, DOB denied the Appellant's request for a reconsideration; the comments on the reconsideration included the requirements that the Appellant: (1) show how the tenant of the house was protected from entering the yards that have been dug up for foundation walls; (2) show the location of construction equipment on site; and (3) correct the condition of new masonry walls with a height greater than eight feet while the building is occupied;

WHEREAS, DOB's denial of the reconsideration request also noted that alteration cannot proceed until the building is demolished; and

WHEREAS, the Appellant responded that a demolition permit has been filed and paid for, but the objections were never cured or responded to in full; and

WHEREAS, on June 17, 2009, DOB revoked the approval and Alteration Permit; and

WHEREAS, in September 2009, the tenant vacated the Home; and

THE PROVISIONS OF THE BUILDING CODE RELEVANT TO THE APPEAL

WHEREAS, the Board notes that, although the Final Determination cites to provisions of the Building Code adopted on July 1, 2008, the Alteration Permit was approved pursuant to the Building Code (1968) in effect at the time of the application; DOB and the Appellant discuss both codes throughout the course of the appeal; and

WHEREAS, accordingly, DOB and the Appellant

address both versions of the Building Code throughout the course of the appeal; and

WHEREAS, the relevant provisions of the 1968 Building Code are as follows:

AC § 27-149

Separate permits required. Separate permits shall be required, as provided above, except that separate permits for foundations and earthwork, or for the installation or alteration of service equipment, other than fire suppression piping systems, shall not be required whenever plans for such work are included in and form a part of the plans for the construction of new buildings or the alteration of existing buildings.

* * *

AC § 27-161

General requirements. All applications for permits to alter existing buildings shall be subject to the requirements of articles nine and ten of this subchapter and section 27-156 of article eleven of this subchapter.

AC § 27-162

Plans required. All such applications shall be accompanied by such architectural, structural, and mechanical plans as may be necessary to indicate the nature and extent of the proposed alteration work and its compliance with the provision of this code and other applicable laws and regulations. To the extent necessary, all such applications and plans shall be subject to and shall comply with the requirements of sections 27-157, 27-158, and 27-159 of article eleven of this subchapter.

AC § 27-157

Plans required. All such applications shall be accompanied by architectural, structural, and mechanical plans, which shall be complete and of sufficient clarity to indicate the entire nature and extent of the proposed construction work and its compliance with the provisions of this code and other applicable laws and regulations . . . (a) Architectural plans shall contain at least the following data and information:

- (1) Lot diagram showing compliance with the zoning resolution and indicating the size, height and location of the proposed construction and all existing structures on the site and their distances from lot and street lines . . . The lot diagram shall be drawn in accordance with an accurate boundary survey, made by a licensed surveyor, which shall be attached to and form part of the lot diagram. . .

WHEREAS, the relevant provisions of the 2008 Building Code are as follows:

AC § 28-105.1

General It shall be unlawful to construct, enlarge, alter, repair, move, demolish, remove or change the use or occupancy of any building or structure in the city, or to erect, install, alter, repair or use or operate

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any sign or service equipment . . . or to cause any such work to be done unless and until a written permit therefore shall have been issued by the commissioner in accordance with the requirements of this code, subject to such exceptions and exemptions as may be provided in section 28-105.4.

* * *

AC § 28-105.3

Separate permits required. Separate work permits shall be required, as provided above, except that separate permits for foundations and earthwork, or for the installation or alteration of air conditioning systems, ventilation systems, and heating systems shall not be required whenever such work is included in and forms a part of the construction documents filed for the construction of a new building or the alteration of a building or structure.

AC § 28-105.4

Work exempt from permit. Exemptions from permit requirements of this code shall not be deemed to grant authorization for any work to be done in any manner in violation of the provisions of this code, the zoning resolution or any other law or rules enforced by the department. Such exemptions shall not relieve any owner of the obligation to comply with the requirements of or file with other city agencies . . . ; and

DISCUSSION

WHEREAS, the Appellant asserts that DOB improperly and erroneously revoked the Alteration Permit, that the permits were valid when issued, and that pursuant to the permits, the owner completed excavation and construction on foundations to the extent that vested rights to complete construction and obtain an amended Certificate of Occupancy were secured; and

WHEREAS, in initial submissions, the Appellant only addressed the Final Determination's Objection No. 3, regarding the requirement for a demolition permit because he found that only that objection was relevant to the question of the validity of the permit, but later modified his papers to include responses to Objections Nos. 1 and 2; and

A. Objection 3: The Permit Sequence

WHEREAS, as to DOB's contention that the permit is not valid because the Appellant failed to obtain a demolition permit prior to the issuance of the Alteration Permit, the Appellant states that neither AC § 28-105.3 nor its predecessor AC § 27-149 mandates the order in which permits for a job must be issued and that nowhere in the AC or Technical Policy and Procedure Notice (TPPN) or Operations Policy and Procedure Notice (OPPN) catalog or other statement of DOB policy is there a condition that a demolition permit be obtained prior to the issuance of an alteration permit; and

WHEREAS, as to Objection No. 3, the Appellant's architect states that the demolition of the existing Home does not affect the proposed foundation and therefore demolition is not required prior to issuance of the Alteration Permit; and

WHEREAS, as to AC § 28-105.3, the Appellant states that it does not set forth the order in which permits must be obtained or signed off; AC § 28-105.3 only requires that

separate permits be obtained for alteration and demolition and the Appellant asserts that it has not proceeded with the required demolition yet without a permit; and

WHEREAS, the Appellant asserts that alterations often are performed prior to or concurrent with demolition; and

WHEREAS, the Appellant states that the foundations for the proposed enlargement are located around the perimeter of the Home and that the Home's presence did not prevent completion of excavation, foundations, and construction of portions of the first floor walls; the Appellant states that the tenant vacated the Home in September 2009; and

WHEREAS, the Appellant notes that DOB did not issue violations pertaining to the safety of the Home or foundations and did not issue violations for not completing demolition prior to the construction of the alteration; and

WHEREAS, the Appellant contends that a demolition permit is only required prior to demolition and sign-off prior to issuance of the Certificate of Occupancy; and

WHEREAS, DOB asserts that the Alteration Permit could not be considered to be validly issued prior to the rezoning given the fact that the proposed enlargement of the Commercial Building could not have been constructed without the issuance of a demolition permit; and

WHEREAS, further, DOB states that where an existing building will not be incorporated in a proposed enlargement but will rather be fully demolished and where construction of the building enlargement is physically impossible without demolition of an existing building, demolition plans must be approved and DOB must issue a demolition permit prior to the issuance of a permit for an enlargement; and

WHEREAS, DOB notes that the job application was approved pursuant to the 1968 Building Code and, thus it should have cited AC § 27-149 (of the 1968 Code) on its objections, regarding the requirement for separate work permits for several types of work cited in AC § 27-148, including alteration and full demolition of buildings; and

WHEREAS, DOB states that it finds that AC § 28-105.3 of the Building Code, effective July 1, 2008 and AC § 27-149 are substantively the same for purposes of separate permits required under the facts of this case; and

WHEREAS, DOB agrees with the Appellant that the AC is silent as to the sequencing of the issuance of separate permits, but it asserts that the issuance of a demolition permit prior to the issuance of an alteration permit is required in instances of physical impossibility (where it would be physically impossible to complete construction without demolition of the existing building); and

WHEREAS, DOB asserts that absent a demolition permit in the subject case, the Alteration Permit could not be valid because a permit cannot authorize a building that is impossible to build; and

WHEREAS, DOB states that it is necessary for the demolition permit to be issued prior to the issuance of the Alteration Permit because in the absence of such demolition approval and permit, the job applicant has no assurance or guarantee that the demolition of the building is legally permissible and could be approved by DOB; and

WHEREAS, DOB provides as an example that it will not

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issue a demolition permit in the event that the building to be demolished is occupied or until all gas, electric, water, steam, and other utility supply lines are disconnected and approved by the respective utility companies or agencies, or that other specific conditions and safety measures are accounted for; and

WHEREAS, DOB states that the purpose of demolition approval in this case is because a pre-demolition survey, utility cutoff, and proof that the building has been vacated is necessary prior to DOB granting assurance that the demolition is legally permissible or approvable by DOB; and

WHEREAS, DOB distinguishes the Appellant's example of a case where DOB issued an alteration permit prior to a demolition permit for the enlargement of an existing single family home at 157-42 22nd Avenue because it would not be an impossibility to alter the home without demolishing the garage as opposed to the subject case where the alteration of the existing commercial building could not be completed without the demolition of the Home; and

WHEREAS, in contrast, DOB notes that the Home must be demolished in order for the enlargement to be in compliance with all relevant regulations; and

WHEREAS, additionally, DOB notes that the plans for 157-42 22nd Avenue reflect the existing conditions which include the garage, as required by code; and

WHEREAS, DOB notes that the Appellant claims that it filed demolition Application No. 420004603 on April 9, 2009 for the demolition of the occupied single-family home and indicating the existing site conditions; and

WHEREAS, however, DOB asserts that the pre-filed demolition application was incomplete and did not include plans and that the plans that were filed did not reflect the existence of the Home nor did the plans filed with the job application; rather, the plans filed with the job application seemingly indicate a vacant zoning lot where the Home exists; and

WHEREAS, the Appellant provides supplemental assertions to support the argument that the objections can be resolved in a manner that would render the permit valid and allow for vesting under the prior zoning; and

WHEREAS, the Appellant cites to GRA v. Board of Standards and Appeals, (no. 2009-0085, March 11, 2009) in which DOB approved plans, which were later found to reflect a street wall that was non-compliant to a depth of 1'-9" based on a Sanborn Map's dimensions, rather than the required survey's; and

WHEREAS, specifically, the Appellant notes that in GRA, the City acknowledged that DOB allows property owners to resolve objections after a rezoning and restore the validity of the permit²; and

WHEREAS, DOB states that where additional approvals are required prior to the issuance of a permit, such as the requirement for a demolition permit, DOB considers the failure to obtain such approvals an incurable error after the permit lapses due to a rezoning; and

² The Board notes that the property at issue in the GRA litigation is still under DOB review and DOB has not reissued or reinstated the permits.

WHEREAS, DOB deems the failure to obtain the demolition permit to be egregious in the subject case involving the construction of the Proposed Building around the perimeter of the occupied Home; and

WHEREAS, accordingly, DOB finds that the absence of a demolition approval and permit for the demolition of the Home prior to the issuance of an Alteration Permit is an incurable error which led to the revocation of the Alteration Permit; and

WHEREAS, DOB distinguishes the facts in the subject case from GRA, stating that it allows minor amendments to plans after a zoning change, which are the subject of vested rights applications, but DOB is not mandated by any provision of law to allow an applicant to amend plans in order to demonstrate compliance with zoning or construction code requirements after a change in zoning; and

WHEREAS, DOB asserts that if it were required to allow applicants to cure any zoning and code objections after a zoning change, its authority to revoke permits under AC § 28-105.1 would be meaningless; and

WHEREAS, DOB concludes that the permit in the subject case was issued in error and therefore should be revoked; although DOB agrees that the text does not identify any required sequence for permitting, it asserts that the sequence is established because (1) the concept of impossibility precludes the Proposed Building from being built without the demolition of the Home; (2) the error and non-compliance is incurable in the context of a rezoning; and (3) the condition is so egregious that it cannot be corrected; and

B. Objection 2: The Existing Conditions

WHEREAS, as to Objection No. 2 that the plans do not show the nature and extent of existing conditions at the site, the Appellant asserts that (1) the Administrative Code does not require the submission of existing condition plans and (2) although the plans do not reflect the Home, DOB was aware of the Home's existence through site visits, filing of the demolition application, and an approval of a subdivision plan; and

WHEREAS, the Appellant asserts that AC § 27-162 is unambiguous and does not set forth a requirement for showing existing conditions, only the proposed alteration work; and

WHEREAS, as to the existing conditions on the zoning lot, the Appellant states that DOB must have been aware of the existing conditions as DOB inspectors made multiple site visits in April 2009 and could have observed the conditions; and

WHEREAS, further, the Appellant states that the plans filed with Application No. 402477869 for the proposed subdivision of the zoning lot included a plot plan that reflects the existing Home; and

WHEREAS, in response to the Appellant's assertion that DOB would have known that two buildings existed on the zoning lot, because the condition was reflected in DOB's Building Information System (BIS), DOB responds that even if such information were in the system, it is the Appellant's responsibility, not DOB's, to establish the existing conditions on the plans and the nature and extent of the proposed work associated with the application, pursuant to AC § 27-162; and

WHEREAS, DOB cites to multiple sources which reflect

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the requirement to submit plans that reflect the extent of work proposed, including the following: AC § 27-162 (1968 Code) requires the plans to “indicate the nature and extent of the proposed alteration work”; AC § 28-104.7.1 (2008 Code) “Construction documents shall be complete and of sufficient clarity to indicate the location and entire nature and extent of the work proposed”; BC § 106.2 (2008 Code) states that the “applicant shall submit any and all of the documents . . . as appropriate to [show] the nature and extent of the work proposed”; and BC § 106.3 (2008 Code) states that a lot diagram must show “all existing structures on the zoning lot”; and

WHEREAS, DOB notes that conditions of concern associated with construction directly around the perimeter of an existing occupied home include disconnection of utilities which could have been disturbed during construction, creating a dangerous condition; and

WHEREAS, DOB asserts that if the plans filed with the alteration application had shown the Home, DOB would have required approval of the demolition application and a demolition permit prior to approving the proposed enlargement; and

WHEREAS, DOB adds that the job application folder does not contain a copy of the May 1, 2006 survey, which reflects the existence of the Home, which was only submitted to DOB in mid-April 2009; and

WHEREAS, DOB concludes that the failure to reflect the existing site conditions, specifically the existence of the occupied Home, was contrary to the Building Code and a significant omission that rendered the plans incomplete and created an incurable error after the rezoning; and

C. Objection 1: Site Safety

WHEREAS, as to Objection No. 1, to secure approval to protect the existing occupancy of single-family dwelling, the Appellant states that the architect referred DOB to plans that had been filed in connection with the fence application (March 26) and finds that DOB’s response to the architect reflects matters that could be resolved through the DOB administrative process; and

WHEREAS, further, the Appellant represents that the architect was advised that DOB would not conduct further review or provide further comment on the objection until a demolition permit had been secured and a vesting proceeding completed; and

WHEREAS, the Appellant contends that if there had been safety concerns, DOB inspectors would have identified them during site inspections; and

WHEREAS, DOB states that it did not revoke the Alteration Permit based on Objection No. 1, but asserts that the site conditions – including that construction occurred around the perimeter of an occupied home – were egregious from construction and public safety perspectives; and

THE OPPOSITION

WHEREAS, the Opposition supports DOB’s position that the permit should be revoked since the original building plans did not reflect the existing conditions and the demolition permit was not obtained prior to the issuance of the Alteration Permit; and

WHEREAS, the Opposition asserts additional claims including that (1) TPPN 1/02 requires that where significant demolition is required, a pre-demolition inspection and demolition plans must accompany the alteration application and OPPN 24/87 requires that whenever demolition interferes with the construction of a new building, demolition permits must be obtained prior to the issuance of a new building permit; (2) DOB may revoke permits based on misrepresentation, fraud, or if the permits were issued erroneously and should never have been issued as the Opposition contends is supported by the facts of the subject case; and (3) the construction should be characterized as a new building, rather than an alteration since the conditions that qualified it to be an enlargement – the change in use in order to address the commercial and residential use on the same floor – were not addressed until April 2009, well after the initial filing; and

CONCLUSION

WHEREAS, the Board finds that (1) the Administrative Code requires that job application plans include the existing conditions, and (2) DOB has the jurisdiction to fill in the gaps, such as the sequencing of permits, when a particular practice is not described in the Administrative Code; and

WHEREAS, the Board recognizes the practical utility of requiring job applications to include existing conditions from the point of view of technical review as well as real safety-related concerns, which necessitate a transparent process; and

WHEREAS, the Board notes that AC § 27-162 references AC § 27-157 which provides more detail about the requirement that the full nature of the work be described and shown on plan, including the presence and dimensions of existing buildings; and

WHEREAS, accordingly, the Board disagrees with the Appellant’s assertion that AC § 27-162 does not set forth the requirement for plans of existing conditions and finds instead that AC § 27-162, as informed by AC § 27-157, is relevant and applicable to the subject case and that the permit, as issued, was thus not code compliant absent the plans; and

WHEREAS, in response to the Appellant’s assertion that DOB had actual or implied knowledge of the existing conditions at the site, the Board agrees with DOB that a DOB examiner is not required to piece together an array of documents from different portions of an application in order to understand the full picture of what exists and is proposed at a site; rather, it is an applicant’s responsibility to provide a clear and complete application, from the outset; and

WHEREAS, the Board upholds the position that a DOB job application file contains the record for an application and it is what property owners, DOB examiners, and the public rely on to understand the construction at a site; an individual DOB inspector, who is called to the site, may not perform a full review of the construction site or plans and his observations are not substitutes for the written record; and

WHEREAS, the Board notes that the Appellant asserts that the failure to provide the plans, as required by the code, is curable, but does not otherwise provide any rational basis for the omission; and

WHEREAS, as to the sequencing of permits, the Board

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finds that DOB maintains a role with authority to fill in gaps of the Administrative Code with policy and that the sequencing of permits, although not set forth in the Administrative Code, may be relevant in certain circumstances; and

WHEREAS, specifically, the Board notes that (1) DOB routinely issues TPPN's and OPPN's to clarify its practices, and (2) DOB has issued TPPN's and OPPN's on the topic of permit sequencing; and

WHEREAS, the Board notes that the cited TPPN and OPPN on the topic of sequencing do not address the proposed construction scenario, but their existence demonstrates DOB's authority to consider specific conditions not addressed by the Administrative Code; and

WHEREAS, the Board notes that the subject site conditions in which construction of a new building's foundation and portions of its first floor walls occurred around the perimeter of an existing occupied home are so unique that DOB policy did not anticipate it and, thus, no provision of the Administrative Code or policy notice is directly on point; and

WHEREAS, accordingly, the Board asserts that it is critical that DOB have full knowledge of the actual circumstances of proposed construction, as set forth in a complete set of application documents, because sequencing, as contemplated in the related TPPN and OPPN, may be warranted; and

WHEREAS, the Board supports DOB's determination that permit sequencing was required and was a significant element of the construction process and a key public safety concern, which arises from the code requirement for existing conditions; and

WHEREAS, the Board notes that there is a correlation between the requirement for a demolition permit prior to the issuance of a New Building Permit and the requirement for a demolition permit prior to the issuance of an Alteration Permit in the subject case; in both scenarios, completion of construction would be impossible without the completion of demolition; and

WHEREAS, the Board recognizes the distinction between these scenarios and a scenario where an alteration could be completed without demolition of an existing building on the site or construction and then relocation before demolition; and

WHEREAS, the Board notes that DOB has enumerated its safety-related concerns, including construction practices, utility disturbance, and the well-being of tenants within an occupied building intended for demolition, yet surrounded by a new foundation system and new exterior walls and that these concerns clearly fit within DOB's mandate and discretion to enforce; and

WHEREAS, the Board agrees with DOB that there are policy concerns for requiring that existing conditions be reflected on the plans and that the demolition permit be obtained prior to the alteration permit; and

WHEREAS, therefore, the Board accepts DOB's jurisdiction and reasoning for requiring application drawings to reflect the existing conditions and to require the demolition permit prior to the issuance of the Alteration Permit in a case where it would be an impossibility to construct the enlargement

without demolition; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Queens Borough Commissioner, dated June 23, 2010, determining that *inter alia* a demolition permit must have been obtained prior to the Alteration Permit and that a plan, which reflects the existing conditions must be included with the job application, is hereby denied.

Adopted by the Board of Standards and Appeals, January 11, 2011.

153-10-A

APPLICANT – Eric Palatnik, P.C., for 101 01 One Group LLC, owner.

SUBJECT – Application August 19, 2010 – Proposed construction of a three story, five family residential building located within the bed of a mapped street (101st Street), contrary to General City Law Section 35. R5 Zoning District.

PREMISES AFFECTED – 101-01 39th Avenue, between 101st Street and 102nd Street, Block 1767, Lot 59, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 20, 2010, acting on Department of Buildings Application No. 410021248, reads in pertinent part:

“The proposed 3 story w/penthouse building with (5) family is in the bed of mapped street of 101st Street, and is contrary to GCL 35;” and

WHEREAS, this is a proposal for the construction of a three-story with penthouse five-family home located within the bed of a mapped street, 101st Street, within an R5 zoning district; and

WHEREAS, a public hearing was held on this application on December 7, 2010, after due notice by publication in the *City Record*, and then to decision on January 11, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Queens, recommends approval of this application; and

WHEREAS, by letter dated December 28, 2010 the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated September 27, 2010, the Department of Environmental Protection (“DEP”) states that:

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(1) there are no existing City sewers or existing water mains within the referenced location; (2) there is an existing 12-inch diameter private combined sewer in 101st Street starting north of the proposed development; (3) there is an existing eight-inch City water main in the bed of 101st Street, starting to the north of the referenced property; and (4) City Drainage Plan No. 24, Sheet No. 2 calls for a future 12-inch diameter combined sewer to be installed in 101st street between 37th Avenue and 39th Avenue; and

WHEREAS, DEP further states that it requires the applicant to submit a revised survey/plan showing the following: (1) the width of the mapped street, 101st Street, between 37th Avenue and 39th Avenue; and (2) the distance from the northerly lot line to the terminal manhole of the 12-inch diameter private combined sewer, and the distance from the end of the property line to the end cap of the eight-inch diameter City water main; and

WHEREAS, in response to DEP's request, the applicant submitted a revised survey to DEP which shows: (1) 60 feet of the total width of 101st Street and 4.49 feet of the widening portion of the street; and (2) that the existing 12-inch private combined sewer starts 18'-5" northerly from the northerly lot line and the existing eight-inch diameter City water main starts 27 feet northerly from the northerly lot line; and

WHEREAS, by letter dated November 30, 2010, DEP states that it reviewed the revised survey and that it has no further objections; and

WHEREAS, by letter dated December 2, 2010, the Department of Transportation ("DOT") states that it has reviewed the subject proposal and has no objections; and

WHEREAS, DOT states that the applicant's property is not included in the agency's ten-year capital plan; and

WHEREAS, accordingly, the Board has determined 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 July 20, 2010, acting on Department of Buildings Application Nos. 410021248 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 14, 2010" – (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 fire safety measures shall be installed and maintained 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; and

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution; and

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 11, 2011.

212-10-A

APPLICANT – NYC Board of Standards and Appeals

OWNER – Augustus H. Lawrence and Company

SUBJECT – Application November 5, 2010 – Dismissal for lack of Jurisdiction - Appeal of a determination by the Department of Buildings that an engineer's report violated Building Code Section 28.211.1. (False Statements). C6-9M Zoning District.

PREMISES AFFECTED – 96 Greenwich Street, west side of Greenwich Street between Rector Street and Carlisle Street, Block 53, Lot 39, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES – None.

ACTION OF THE BOARD – Application dismissed.

THE VOTE TO DISMISS –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the instant appeal comes before the Board in response to Notice of Violation #100510C101KE issued by the Commissioner of the Department of Buildings ("DOB"), dated October 5, 2010, stating that DOB determined that the project engineer had made a false statement as to the structural soundness of the building on the subject premises, which conflicts with Administrative Code Sections 28-201.1, 28-211.1, and 28-203.1 (the "Final Determination"); and

WHEREAS, on October 21, 2010, DOB issued an Order of the Commissioner (the "Order of the Commissioner") requesting the supporting documentation for the engineer's structural analysis and setting a meeting date with DOB's Special Enforcement Unit;¹ and

WHEREAS, on November 5, 2010, the property owner filed the subject appeal of the Final Determination, challenging DOB's classification of the project engineer's report as a "false statement;" and

WHEREAS, on November 12, 2010, DOB issued a letter to the Board stating that it dismissed the October 5, 2010 violation and that, as such, the subject appeal is moot and should be removed from the Board's calendar; and

WHEREAS, specifically, DOB indicated that the subject violation had been dismissed on the basis that it was superseded by the Order of the Commissioner; and

WHEREAS, the Board notes that DOB's Buildings Information System also indicates that the subject violation has been dismissed; and

¹ The meeting referenced in the Order of the Commissioner was originally scheduled for November 16, 2010, but was subsequently postponed to December 17, 2010.

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WHEREAS, accordingly, on November 24, 2010, Board staff issued a Notice of Hearing to the appellant stating that, based on DOB's November 12, 2010 letter, the Board had placed the case on the December 14, 2010 dismissal calendar; the notice included a December 10, 2010 submission date for the appellant's response; and

WHEREAS, on December 9, 2010, the appellant submitted a response to the Board in which it argued that the Order of the Commissioner did not supersede the subject violation and that the case was not moot and should therefore proceed before the Board; and

WHEREAS, at the December 13, 2010 executive session, the Board indicated that, due to the pending meeting between the representative of the property owner and the DOB Special Enforcement Unit scheduled to take place on December 17, 2010, it would not dismiss the case at the December 14, 2010 hearing but would instead put the case on the January 11, 2011 dismissal calendar; and

WHEREAS, at the December 14, 2010 hearing of the Board, the case was laid over to the January 11, 2011 dismissal calendar; and

WHEREAS, following the December 14, 2010 hearing the Board did not receive any subsequent response from the appellant; and

WHEREAS, the appellant did not appear at the hearing on January 11, 2011; and

WHEREAS, accordingly, because Notice of Violation #100510C101KE has been dismissed by DOB, the Board finds that the subject appeal is therefore moot.

Therefore it is resolved that the instant appeal is dismissed on the basis of mootness.

Adopted by the Board of Standards and Appeals, January 11, 2011.

116-10-BZY

APPLICANT – Steven Sinacori, Esq., for Akerman Senterfitt, LLP, for 3516 Development LLC, owner.

SUBJECT – Application June 24, 2010 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior R6 zoning district. R6B zoning district.

PREMISES AFFECTED – 35-16 Astoria Boulevard, south side of Astoria Boulevard between 35th and 36th Streets, Block 633, Lots 39 and 140, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to March 1, 2011, at 10 A.M., for adjourned hearing.

216-10-A

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 1466 Broadway LP c/o Highgate Holdings, Incorporated, owner.

SUBJECT – Application November 12, 2010 – Appeal pursuant to Section 310(2) of the Multiple Dwelling Law

seeking to vary the court requirements under Section 26 of the Multiple Dwelling Law to permit the hotel conversion of an existing commercial building. C6-7 Zoning District.

PREMISES AFFECTED – 1466 Broadway, southeast corner of Broadway and West 42nd Street, Block 994, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Gary R. Tarnoff.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 1, 2011, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, JANUARY 11, 2011
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

ZONING CALENDAR

98-08-BZ

CEQR #08-BSA-085K

APPLICANT – Gerald J. Caliendo, RA, for Property Holdings LLC/Moshik Regev, owner.

SUBJECT – Application April 18, 2008 – Variance (§72-21) to allow a four-story residential building containing four (4) dwelling units, contrary to use regulations (§42-00). M1-1 district.

PREMISES AFFECTED – 583 Franklin Avenue, 160' of the corner of Atlantic Avenue and Franklin Avenue, Block 1199, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated April 2, 2008, acting on Department of Buildings Application No. 302366927, reads in pertinent part:

“Proposed residential use (Use Group 2) is not permitted in an M1-1 manufacturing zoning district and is contrary to Section 42-00 of the NYC Zoning Resolution”; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-1 zoning district, the proposed construction of a four-story residential building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on July 27, 2010, after due notice by publication in the *City Record*, with continued hearings on August 24, 2010, November 15, 2010 and December 14, 2010, and then to decision on January 11, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Franklin Avenue, between Atlantic Avenue and Pacific Street,

within an M1-1 zoning district; and

WHEREAS, the subject premises has 20 feet of frontage along Franklin Avenue, a depth ranging from 83 feet to 92 feet, and a lot area of 1,750 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a four-story residential building with four dwelling units, a floor area of 4,000 sq. ft. (2.28 FAR), a total building height of 40'-0", and a rear yard with a depth of approximately 37'-6"; and

WHEREAS, because residential use is not permitted in the subject M1-1 zoning district, the applicant seeks a use variance to permit construction of the proposed building; and

WHEREAS, the applicant represents 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 site is a small, vacant lot surrounded by residential uses; and (2) the site's history of development; and

WHEREAS, the applicant states that the subject lot is 20 feet in width and has a depth ranging from 83 feet to 92 feet, and that the small size of the lot does not allow for floor plates of sufficient size to support a conforming manufacturing use; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which reflects that there are no active commercial or manufacturing uses on similarly sized sites in the surrounding area; and

WHEREAS, the radius diagram submitted by the applicant also reflects that the site is the only vacant lot on the subject block and one of only two vacant lots in the surrounding M1-1 zoning district; further, the other vacant lot has a lot area of approximately 7,500 sq. ft., and is therefore more compatible for a conforming manufacturing or commercial use than the subject site; and

WHEREAS, the radius diagram further reflects that the subject site is situated between two lots which are occupied by existing non-conforming residential uses, and that the entire block front of Franklin Avenue is developed with multiple dwellings or mixed use buildings with ground floor retail and residential units above; and

WHEREAS, as to the history of development of the lot, the applicant represents that the site was developed with residential uses from 1888 until 1988, when the previously-existing residential building was destroyed by fire and had to be demolished; the lot has remained vacant since that time; and

WHEREAS, in support of this representation, the applicant submitted Sanborn Maps dating back to 1908, as well as Department of Buildings records; 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 provided a financial analysis for (1) an as-of-right one-story retail commercial building; (2) an as-of-right one-story warehouse building; and (3) the proposed four-story residential building; and

WHEREAS, the study concluded that the as-of-right

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scenarios would not result in a reasonable return, but that the proposal would realize 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 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 represents that the character of the surrounding area is a mix of residential, manufacturing, and community facility uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that the subject block consists predominantly of residential uses; and

WHEREAS, specifically, the applicant states that the entire blockfront along Franklin Avenue between Atlantic Avenue and Pacific Street consists of four-story residential or mixed-use buildings, on both the east and west side of the street; and

WHEREAS, the applicant further states that the adjacent lots to the north and south of the subject site are both occupied by four-story residential buildings; and

WHEREAS, the applicant submitted a streetscape reflecting that the street wall height of the proposed building will match the two adjacent buildings, thereby filling in a gap in the current street front along Franklin Avenue; and

WHEREAS, the applicant notes that the site's history supports the residential use of the site, as it was developed residentially between 1888 and 1988 and has remained vacant since; and

WHEREAS, the applicant represents that the proposed building will comply with the bulk regulations for an R6 zoning district pursuant to the Quality Housing Program, except for a slight overage in the floor area ratio ("FAR") to allow for a building with a floor area of 4,000 sq. ft. (2.28 FAR); the maximum permitted floor area for an R6 (Quality Housing) building would be 3,850 sq. ft. (2.20 FAR); 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 site's unique physical conditions; and

WHEREAS, 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 6 NYCRR, Part 617.2; 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") 08BSA085K dated November 20, 2008; 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 Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis has reviewed the project for potential hazardous materials; and

WHEREAS, DEP requested a Phase II Workplan and Health and Safety Plan and the applicant requested to do a Restrictive Declaration which BSA and DEP agreed to; and

WHEREAS, the Restrictive Declaration was executed on January 4, 2011 and submitted for recording on January 5, 2011; and

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

WHEREAS, accordingly, 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 M1-1 zoning district, the proposed construction of a four-story residential building, contrary to ZR § 42-00; *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, 2011"-five (5) sheets; and *on further condition*:

THAT the bulk parameters of the proposed buildings shall be as follows: maximum floor area of 4,000 sq. ft. (2.28 FAR); and a total height of 40'-0", as illustrated on the BSA-approved plans;

THAT a Phase II Workplan and Health and Safety Plan and any other necessary documents (Phase II Site Investigation report, Remedial Action Plan, Construction Health and Safety Plan, etc.) be submitted to DEP for review and approval;

THAT, prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor shall obtain from DEP a Notice to Proceed; and

THAT prior to the issuance by DOB of a temporary or

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permanent Certificate of Occupancy, the applicant or successor shall obtain from DEP a Notice of Satisfaction;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT all interior layouts and exits 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 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 11, 2011.

107-10-BZ

APPLICANT – Akerman Senterfitt, for Associazione Sacchese D’America, owner.

SUBJECT – Application September 10, 2010 – Variance (§72-21) to allow for a community facility use (*Associazione Sacchese D’America*), contrary to side yard regulations (§24-35). R2 zoning district.

PREMISES AFFECTED – 12-24 149th Street, between 12th Avenue and Cross Island Parkway, Block 4466, Lot 21, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated May 15, 2010, acting on Department of Buildings Application No. 420092081, reads in pertinent part:

“As per ZR 24-35(a) minimum required side yards:

(a) two side yards shall be provided, each with a minimum required width of eight feet;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R2 zoning district the legalization of a community facility use on the first floor of an existing mixed-use community facility/residential building which does not comply with side yard regulations for community facility use, contrary to ZR § 24-35; and

WHEREAS, a public hearing was held on this application on November 16, 2010, after due notice by publication in the *City Record*, with a continued hearing on December 14, 2010 and then to decision on January 11, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, the Queens Borough President recommends approval of this application; and

WHEREAS, State Senator Frank Padavan and State Assemblywoman Ann-Margaret Carrozza provided written testimony in support of the application; and

WHEREAS, two adjacent neighbors provided letters in support of the application; and

WHEREAS, Saint Luke’s Church provided written testimony in support of the application, noting that the applicant works in conjunction with the church for religious events and community-based social service events; and

WHEREAS, the application is brought on behalf of the Associazione Sacchese D’America (the “Association”), a nonprofit religious organization; and

WHEREAS, the site is located on the west side of 149th Street, between Cross Island Parkway and 12th Avenue; and

WHEREAS, the site has a lot area of approximately 4,037 sq. ft. (.56 FAR) and is located within an R2 zoning district; and

WHEREAS, the site is occupied by a two-story building, built in 1915 for residential occupancy; the first floor of the building is occupied by the Association (Use Group 4) and the second floor is occupied by residential use (Use Group 2), both of which are proposed to remain; and

WHEREAS, the applicant now proposes to legalize the existing community facility use within the existing building without any physical changes to the building; and

WHEREAS, the existing building is non-complying as to side yards; specifically, the existing side yards have widths of 4’-0” and 1’-0” (a community facility use requires two side yards with minimum widths of 8’-0” each); and

WHEREAS, the side yards are pre-existing legal non-compliances for residential use, but a variance is required due to the change in use and the increased degree of non-compliance as to the side yards associated with the community facility use; and

WHEREAS, the applicant represents that the proposed legalization of the community facility use will not create any other non-compliances and that the building will remain at .56 FAR (a maximum FAR of 1.0 is permitted for the mixed-use building); and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the programmatic needs of the Association; and (2) the narrowness of the zoning lot; and

WHEREAS, specifically, the applicant states that the following are the programmatic needs of the Association which require the requested waivers: to provide a sufficiently-sized gathering place for its members to worship the Roman Catholic Patron Saints of Sacco, Italy, within walking distance of many of its members; and

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WHEREAS, the applicant states that the Association conducts religious, cultural and civic functions related to the worship of its patron saint Maria Santissimo D'Angeli, usually conducting worship services in the evening; the Association also works closely with nearby St. Luke's Church to provide services which the church cannot accommodate; and

WHEREAS, the Board acknowledges that the Association, as a religious institution, is entitled to significant deference under the 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, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the Board finds that the Association's programmatic needs are legitimate, and agrees that the existing first floor space is required to accommodate the Association's programmatic needs at the subject site; and

WHEREAS, the applicant represents that the building was built as a residential building nearly 100 years ago and that it cannot be occupied by a community facility in strict compliance with zoning district regulations; and

WHEREAS, as to the site's narrow width, the applicant notes that the site has a width of 25 feet and that if a new building were constructed at the site to accommodate the community facility use with two complying side yards with widths of 8'-0", the exterior width of the building would be 9'-0", an insufficient width to accommodate the Association's programmatic needs; and

WHEREAS, as to the uniqueness of the site condition, the Board notes that the 400-ft. radius diagram reflects that there are only approximately two lots with similar or narrower widths that are occupied by detached buildings with two side yards; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the site, when considered in conjunction with the programmatic needs of the Association, creates unnecessary hardship and practical difficulty in occupying the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Association 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, the applicant notes that community facility use is permitted within the zoning district; and

WHEREAS, the applicant states that the existing 1915

building with non-complying side yards will not be changed and is compatible with the context of the immediate area; and

WHEREAS, the applicant notes that the building is compatible in size with the other buildings in the area, including many similar two-story residential buildings; 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 construction that would meet the programmatic needs of the Association 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 applicant represents that the requested side yard waivers are the minimum necessary to accommodate the Association's programmatic needs; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Association to fulfill its programmatic needs on the narrow site; 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 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 R2 zoning district, the legalization of a community facility use on the first floor of an existing mixed-use community facility/residential building which does not comply with side yard regulations for community facility use, contrary to ZR § 24-35, *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 10, 2010" – two (2) sheets and "Received November 9, 2010" – one (1) sheet and *on further condition*:

THAT any change in control or ownership 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 use of the building 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.

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Adopted by the Board of Standards and Appeals, January 11, 2011.

179-10-BZ

CEQR #11-BSA-025K

APPLICANT – Sheldon Lobel, P.C., for E & R Duffield Holding Associates, owner; Duffield Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application September 16, 2010 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment (*Planet Fitness*). C6-4 zoning district.

PREMISES AFFECTED – 249 Duffield Street, east side of Duffield Street, approx. 69’ north of the corner of Duffield Street and Fulton Street, Block 146, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Elizabeth Safien.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 26, 2010, acting on Department of Buildings Application No. 300196151, reads in pertinent part:

“Proposed change of use to a physical culture establishment is contrary to ZR Section 32-10 and must be referred to BSA for approval pursuant to ZR Section 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C6-4.5 zoning district within the Special Downtown Brooklyn District, the legalization of a physical culture establishment (PCE) at the cellar, first floor, and second floor of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 16, 2010, after due notice by publication in *The City Record*, with a continued hearing on December 14, 2010, and then to decision on January 11, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson and Commissioner Ottley-Brown; and

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

WHEREAS, the subject site is located on the east side of Duffield Street, between Fulton Street and Willoughby Street, in a C6-4.5 zoning district within the Special Downtown Brooklyn District; and

WHEREAS, the site is occupied by a two-story commercial building; and

WHEREAS, the PCE will occupy the entire building, with a total floor area of 13,434 sq. ft. on the first floor and second floor, and an additional 7,809 sq. ft. of floor space at the cellar level; and

WHEREAS, the PCE is operated as Planet Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, 24 hours per day; Friday, from 12:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, at hearing, the Board questioned whether the signage at the site complies with the underlying zoning district regulations; and

WHEREAS, in response, the applicant submitted photographs reflecting that the rooftop banner has been removed from the site, and submitted revised plans and a signage analysis reflecting that the signage on the site complies with the underlying zoning district regulations; and

WHEREAS, by letter dated September 30, 2010, the Fire Department states that a sprinkler system is required for the subject site pursuant to Building Code Section 903.2.1.3, and requests that the plans be amended to reflect the installation of a sprinkler system in the building; and

WHEREAS, in response, the applicant submitted revised plans which reflect that an automatic wet sprinkler will be installed throughout the PCE; 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 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 Board notes that the PCE has been in operation since January 1, 2010, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between January 1, 2010 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; 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

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Assessment Statement, CEQR No.11BSA025K, dated September 15, 2010; and

WHEREAS, the EAS documents 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, 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 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, on a site in a C6-4.5 zoning district within the Special Downtown Brooklyn District, the legalization of a physical culture establishment at the cellar, first floor, and second floor of a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 4, 2010"-(4) sheets and "Received November 30, 2010"-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on January 1, 2020;

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 all massages shall be performed by New York State licensed massage therapists;

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

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);

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, January 11, 2011.

24-09-BZ

APPLICANT – Sheldon Lobel, PC, for Meadows Park Rehabilitation and Health Care Center, LLC, owners.

SUBJECT – Application February 12, 2009 – Variance to allow the enlargement of a community facility (*Meadow Park Rehabilitation and Health Care Center*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), height (§24-521) and rear yard (§24-382) regulations. R3-2 district.

PREMISES AFFECTED – 78-10 164th Street, Located on the western side of 164th Street between 78th Avenue and 78th Road, Block 6851, Lot 9, 11, 12, 23, 24, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Elizabeth Safien.

ACTION OF THE BOARD – Laid over to February 8, 2011, at 1:30 P.M., for adjourned hearing.

304-09-BZ

APPLICANT – Stuart A. Klein, Esq. for Junius-Glenmore Development, LLC, owner; Women in Need, Inc., lessee.

SUBJECT – Application November 4, 2009 – Variance (§72-21) to allow the erection of a ten-story, mixed-use community facility (*Women In Need*) and commercial building, contrary to floor area (§42-00, 43-12 and 43-122), height and sky exposure plane (§43-43), and parking (§44-21). M1-4 zoning district.

PREMISES AFFECTED – 75-121 Junius Street, Junius Street, bounded by Glenmore Avenue and Liberty Avenue, Block 3696, Lot 1, 10, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Jay Goldstein and Hiram Rothkrug.

For Opposition: William Wilkins, Devon Prioleau and John Curcio.

ACTION OF THE BOARD – Laid over to March 1, 2011, at 1:30 P.M., for continued hearing.

309-09-BZ

APPLICANT – Harold Weinberg, P.E., for Ralph Stroffolino, owner.

SUBJECT – Application November 20, 2009 – Variance (§72-21) to allow a mixed use building, contrary to lot coverage (§23-145), side yard (§35-541) and height (§35-542) regulations. R6A/C2-3 zoning district.

PREMISES AFFECTED – 2173 65th Street, between Bay Parkway and 21st Avenue, Block 5550, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Harold Weinberg, Frank Sellitto and David Lane.

ACTION OF THE BOARD – Laid over to February

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15, 2011, at 1:30 P.M., for continued hearing.

31-10-BZ

APPLICANT – Eric Palatnik, P.C., for 85-15 Queens Realty, LLC, owner.

SUBJECT – Application March 16, 2010 – Variance (§72-21) to allow for a commercial building, contrary to use (§22-00), lot coverage (§23-141), front yard (§23-45), side yard (§23-464), rear yard (§33-283), height (§23-631) and location of uses within a building (§32-431) regulations. C1-2/R6, C2-3/R6, C1-2/R7A, R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard aka 51-35 Reeder Street, north side of Queens Boulevard, between Broadway and Reeder Street, Block 1549, Lot 28, 41, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik and Raymond Chen.

For Opposition: Helen Lesnik.

ACTION OF THE BOARD – Laid over to March 15, 2011, at 1:30 P.M., for continued hearing.

35-10-BZ

APPLICATION – Sheldon Lobel, PC for Yuriy Pirov, owner.

SUBJECT – Application March 22, 2010 – Variance (§72-21) to permit the legalization of an existing synagogue (*Congregation Torah Haim Ohel Sara*), contrary to front yard (§24-34), side yard (§24-35) and rear yard (§24-36). R4 zoning district.

PREMISES AFFECTED – 144-11 77th Avenue, approximately 65 feet east of the northeast corner of Main Street and 77th Avenue. Block 6667, Lot 45, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Elizabeth Safien.

ACTION OF THE BOARD – Laid over to February 1, 2010, at 1:30 P.M., for adjourned hearing.

47-10-BZ

APPLICANT – Eric Palatnik, P.C., for 2352 Story Avenue Realty Coprporation, owner; Airgas-East, Incorporated, lessee.

SUBJECT – Application April 8, 2010 – Variance (§72-21) to allow a manufacturing use in a residential district, contrary to ZR 22-00. M1-1/R3-2 zoning district.

PREMISES AFFECTED – 895 Zerega Avenue, aka 2352 Story Avenue, Block 3698, Lot 36, Borough of The Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Eric Palatnik and Eric Meyn.

ACTION OF THE BOARD – Laid over to February 15, 2011, at 1:30 P.M., for continued hearing.

95-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Raymond Kohanbash, owner.

SUBJECT – Application May 27, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461 and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2216 Quentin Road, south side of Quentin Road between East 22nd Street and East 23rd Street, Block 6805, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to April 5, 2011, at 1:30 P.M., for adjourned hearing.

127-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Aleksandr Goldshmidt and Inna Goldshmidt, owners.

SUBJECT – Application July 12, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space, lot coverage (§23-141), exceeds the maximum perimeter wall height (§23-631) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 45 Coleridge Street, east side of Coleridge Street, between Shore Boulevard and Hampton Avenue, Block 8729, Lot 65, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to February 8, 2011, at 1:30 P.M., for continued hearing.

130-10-BZ

APPLICANT – Sheldon Lobel, P.C., for John Ingravallo, owner.

SUBJECT – Application July 16, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141) and perimeter wall height (§23-631) regulations. R3X zoning district.

PREMISES AFFECTED – 1153 85th Street, north side of 85th Street, between 11th and 12th Avenue, Block 6320, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Elizabeth Safien.

ACTION OF THE BOARD – Laid over to February 1, 2011, at 1:30 P.M., for adjourned hearing.

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134-10-BZ

APPLICANT – Stuart Beckerman, for Passiv House Xpermental LLC, owner.

SUBJECT – Application July 30, 2010 – Variance (§72-21) to allow a residential building, contrary to floor area (§43-12), height (§43-43), and use (§42-10) regulations. M1-1 zoning district.

PREMISES AFFECTED – 107 Union Street, north side of Union Street, between Van Brunt and Columbia Streets, Block 335, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Neil Weisbard.

ACTION OF THE BOARD – Laid over to February 8, 2011, at 1:30 P.M., for continued hearing.

149-10-BZ

APPLICANT – Eric Palatnik, P.C., for Chaya Singer, owner.

SUBJECT – Application August 13, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and lot coverage (§23-141); side yard (§23-461) and less than the minimum rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1415 East 29th Street, between Avenue N and Kings Highway, Block 7683, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to February 15, 2011, at 1:30 P.M., for continued hearing.

150-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Lyle Broochian, owner.

SUBJECT – Application August 16, 2010 – Special Permit (§73-622) for the legalization of the enlargement of an existing single family home, contrary to floor area (23-141); side yard (§23-461) and rear yard regulations (§23-47). R2 zoning district.

PREMISES AFFECTED – 1124 East 26th Street, west side of East 26th Street, between Avenue K and Avenue L, Block 7625, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Elizabeth Safien.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 1, 2011, at 1:30 P.M., for decision, hearing closed.

173-10-BZ

APPLICANT – Nasir J. Khanzada, for Olympia Properties, LLC., owner.

SUBJECT – Application August 26, 2010 – Special Permit (§73-30) to legalize the operation of a physical culture establishment (*Olympia Spa*). C2-4/R6B zoning district.

PREMISES AFFECTED – 65-06 Fresh Pond Road, west side of Fresh Pond Road, 45.89’ south of corner of Linden Street and Fresh Pond Road, Block 3526, Lot 67, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Nasir J. Khanzada.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 8, 2011, at 1:30 P.M., for decision, hearing closed.

175-10-BZ

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

SUBJECT – Application September 1, 2010 – Special Permit (§11-411) for an Extension of Term of a previously approved Automotive Service Station (UG 16B) which expired on December 18, 2001; Extension of Time to obtain a certificate of occupancy which expired on September 21, 1994; Waiver of the Rules of Practice and Procedures. R4 zoning district.

PREMISES AFFECTED – 3400 Baychester Avenue, Northeast corner of Baychester and Tillotson Avenue, Block 5257, Lot 47, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Elizabeth Safien.

ACTION OF THE BOARD – Laid over to March 1, 2011, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

This resolution adopted on December 14, 2010, under Calendar No. 104-10-BZ and printed in Volume 95, Bulletin No. 51, is hereby corrected to read as follows:

104-10-BZ

CEQR #10-BSA-077K

APPLICANT – Moshe M. Friedman, P.E., for Congregation Ohr Yisroel Inc., owner.

SUBJECT – Application June 8, 2010 – Variance (§72-21) to permit the extension and conversion of an existing residential building to a synagogue and rectory, contrary to lot coverage and floor area (§24-11) front yard (§24-34), side yard (§24-35) and wall height and sky exposure plane (§24-521). R5 zoning district.

PREMISES AFFECTED – 5002 19th Avenue, aka 1880-1890 50th Street, south side of 50th Street, west of 19th Avenue, Block 5461, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant:

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated May 13, 2010, acting on Department of Buildings Application No. 320152213 reads, in pertinent part:

“Proposed house of worship (UG 4) in an R5 district is contrary to:

- ZR 24-11 Floor Area & Lot Coverage
- ZR 24-521 Height
- ZR 23-34 Front Yard
- ZR 24-35 Side Yard
- ZR 23-521 Sky Exposure Plane

And requires a variance from the Board of Standards and Appeals as per Section 72-21;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R5 zoning district, the conversion and enlargement of an existing residential building to a synagogue (Use Group 4), which does not comply with floor area, lot coverage, front yard, side yard, height and sky exposure plane requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35 and 24-521; and

WHEREAS, a public hearing was held on this application on October 5, 2010, after due notice by publication in *The City Record*, with a continued hearing on November 16, 2010, and then to decision on December 14, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of the application; and

WHEREAS, certain neighborhood residents provided written testimony in support of this application; and

WHEREAS, this application is being brought on behalf of Congregation Ohr Yisroel, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject site is located on the southwest corner of 19th Avenue and 50th Street, within an R5 zoning district; and

WHEREAS, the subject lot has a width of 20’-2”, a depth of 100’-0”, and a lot area of 2,081 sq. ft.; and

WHEREAS, the subject site is currently occupied by a two-story residential building with a floor area of 3,464 sq. ft. (1.72 FAR); and

WHEREAS, the proposed building provides for a three-story synagogue with the following parameters: a floor area of 5,696 sq. ft. (the maximum permitted floor area is 4,162 sq. ft.), an FAR of 2.82 (the maximum permitted FAR is 2.0); lot coverage of 94 percent (the maximum permitted lot coverage is 60 percent); a front yard with a depth of 5’-0” along the eastern lot line and no front yard along the northern lot line (a front yard with a minimum depth of 10’-0” is required); no side yards (two side yards with minimum depths of 8’-0” and 9’-6”, respectively, are required); a front wall height of 40’-0” (the maximum permitted front wall height is 35’-0”); and encroachment into the sky exposure plane; and

WHEREAS, the proposal provides for the following uses: (1) a synagogue at the cellar level and first floor; (2) a women’s balcony on the second floor; and (3) a library and rabbinical study room on the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate its growing congregation; and (2) to provide a separate space for men and women during religious services; and

WHEREAS, the applicant states that the congregation currently has a membership of 60 families and there are approximately 60 congregants who worship at the current rented facility on the Sabbath, between 30 and 40 congregants who attend daily services, and approximately 115 congregants who attend holiday services; and

WHEREAS, the applicant further states that the congregation currently worships in rented space and has to rent out additional space for holiday services, which attract a larger number of worshippers; and

WHEREAS, the applicant represents that the size, layout and design of the subject building is inadequate to serve the current congregation; and

WHEREAS, the applicant represents that the congregation is made up of many young families and has been growing steadily since its inception, and that the proposed synagogue is necessary to accommodate the future growth of the congregation; and

WHEREAS, the applicant states that the proposed building can accommodate its growing congregation as well as provide a separate worship space for men and women, as

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required by religious doctrine; and

WHEREAS, the applicant states that the requested waivers enable the Synagogue to provide adequate space for worship services in the cellar synagogue, first floor synagogue, and the women's balcony; and

WHEREAS, the applicant represents that worship space which separates men and women is critical to its religious practice; and

WHEREAS, the applicant further represents that the third floor study space is necessary to accommodate the religious traditions of the congregation, which require that the congregation set aside a study period during prayer times for the study of the Torah, Talmud, and other Jewish religious texts; and

WHEREAS, the Board acknowledges that the Synagogue, as a religious institution, is entitled to significant deference under the 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, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that 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, however, the applicant also represents that the narrow width of the site creates an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, the subject lot has a width of 20'-2"; and

WHEREAS, the applicant states that the site is too narrow to accommodate a complying synagogue building, as providing complying side yards would reduce the width of the building to 4'-9"; and

WHEREAS, the applicant represents that, therefore, the required floor area cannot be accommodated within the as-of-right lot coverage, floor area, and yard parameters and allow for efficient floor plates that accommodate the Synagogue's programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical condition, when considered 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 that the proposed use is permitted in the subject zoning district; and

WHEREAS, as to bulk, the applicant submitted a 400-ft. radius diagram reflecting that the residential character of the surrounding neighborhood includes one-, two- and three-family homes and three- and four-story apartment buildings; and

WHEREAS, the applicant states that the proposed three-story building is consistent with the surrounding area, as three-story residential buildings are permitted in the subject zoning district; and

WHEREAS, at hearing, the Board questioned whether the applicant needed the requested front yard waiver, and the effect it would have on the surrounding residences; and

WHEREAS, in response, the applicant submitted plans for a lesser variance alternative that eliminated the front yard waiver; and

WHEREAS, the plans submitted by the applicant reflect that the lesser variance scenario would limit the occupancy of both the proposed synagogue and balcony to 63 people, and would limit the occupancy of the cellar synagogue to 38 people; and

WHEREAS, the applicant states that while the lesser variance scenario would provide a temporary reprieve to the Synagogue's space requirements for weekday and Sabbath services, it would not meet the programmatic needs of the Synagogue because it would not provide adequate space to accommodate the current congregation during holiday services, and would not provide space to accommodate the anticipated growth of the congregation; and

WHEREAS, the applicant also submitted letters from the adjacent neighbors on 19th Avenue in support of the proposal, including the extension of the building into the front yard; and

WHEREAS, accordingly, 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, 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 Synagogue 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, as noted above, the applicant submitted plans for a lesser variance scenario which was unable to meet the programmatic needs of the Synagogue; and

WHEREAS, accordingly, the Board finds the requested waivers 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

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action pursuant to 6 NYCRR Part 617.2; 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. 10BSA077K, dated September 15, 2010; 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 each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R5 zoning district, the conversion and enlargement of an existing residential building to a synagogue (Use Group 4), which does not comply with floor area, lot coverage, front yard, side yard, height and sky exposure plane requirements for community facilities, contrary to ZR §§ 24-11, 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 June 8, 2010” – (9) sheets and “Received September 15, 2010” – (1) sheet; and *on further condition*:

THAT the building parameters shall be: a floor area of 5,696 sq. ft. (2.82 FAR); lot coverage of 94 percent; a front yard with a depth of 5’-0” along the eastern lot line; and a front wall height of 40’-0”, as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4);

THAT no commercial catering shall take place onsite;

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 construction shall proceed in accordance with ZR

§ 72-23;

THAT the Department of Buildings must ensure compliance 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 14, 2010.

***The resolution has been revised to correct the Plans Date which read: “Received June 8, 2010” – (3) sheets, “Received September 15, 2010” – (2) sheets and “Received November 3, 2010” – (5) sheets now reads: “Received June 8, 2010” – (9) sheets and “Received September 15, 2010” – (1) sheet. Corrected in Bulletin Nos. 1-3, Vol. 96, dated January 19, 2011.**

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5-11-BZ

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6-11-BZ

50-20 216th Street, Irregular corner lot of 7536.8 square feet on 216th Street and the corner of 51st Avenue., Block 7395, Lot(s) 13,16, Borough of **Queens, Community Board: 11**. Variance (§72-21) to allow a one family detached residence, contrary to use regulations. R2A 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

FEBRUARY 8, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 8, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

899-65-BZ

APPLICANT – Sheldon Lobel, P.C., for Rengency Towers, LLC, owner.

SUBJECT – Application December 3, 2010 – Extension of Term permitting the use of no more than 75 unused and surplus tenant parking spaces, within an accessory garage, for transient parking granted by the Board pursuant to §60 (3) of the Multiple Dwelling Law (MDL) which expired on November 16, 2010. C2-8/R8B zoning district.

PREMISES AFFECTED – 231-245 East 63rd Street, aka 1201-1222 2nd Avenue. Located along the entire west block front of Second Avenue between 63rd and 64th Streets. Block 1418, Lot 21. Borough of Manhattan.

COMMUNITY BOARD #8M

197-02-BZ

APPLICANT – Gary Silver Architects, for Nostrand Kings Management, ower; No Limit LLC, lessee.

SUBJECT – Application November 9, 2010 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Culture Establishment which expired on November 26, 2007; Extension of Time to obtain a Certificate of Occupancy; Waiver of the Rules of Practice and Procedure. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 2825 Nostrand Avenue, East side of Nostrand Avenue 129.14 feet south of the corner of Kings Highway. Block 7692, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #18BK

259-08-BZ

APPLICANT – Jeffrey A. Chester/Einbinder & Dunn, for AAC Douglaston Plaza, LLC, owner; Fairway Douglaston LLC, lessee.

SUBJECT – Application October 18, 2010 – Amendment of a previously approved variance (§72-21) permitting the expansion of a non-conforming supermarket (UG 6).The application seeks to remove a condition limiting the signage to C1 regulations. R4 zoning district.

PREMISES AFFECTED – 242-02 61st Avenue, Douglaston Parkway and 61st Avenue, Block 8286, Lot 185, Borough of Queens.

COMMUNITY BOARD #11Q

APPEALS CALENDAR

96-10-A & 97-10-A

APPLICANT – Rothkrug Rothkrug & Spector,for Hub Development Corporation, owner.

SUBJECT – Application June 1, 2010 – Proposed construction of a single family home located within the bed of a mapped street (Jay Street) contrary to General City Law Section 35. R3-1 Zoning District.

PREMISES AFFECTED – 673 & 675 Hunter Avenue, north side of Hunter Avenue, bed of Jay Street, Block 3864, Lot 98 & 99, Borough of Staten Island.

COMMUNITY BOARD #2SI

214-10-A

APPLICANT – Carol E. Rosenthal, Esq./Fried Frank, for Boulevard Leasing Limited Partnership, owner.

SUBJECT – Application November 10, 2010 – Appeal challenging the Department of Buildings determination regarding maximum number of dwelling units (ZR §23-22) allowed in a residential conversion of an existing building. C4-2 zoning district.

PREMISES AFFECTED – 97-45 Queens Boulevard, bounded by Queens Boulevard, 64th Road and 64th Avenue, Block 2091, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

FEBRUARY 8, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 8, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

118-10-BZ

APPLICANT – Eric Palatnik, P.C., for Arkady Nabatov, owner.

SUBJECT – Application June 28, 2010 – Reinstatement (§11-411 & §11-413) of an approval permitting the operation of an automotive service station (UG 16B), with accessory uses, which expired on December 9, 2003. Amendment to legalize a change in use from automotive service station to automotive repair, auto sales and hand car wathing. R4 zoning district.

PREMISES AFFECTED - 2102/24 Avenue Z, aka 2609/15 East 21st Street. Block 7441, Lot 371. Borough of Brooklyn.

COMMUNITY BOARD #15BK

CALENDAR

192-10-BZ

APPLICANT – Vincent L. Petraro, PLLC, for The Leavitt Street LLC, owner.

SUBJECT – Application October 20, 2010 – Special Permit (§73-66) to allow for a waiver of height restrictions around airports. C4-2 zoning district.

PREMISES AFFECTED – 39-16 College Point Boulevard, west side of College Point Boulevard, at the cross section of Roosevelt Avenue and College Point Boulevard, Block 462, Lot 4, Borough of Queens.

COMMUNITY BOARD #7Q

193-10-BZ

APPLICANT – Vincent L. Petraro, PLLC, for Jia Ye Realty, LLC, owner.

SUBJECT – Application October 20, 2010 – Special Permit, ZR §73-66, to allow for a waiver of height restrictions around airports. C4-3 zoning district.

PREMISES AFFECTED – 35-27 Prince Street, at the congruence of 36th Road and Prince Street, Block 4971, Lot 8, Borough of Queens.

COMMUNITY BOARD #7Q

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JANUARY 25, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

245-49-BZ

APPLICANT – Simons & Wright LLC, for Alley Pond Owners Corporation, owner.

SUBJECT – Application October 7, 2010 – Amendment of previous approval to legalize the conversion of one residential unit to be used as an accessory residential management office and elimination of the term; waiver of the rules. R3-2 zoning district.

PREMISES AFFECTED – 78-09 Springfield Boulevard, east side of Springfield between Kingsbury Avenue and Union Turnpike, Block 7842, Lot 33, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Emily Simons.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an amendment to a previously approved variance for the development of 275 two-story two-family residential buildings; and

WHEREAS, a public hearing was held on this application on December 14, 2010, after due notice by publication in *The City Record*, and then to decision on January 25, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Queens, recommends approval of this application; and

WHEREAS, the site occupies the majority of Block 7842, with frontage on Kingsbury Avenue, 226th Street, Union Turnpike and Springfield Boulevard, within an R3-2 zoning district; and

WHEREAS, the site is occupied by a residential development consisting of 275 two-story garden apartments with a total of 549 one- and two-bedroom apartments and an accessory residential management office located in one of the residential units; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 1, 1949 when, under the subject calendar number, the Board granted a variance to permit the

construction of the subject residential development, contrary to regulations related to side and rear yards, the construction and maintenance of more than one building on a lot, and the parking and storage of motor vehicles; the grant included a term of ten years, which expired on June 1, 1959; and

WHEREAS, on June 1, 1949, the Board also granted a companion application under BSA Cal. No. 246-49-A, to permit the construction of buildings which are located in the bed of a mapped street and do not face on a legal street, pursuant to General City Law §§ 35 and 36; and

WHEREAS, the applicant now seeks an amendment to legalize the use of one of the residential units as an accessory residential management office; and

WHEREAS, the applicant represents that the residential management office has operated at the subject site since the time of the initial Board grant, and that the residential management office is necessary to carry out the customary tasks associated with a residential development of this size; and

WHEREAS, the applicant notes that it is not seeking to extend or enlarge any portion of the residential management office, but merely to legalize the current configuration which has existed at the site for more than 60 years; and

WHEREAS, the applicant also seeks to eliminate the term associated with the subject variance; and

WHEREAS, the applicant states that the subject site has operated in accordance with the terms of the variance for more than 60 years, with the exception of the use of one unit as a residential management office, and represents that imposing such a term on an occupied residential development built pursuant to a variance is an unnecessary encumbrance; and

WHEREAS, the applicant submitted photographs reflecting that the open green spaces, sidewalks, accessory garages, parking lots and the playground that comprise the site have been maintained in good condition; and

WHEREAS, based upon the above, the Board finds that the requested amendments to legalize the residential management office and to eliminate the term of the variance 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 June 1, 1949, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to eliminate the term and legalize the use of one residential unit as an accessory residential management office; *on condition* that the use shall substantially conform to drawings as filed with this application, marked “Received October 7, 2010”–(2) 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.”

MINUTES

(DOB Application No. 410155594)

Adopted by the Board of Standards and Appeals, January 25, 2011.

66-90-BZ

APPLICANT – Eric Palatnik, P.C., for A.H.G. Realty Corporation, owner.

SUBJECT – Application October 5, 2010 – Extension of Term for a UG16 Gasoline Service Station (*Mobil*) which expired on October 1, 2010. R5 zoning district.

PREMISES AFFECTED – 43-03 Astoria Boulevard, northeast corner of 43rd Street, Block 780, Lot 18, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for an automotive service station, which expired on October 1, 2010; and

WHEREAS, a public hearing was held on this application on November 23, 2010, after due notice by publication in *The City Record*, with a continued hearing on December 14, 2010, and then to decision on January 25, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

WHEREAS, the site is located on the northeast corner of Astoria Boulevard and 43rd Street, within an R5 zoning district; and

WHEREAS, in 1959, under BSA Cal. No. 525-58-BZ, the Board granted a variance to permit the construction of a gasoline service station at the site; and

WHEREAS, the grant was subsequently extended at various times under BSA Cal. No. 525-58-BZ, but ultimately expired; and

WHEREAS, on October 1, 1991, under the subject calendar number, the Board permitted the re-establishment of the variance for a term of ten years, to expire on October 1, 2001; and

WHEREAS, on November 14, 2000, under the subject calendar number, the Board granted an extension of the term of the variance, to expire on October 1, 2010, and permitted the renovation of the existing accessory building to include a convenience store and the construction of a new metal canopy; and

WHEREAS, most recently, on March 17, 2009, the

Board granted an extension of time to obtain a certificate of occupancy, to expire October 25, 2009; and

WHEREAS, the Board notes that the site was the subject of a padlock petition and closure action pursuant to Administrative Code § 26-127.2, and that a stipulation executed with DOB on January 14, 2008 allowed the applicant to operate the site while pursuing an application for an extension of time to secure a new certificate of occupancy; and

WHEREAS, on May 6, 2008, under the subject calendar number, the Board granted an extension of time to obtain a certificate of occupancy, to expire on December 31, 2008; and

WHEREAS, on January 14, 2009, due to the applicant's failure to secure a certificate of occupancy by the stipulated deadline, DOB issued an order of closure for the premises, declaring the use of the site as an automotive and gasoline service station to be illegal (the "padlock order"); and

WHEREAS, the premises was subsequently padlocked by DOB; and

WHEREAS, on February 25, 2009, pursuant to an action to vacate the padlock order (denominated AHG Realty Corp. and MNC Realty Corp. v. DOB, Supreme Court, County of Queens, Index No. 3935/20009) the applicant and DOB executed a stipulation whereby DOB agreed to vacate the padlock order of January 14, 2009 and allow the applicant to operate the site while pursuing an application for an extension of time to obtain a new certificate of occupancy; and

WHEREAS, the Board notes that the applicant stipulated, inter alia, that it would obtain a final certificate of occupancy no later than October 25, 2009, unless delays were caused by DOB or the City of New York which prevent it from doing so; and

WHEREAS, the applicant submitted a copy of the final certificate of occupancy for the site, which was issued on September 16, 2009; 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; and

WHEREAS, at hearing, the Board questioned whether the signage at the site complied with C1 district regulations; and

WHEREAS, in response, the applicant submitted a letter from the project engineer and a signage analysis confirming that the signage on the site complies with C1 district regulations; 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 *reopens* and *amends* the resolution, dated October 1, 1991, so that as amended this portion of the resolution shall read: "to grant an extension of term from October 1, 2010 to expire October 1, 2020; *on condition* that the use shall substantially conform to drawings as filed with this application, marked 'Received October 5, 2010'-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 1, 2020;

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THAT all signage shall comply with C1 zoning regulations;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from the prior resolution 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. 401114968)

Adopted by the Board of Standards and Appeals, January 25, 2011.

315-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owners.

SUBJECT – Application July 30, 2010 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*Gulf*) with accessory convenience store which expires on March 13, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on March 13, 2003; waiver of the rules. C2-2/R4 zoning district.

PREMISES AFFECTED – 82-06 Astoria Boulevard, southeast corner of Astoria Boulevard and 82nd Street, block 1094, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued operation of an automotive service station (Use Group 16), and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on November 16, 2010, after due notice by publication in *The City Record*, with a continued hearing on December 14, 2010, and then to decision on January 25, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 3, Queens, recommends approval of this application; and

WHEREAS, the site is located on the southeast corner of

the intersection at Astoria Boulevard and 82nd Street, within a C2-2 (R4) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 18, 1957 when, under BSA Cal. No. 725-56-BZ, the Board granted a variance to permit the construction of a gasoline service station with accessory uses, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, on April 28, 1992, under the subject calendar number, the Board granted a special permit under ZR §§ 11-411 and 11-412 to permit an extension of term and the reconstruction of the existing automotive service station, and the addition of an accessory food market, to expire April 28, 2002; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on March 13, 2001, the Board granted an extension of term, to expire on March 13, 2011; a condition of the grant was that a certificate of occupancy be obtained by March 13, 2003; and

WHEREAS, the applicant now requests an additional ten-year term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, at hearing, the Board questioned whether the signage at the site was in compliance with the underlying zoning regulations; and

WHEREAS, in response, the applicant submitted a photograph showing the removal of a promotional sign at the site, and submitted revised plans and signage analyses reflecting that the signage at the site complies with the underlying C2-2 regulations; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and extension of time to obtain a certificate of occupancy 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 April 28, 1992, so that as amended this portion of the resolution shall read: “to extend the term for ten years from the date of this grant, to expire on January 25, 2021, and to grant an extension of time to obtain a certificate of occupancy to January 25, 2012; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked ‘Received December 3, 2010’-(5) sheets; and *on further condition*:

THAT the term of the grant shall expire on January 25, 2021;

THAT a certificate of occupancy shall be obtained by January 25, 2012;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other

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relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 400089417)

Adopted by the Board of Standards and Appeals, January 25, 2011.

175-05-BZ

APPLICANT – Eric Palatnik, P.C., for Athanasios Amaxus, owner.

SUBJECT – Application September 9, 2010 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to construct a four-story multiple dwelling with accessory parking which expires on January 9, 2011. M1-1 zoning district.

PREMISES AFFECTED – 18-24 Luquer Street, between Hicks Street and Columbia Street, Block 520, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit, within an M1-1 zoning district, the construction of a three-story and cellar residential building, which expired on January 9, 2011; and

WHEREAS, a public hearing was held on this application on October 19, 2010, after due notice by publication in *The City Record*, with continued hearings on November 23, 2010 and December 14, 2010, and then to decision on January 25, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the south side of Luquer Street between Columbia Street and Hicks Street, within an M1-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since January 9, 2007 when, under the subject calendar number, the Board granted a variance to permit the proposed construction of a three-story and cellar 12-unit residential building; and

WHEREAS, substantial construction was to be completed by January 9, 2011, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to funding delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, at hearing, the Board questioned whether the site was being used as a parking lot, and directed the applicant to remove the graffiti from the construction fence; and

WHEREAS, in response, the applicant states that the site is not being used as a parking lot, and submitted photographs reflecting that the graffiti has been removed from the construction fence; and

WHEREAS, the Board also raised concerns about the condition of the fence located along the eastern lot line and whether it encroached onto the adjacent lot; and

WHEREAS, in response, the applicant submitted photographs reflecting that the portion of the fence that was in disrepair has been removed, and represents that the fence will be restored as soon as weather permits; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction 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, dated January 9, 2007, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years, to expire on January 9, 2015; *on condition:*

THAT substantial construction shall be completed by January 9, 2015;

THAT the fence located along the eastern lot line shall be repaired by April 25, 2011;

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. 301973639)

Adopted by the Board of Standards and Appeals, January 25, 2011.

827-55-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products, Incorporated, owner.

SUBJECT – Application October 5, 2010 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*British Petroleum*) which expires on January 31, 2011. R3-2 zoning district.

PREMISES AFFECTED – 245-20 139th Avenue, southwest corner of Conduit Avenue, Block 13614, Lot 23, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Laid over to April 12,

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2011, at 10 A.M., for continued hearing.

758-84-BZ

APPLICANT – David L. Businelli, R.A., for Richard Sgarato, owner.

SUBJECT – Application August 30, 2010 – Extension of Term of a variance (§72-21) to legalize a two-story and cellar commercial building contrary to use regulations. R3X zoning district.

PREMISES AFFECTED – 1444 Clove Road, 61' North of intersection Tioga Street and Clove Road, Block 658, Lot 20, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: David L. Businelli.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 15, 2011, at 10 A.M., for decision, hearing closed.

95-97-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 700 West 178th Street Associates, LLC, owner; TSI Forest Hills LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 14, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on May 1, 2007; Waiver of the Rules. C4-5X zoning district.

PREMISES AFFECTED – 69-47 Austin Street, northwest corner of Austin Street and 70th Avenue, Block 3237, Lot 30, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to February 15, 2011, at 10 A.M., for continued hearing.

299-99-BZ

APPLICANT – Carl A. Sulfaro, Esq., for M & V, LLC, owner.

SUBJECT – Application August 4, 2010 – Extension of Term for the continued operation of a gasoline service station (*Getty*) which expired on July 25, 2010. C2-3/R6 zoning district.

PREMISES AFFECTED – 8-16 Malcom X Boulevard, northwest corner of DeKalb Avenue, Block 599, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to February 15, 2011, at 10 A.M., for adjourned hearing.

128-00-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for CRP/Capstone 14W Property Owner, LLC c/o CB Richard Ellis, owner; Equinox Wall Street Incorporated, lessee.

SUBJECT – Application September 30, 2010 – Extension of Term of a Special Permit (ZR §73-36) for the continued operation of a physical culture establishment (*Equinox*) which expired on September 12, 2010. C5-5(LM) zoning district.

PREMISES AFFECTED – 10/16 Wall Street, north west corner of Wall Street and Nassau Street, Block 46, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 8, 2011, at 10 A.M., for decision, hearing closed.

259-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 26 Court Associates, LLC, owner; TSI Court Street, LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application January 25, 2011 – Extension of Term of a Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*New York Sports Club*) which expires on February 6, 2011. C5-2A (DB) zoning district.

PREMISES AFFECTED – 26 Court Street, northwest corner of Court Street and Remsen Street, Block 250, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to February 15, 2011, at 10 A.M., for continued hearing.

379-01-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Consolidated Edison of New York, owner; TSI Irving LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 22, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of physical culture establishment (*New York Sports Club*), located in portions of the basement, first floor and second floor, in a 33 story office building, which expires on April 16, 2011. C6-3X/C1-9 zoning district.

PREMISES AFFECTED – 4 Irving Place, northeast corner of Irving Place and East 14th Street, Block 870, Lot 24, Borough of Manhattan.

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COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 8, 2011, at 10 A.M., for decision, hearing closed.

215-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owner.

SUBJECT – Application October 20, 2010 – Extension of Term of an existing Gasoline Service Station (*Gulf*) with accessory convenience store which expires on July 24, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on June 17, 2010; Waiver of the Rules. C1-2/R4 zoning district.

PREMISES AFFECTED – 202-06 Hillside Avenue, southeast corner of Hillside Avenue and 202nd Street, Block 10496, Lot 52, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to March 1, 2011, at 10 A.M., for continued hearing.

APPEALS CALENDAR

125-10-A

APPLICANT – Simons & Wright, for Sofia Gazgalis & Spyridon Gazgalis, owner.

SUBJECT – Application July 8, 2010 – Appeal challenging the interpretation of ZR §23-22 as it applies to the required density factor for existing buildings in an R5B zoning district.

PREMISES AFFECTED – 346 Ovington Avenue, between 4th and 3rd Avenues, Block 5891, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, January 25, 2011.

155-80-A

APPLICANT – Raymond J. Irrera, for Dr. Jerold Blatt, owner.

SUBJECT – Application August 11, 2010 – Extension of Term to allow the continued operation of a medical office (UG4) in an existing frame structure which expired on June 10, 2000; Extension of time to obtain a Certificate of Occupancy; Waiver of the Rules. R2A Zoning District.

PREMISES AFFECTED – 75-72 185th Street, aka 184-17 Union Turnpike, northwest corner of 185th Street and Union Turnpike, Block 7201, Lot 42, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Raymond J. Irrera and Dr. Gerald Blott.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 1, 2011, at 10 A.M., for decision, hearing closed.

264-08-A

APPLICANT – Slater & Beckerman, LLP, for Wilshire Hospitality, LLC, owner.

SUBJECT – Application December 22, 2010 – Extension of Time to complete construction and obtain a Certificate of Occupancy for a previously-granted Common Law vesting application which expires on February 3, 2011. M1-3D previous zoning districts; M1-3/R7X current zoning district.

PREMISES AFFECTED – 29-23 40th Road, aka 30-02 40th Avenue, through lot, bounded by 40th Road to the south, 40th Avenue to the north, 29th Street to the west, Northern Boulevard to the east. Block 402, Lots 12 & 35. Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Neil Weisbard.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 1, 2011, at 10 A.M., for decision, hearing closed.

154-10-A

APPLICANT – Isaac Rosenberg, for Congregation Yetev Lev D'Satmar, owner.

SUBJECT – Application August 25, 2010 – Appeal challenging a determination by Department of Buildings to revoke permits and approvals based on failure to provide owner authorization in accordance with §28-104.8.2 of the Administrative Code. R7-1 Zoning District.

PREMISES AFFECTED – 540 Bedford Avenue, between Ross and Wilson Streets, Block 2181, Lot 35, Borough of

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Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Donald Kravet, Leib Glanz and Chaim Goldberger.

For Opposition: Amanda Derr and Paul Rubin.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 1, 2011, at 10 A.M., for decision, hearing closed.

201-10-BZY

APPLICANT - Law Offices of Marvin B. Mitzner, for LES Realty Group LLC, owner.

SUBJECT – Application October 29, 2010 – Extension of Time (§11-332) to complete construction of a minor development commenced under the prior C6-1 zoning district. C4-4A zoning district.

PREMISES AFFECTED – 180 Orchard Street, through lot extending from Orchard Street to Ludlow Street. Block 412, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to February 1, 2011, at 10 A.M., for postponed hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING

TUESDAY AFTERNOON, JANUARY 25, 2011

1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

31-09-BZ

APPLICANT – Eric Palatnik, PC, for R & R Auto Repair & Collision, owner.

SUBJECT – Application February 27, 2009 – Special Permit (§11-411, §11-412, §11-413) for re-instatement of previous variance, which expired on November 12, 1990; amendment for a change of use from a gasoline service station (UG16b) to automotive repair establishment and automotive sales (UG16b); enlargement of existing one story structure; and Waiver of the Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 117-04 Sutphin Boulevard, southwest corner of Foch Boulevard, Block 1203, Lot 13, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated January 26, 2009, acting on Department of Buildings Application No. 401991234, reads in pertinent part:

“Proposed reinstatement of previous variance and amendment to change the previously existing automotive service station to a use group 16 automotive repair facility and to enlarge same is contrary to ZR Sections 11-411 and 11-413 as well as BSA Calendar Number 15-55-BZ and therefore must be referred to the NYC BSA;” and

WHEREAS, this is an application for a reinstatement of a prior Board approval and an amendment to legalize the change in use from a gasoline service station to an automotive repair station with accessory auto sales on the site, pursuant to ZR §§ 11-411 and 11-413; and

WHEREAS, the applicant’s initial proposal also sought to enlarge the building on the site by approximately 850 sq. ft.; and

WHEREAS, at the direction of the Board, the applicant revised its proposal to eliminate the requested enlargement to the existing building; and

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WHEREAS, a public hearing was held on this application on April 13, 2010 after due notice by publication in *The City Record*, with continued hearings on June 22, 2010, August 24, 2010, October 5, 2010, November 9, 2010 and December 14, 2010, and then to decision on January 25, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Queens, recommended disapproval of the original application; and

WHEREAS, the site is located at the southwest corner of Sutphin Boulevard and Foch Boulevard; and

WHEREAS, the site is located partially within a C2-2 (R3-2) zoning district and partially within an R3-2 zoning district, and is currently occupied by an automotive repair station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 28, 1955 when, under BSA Cal. No. 15-55-BZ, the Board granted a variance to permit the construction and maintenance of a gasoline service station, lubricatorium, car wash, minor repairs with hand tools only, storage and sale of accessories, and office, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on November 12, 1980, the Board granted a ten year extension of term, which expired on November 12, 1990; and

WHEREAS, the applicant now seeks to reinstate the variance granted under BSA Cal. No. 15-55-BZ and to amend the grant to reflect a change in use from a gasoline service station to an automotive repair station with accessory auto sales; and

WHEREAS, although the term expired in 1990, the applicant represents that the automotive-related (Use Group 16) use has been continuous from 1955 to the present; 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 approve a change from one non-conforming use to another non-conforming use, under certain conditions; and

WHEREAS, as to the change in use, the applicant represents that the gasoline service station use at the site has been discontinued and submitted an affidavit stating that the gasoline storage tanks were removed from the site in 2002, but no other changes were made to the site or the garage building; and

WHEREAS, the current applicant operates an automotive repair station at the site; and

WHEREAS, the applicant notes that the entire use is located within the C2-2 (R3-2) portion of the site and that the small portion at the rear of the site located within the R3-2 zoning district is vacant; and

WHEREAS, at hearing, the Board directed the applicant to: (1) provide a parking plan and vehicle circulation plan; (2) confirm that no body work or auto painting will take place on the site; (3) replace the existing corrugated metal fence abutting

the adjacent residential property with a 50 percent opaque chain link fence; (4) remove one of the curb cuts along Foch Boulevard; (5) relocate the garbage container from the front of the building; (6) plant additional street trees and provide additional landscaping at the site as a buffer to adjacent neighbors; and (7) install sliding gates rather than roll down gates at the entrances and exits to the site; and

WHEREAS, in response, the applicant submitted a vehicle circulation plan for the site and a parking plan reflecting that three parking spaces will be reserved for cars awaiting service and ten parking spaces will be available for accessory auto sales; and

WHEREAS, the applicant also submitted an affidavit from the property owner stating that no body work or auto painting takes place on the site, and provided photographs reflecting that the spray painting equipment has been removed from the site; and

WHEREAS, the applicant also submitted revised plans reflecting that (1) a 50 percent opaque chain link fence will be installed along the western portion of the site to buffer the adjacent residential building; (2) the westernmost curb cut along Foch Boulevard will be removed; (3) the garbage container will be relocated from the front of the site; (4) two new street trees will be planted along Foch Boulevard and landscaping will be provided along the western portion of the site and along the majority of Foch Boulevard; and (5) sliding gates will be installed at the entrances and exits to the site; and

WHEREAS, the Board determined that the applicant's modifications and analysis were responsive to its requests; and

WHEREAS, based upon its review of the record, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-413, and a reinstatement and change in use are appropriate with certain conditions as set forth below; and

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, as amended, 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 of a gasoline service station and the legalization of a change in use from gasoline service station to automotive repair station with accessory auto sales; *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 January 4, 2011"-(4) sheets; and *on further condition*:

THAT this grant shall be for a term of ten years to expire on January 25, 2021;

THAT the following measures shall be undertaken at the site in conformance with the BSA-approved plans: (1) the installation of fencing and landscaping; (2) the removal of the westernmost curb cut on Foch Boulevard; (3) the relocation of the garbage container from the front of the site; and (4) the installation of sliding gates at the entrances and exits to the site;

THAT no body work or auto painting shall take place on the site;

THAT the hours of operation shall be limited to: Monday

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through Friday, from 8:00 a.m. to 6:00 p.m.; Saturday, from 8:00 a.m. to 3:00 p.m.; and closed on Sunday;

THAT all lighting shall be directed downward and away from adjacent residences;

THAT the site shall be maintained free of debris and graffiti;

THAT all signage shall comply with C2 district zoning regulations;

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

THAT a certificate of occupancy shall be obtained by January 25, 2012;

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.”

Adopted by the Board of Standards and Appeals, January 25, 2011.

43-10-BZ CEQR #10-BSA-058Q

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Cammastro Corp./Maria Pilato, owner; First Club One LLC/Spiro Tsadilas, lessee.

SUBJECT – Application March 30, 2010 – Special Permit (§73-244) to allow an eating and drinking establishment without restrictions and no limitation on entertainment and dancing. C2-2/R5 zoning district.

PREMISES AFFECTED – 23-70 Steinway Street, west side of Steinway Street, 17.65’ north of Astoria Boulevard North, Block 803, Lot 75, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated March 29, 2010, acting on Department of Buildings Application No. 420088032, reads in pertinent part:

“ZR 32-21 – Proposal is contrary to Zoning Regulation. Use Group 12 ‘consists primarily of fairly large entertainment facilities’ not as of right in C2-2 districts.

Proposed Eating and Drinking Establishment with

no limitation on entertainment or dancing Use Group 12 should be referred to the Board of Standards and Appeals for Special Permit as per 73-244 ZR;” and

WHEREAS, this is an application under ZR §§ 73-244 and 73-03 to permit, within a C2-3 (R5D) zoning district, a Use Group 12 eating and drinking establishment with entertainment and dancing, contrary to ZR § 32-21; and

WHEREAS, a public hearing was held on this application on September 14, 2010, after due notice by publication in the *City Record*, with continued hearings on October 26, 2010 and December 14, 2010, and then to decision on January 25, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Queens, recommends disapproval of this application, citing concerns that the proposed use of the site will have a negative impact on the character of the surrounding neighborhood; and

WHEREAS, a resident of the surrounding community provided oral testimony in opposition to this application; and

WHEREAS, the subject site is located on the west side of Steinway Street, between Astoria Boulevard and 23rd Avenue, within a C2-3 (R5D) zoning district; and

WHEREAS, the site has 25 feet of frontage on Steinway Street, a depth of 100 feet, and a lot area of 2,500 sq. ft.; and

WHEREAS, the site is occupied by a two-story commercial building which is currently vacant; and

WHEREAS, on February 24, 1976, under BSA Cal. No. 482-75-BZ, the Board granted a special permit under ZR § 73-241 to permit the change in use of the site from a Use Group 6 eating and drinking establishment to a Use Group 12 eating and drinking establishment, which expired on February 24, 1981; and

WHEREAS, on March 21, 1989, under BSA Cal. No. 942-87-BZ, the Board granted a new special permit under ZR § 73-241, to legalize the use of the first floor as a Use Group 12 eating and drinking establishment without restrictions on entertainment and dancing, which expired on March 21, 1994; and

WHEREAS, on February 7, 1995, under BSA Cal. No. 942-87-BZ, the Board, noting that the prior grant had expired and the special permit under ZR § 73-241 was no longer available for establishments with dancing, granted a new special permit under ZR § 73-244 to permit a Use Group 12 eating and drinking establishment with entertainment and dancing at the first and second floor, and an enlargement at the first floor level of the subject building, to expire on March 21, 1997; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on July 17, 2001, the Board granted an extension of term of the special permit, which expired on July 17, 2002; and

WHEREAS, the applicant proposes to again occupy the subject building as a Use Group 12 eating and drinking

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establishment with entertainment and dancing; and

WHEREAS, the applicant represents that the proposal meets all requirements of the special permit authorized by ZR § 73-244 for permitting a Use Group 12 eating and drinking establishment with entertainment and dancing in a C2-3 (R5D) zoning district; and

WHEREAS, as to the findings, ZR § 73-244(a) requires that: a minimum of four square feet of waiting area within the zoning lot shall be provided for each person permitted under the occupant capacity as determined by the Building Code; the required waiting area shall be in an enclosed lobby and shall not include space occupied by stairs, corridors or restrooms; and a plan shall be provided to the Board to ensure that the operation of the establishment will not result in the gathering of crowds or the formation of lines on the street; and

WHEREAS, the applicant states that the maximum occupancy for the proposed Use Group 12 use is 144 persons, and therefore the minimum required size of the waiting area is 576 sq. ft.; and

WHEREAS, the applicant proposes to provide a 770 sq. ft. waiting area in the cellar of the building; and

WHEREAS, at hearing, the Board raised concerns about the proposed waiting area, specifically as to the existence of partitions in the cellar area and the need to access the proposed cellar waiting area by walking through the proposed eating and drinking establishment on the first floor; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the existing partitions in the cellar will be removed in order to provide one open area and that direct access from the street to the cellar waiting area will be provided; and

WHEREAS, ZR § 73-244(b) requires that the entrance to such use be a minimum of 100 feet from the nearest residence district boundary; and

WHEREAS, the applicant submitted a site plan reflecting that the entrance to the premises is located at the property line on Steinway Street, which is 100 feet from the nearest residence district boundary; and

WHEREAS, ZR § 73-244(c) requires that the use will not cause undue vehicular or pedestrian congestion in local streets; and

WHEREAS, the applicant represents that the availability of on-street parking, the site's proximity to off-street parking facilities, and the fact that the site will operate during a time when heavy vehicular traffic is at a minimum will prevent the creation of undue vehicular or pedestrian congestion on local streets; and

WHEREAS, the applicant notes that the proposed hours of operation for the subject site are Monday through Sunday, from 8:00 p.m. to 4:00 a.m., and represents that vehicular traffic in this area along Steinway Street is at a minimum during this time because the majority of commercial establishments in the vicinity are closed during the site's hours of operation; and

WHEREAS, the applicant represents that because the proposed waiting area in the cellar will have direct access to the street, undue pedestrian congestion on the street will be

prevented; and

WHEREAS, as to parking demand, the applicant states that there is ample on-street parking within the vicinity of the site and there are no parking restrictions during the proposed hours of operation; and

WHEREAS, the applicant also provided a letter from the operator of an off-street parking establishment located one block east of the site (at 40-25 Astoria Boulevard) authorizing the operator of the subject site to use the parking establishment for patrons of the proposed Use Group 12 eating and drinking establishment; and

WHEREAS, accordingly, the Board finds that the proposed use will not cause undue vehicular or pedestrian traffic in local streets; and

WHEREAS, ZR § 73-244(d) requires that the use will not impair the character or the future use or development of the surrounding residential or mixed-use neighborhoods; and

WHEREAS, the applicant states that the surrounding area is characterized by a mix of commercial and residential development, and that in particular, the ground floor uses along Steinway Street are predominantly commercial; and

WHEREAS, the applicant notes that the subject site has operated predominantly as a Use Group 12 eating and drinking establishment with entertainment and dancing since 1976, pursuant to special permits previously issued by the Board, and therefore the proposed re-establishment of such use at the site will not impair the character or future use and development of the surrounding neighborhoods; and

WHEREAS, the Board notes that the occupancy of the Use Group 12 use is limited to 144 people even though the subject special permit allows an increased occupancy; and

WHEREAS, as to bulk, the applicant states that there will be no changes to or enlargement of the building envelope; and

WHEREAS, accordingly, the Board finds that the proposed use will not impair the character or the future use or development of the surrounding residential or mixed-use neighborhoods; and

WHEREAS, ZR § 73-244(e) requires that the use will not cause the sound level in any affected conforming residential use, joint living-work quarters for artists or loft dwelling to exceed the limits set forth in any applicable provision of the New York City Noise Control Code (the "Noise Code"); and

WHEREAS, the applicant states that the following soundproofing acoustical treatments will be provided at the site to insure that the acceptable decibel level of the Noise Code will not be exceeded: (1) the first and second floors will be soundproofed with QuietRock certified sound damping wall; (2) stud beam isolators will be installed on the entire first and second floors to isolate vibration and structural noise transmission and reduce impact and low frequency noise; (3) noise barrier ceiling tiles will be installed in the ceilings of the first and second floor to lower sound transmission and reverberation; (4) isolation blocks (Vibra Pads) will be installed between all the speakers and floors and/or walls to reduce structure borne noise transmission; (5) no speakers will be installed on the walls located adjacent to the building which contains residential uses; and (6) no amplifiers or speakers will

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be located in the proposed DJ booth; and

WHEREAS, accordingly, the Board finds that the proposed use will not cause the sound level in any affected conforming residential use to exceed the limits set forth in any applicable provision of the Noise Code; and

WHEREAS, ZR § 73-244(f) requires that the application is made jointly by the owner of the building and the operators of such eating or drinking establishment; and

WHEREAS, the applicant represents that the instant application has been made jointly by the owner of the building, who has authorized the filing of this application, and the operator of the proposed establishment; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR §73-244; and

WHEREAS, at hearing, the Board directed the applicant to remove the billboard sign located on the side of the subject building; and

WHEREAS, in response, the applicant submitted photographs reflecting that the billboard sign has been removed; 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, 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 requisite findings pursuant to ZR §§ 73-244 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. 10BSA058Q, dated September 1, 2010; 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 §§ 73-244 and 73-03, to

permit, within a C2-3 (R5D) zoning district, a Use Group 12 eating and drinking establishment with entertainment and dancing, contrary to ZR § 32-21; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked “Received March 30, 2010” – One (1) sheet, “Received September 1, 2010” – One (1) sheet, “Received October 12, 2010” – Two (2) sheets and “Received November 30, 2010” – One (1) sheet and *on further condition*:

THAT the term of this grant shall expire on January 25, 2014;

THAT there shall be no change in ownership of the site or the building without prior application to and approval from the Board;

THAT the maximum occupancy for the Use Group 12 eating and drinking establishment with entertainment and dancing shall be 144 persons;

THAT the following noise attenuation measures shall be installed in accordance with the BSA-approved plans: (1) the first and second floors shall be soundproofed with QuietRock certified sound damping wall; (2) stud beam isolators shall be installed on the entire first and second floors; (3) noise barrier ceiling tiles shall be installed in the ceilings of the first and second floor; (4) isolation blocks (Vibra Pads) shall be installed between all the speakers and floors and/or walls; (5) no speakers shall be installed on the walls located adjacent to the building which contains residential uses; and (6) no amplifiers or speakers shall be located in the proposed DJ booth;

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

THAT a certificate of occupancy shall be obtained by January 25, 2012;

THAT substantial construction be completed in accordance with ZR § 73-70;

THAT 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 25, 2011.

187-07-BZ

APPLICANT – Dennis D. Dell’Angelo, for Michael Modatsos, owner.

SUBJECT – Application August 1, 2010 – Variance (§72-21) to permit accessory parking for an existing eating and drinking establishment, contrary to use regulations (§22-00). R3X zoning district.

PREMISES AFFECTED – 4677 Hylan Boulevard, North side of Hylan Boulevard 175.03 feet west of Arden Avenue.

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Block 5408, Lot 43, Borough of Staten Island.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Dennis D. Dell’Angelo and Cathy Moudatsos.

For Opposition: Yury Gorokhovskiy.

ACTION OF THE BOARD – Laid over to March 1, 2011, at 1:30 P.M., for continued hearing.

277-07-BZ

APPLICANT – Miele Associates, LLP, for Barnik Associates LLC & Lama Holdings, LLC, owner.

SUBJECT – Application December 3, 2007 – Variance (§72-21) for the development of a one-story automotive service station with accessory convenience store, contrary to §22-10. R3-1 zoning district.

PREMISES AFFECTED – 165-35 North Conduit Avenue, North west corner of North Conduit Avenue & Guy R. Brewer Boulevard. Block 12318, Lot 10, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Hiram Rothkrug, Robert B. Pauls and Adam Degerolomo.

ACTION OF THE BOARD – Laid over to February 15, 2011, at 1:30 P.M., for continued hearing.

194-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Dabes Realty Company, Incorporated, owner.

SUBJECT – Application June 17, 2009 – Variance to allow the construction of a four story mixed use building contrary to floor area (§23-141), open space (§23-141), lot coverage (§23-141), front yard (§23-45), height (§23-631), open space used for parking (§25-64) and parking requirements (§25-23); and to allow for the enlargement of an existing commercial use contrary to §22-10. R3-2 zoning district.

PREMISES AFFECTED – 2113 Utica Avenue, 2095-211 Utica Avenue, East side of Utica Avenue between Avenue M and N, Block 7875, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Josh Rhinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 1, 2011, at 1:30 P.M., for decision, hearing closed.

6-10-BZ

APPLICANT – Sheldon Lobel, P.C. for 2147 Mill Avenue, LLC, owner.

SUBJECT – Application January 8, 2010 – Variance (§72-

21) to allow for legalization of an enlargement of a commercial building, contrary to §22-00. R2 zoning district.

PREMISES AFFECTED – 2147 Mill Avenue, Northeast side of Mill Avenue between Avenue U and Strickland Avenue. Block 8463, Lot 65, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 1, 2011, at 1:30 P.M., for decision, hearing closed.

29-10-BZ

APPLICANT – Sheldon Lobel, P.C., for R.A.S. Associates, owner; Mojave Restaurant, lessee.

SUBJECT – Application March 4, 2010 – Special Permit (§73-52) to allow for an outdoor eating and drinking establishment within a residential district. C1-2 and R5 zoning districts.

PREMISES AFFECTED – 22-32/36 31st Street, Ditmas Boulevard and 23rd Avenue, Block 844, Lot 49, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Irving Minkin and Jim McCartin.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 15, 2011, at 1:30 P.M., for decision, hearing closed.

140-10-BZ thru 147-10-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Edward Lauria, owner.

SUBJECT – Application August 9, 2010 – Variance (§72-21) to allow four single-family homes on a zoning lot that does not meet the minimum lot width requirements (§23-32), and waiver to the General City Law, Section 36, for development not fronting a mapped street. R1-2 (NA-1) zoning district.

PREMISES AFFECTED – 160, 170, 181, 191, Edinboro Road, south of Meisner Avenue, east of intersection Lighthouse Avenue and Edinboro Road, Block 2267, Lot 55(tent), 50, 197, 168, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,

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Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 8, 2011, at 1:30 P.M., for decision, hearing closed.

174-10-BZ

APPLICANT – The Briarwood Organization, LLC, for English Evangelical Church of Redeemer, owner.

SUBJECT – Application August 27, 2010 – Special Permit (§73-44) to allow for a reduction in parking for a mixed office and community facility building. R4/C2-2 zoning district.

PREMISES AFFECTED – 36-29 Bell Boulevard, between 36th Avenue and 38th Avenue, Block 6176, Lot 61 p/o 2, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eldad Gothelf.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 8, 2011, at 1:30 P.M., for decision, hearing closed.

178-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Rebecca Leshkowitz and Naftuli Leshkowitz, owners.

SUBJECT – Application September 13, 2010 – Special Permit (§73-622) for the legalization and enlargement of a single family home, contrary to floor area and open space (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 943 East 24th Street, east side of East 24th Street, between Avenue I and Avenue J, Block 7588, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 15, 2011, at 1:30 P.M., for decision, hearing closed.

181-10-BZ

APPLICANT – Patrick W. Jones, P.C., for Metroeb Realty Corporation, owner.

SUBJECT – Application September 20, 2010 – Special Permit (§73-46) to waive parking for a proposed residential

conversion of an existing building. M1-2/R6A (MX-8) zoning district.

PREMISES AFFECTED – 143/155 Roebling Street, aka 314/330 Metropolitan Avenue and 1/10 Hope Street, corner of Roebling Street, Metropolitan Avenue and Hope Street, Block 2368, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Patrick W. Jones.

For Opposition: Mark Gibian, Lisa Steiner and Conroy Symister.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 15, 2011, at 1:30 P.M., for decision, hearing closed.

182-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, Miriam Kirzner and Martin Kirzner, owners.

SUBJECT – Application September 20, 2010 – Special Permit (§73-622) for the enlargement of a single family home, contrary to floor area and open space (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1082 East 23rd Street, west side of East 23rd Street, between Avenue J and Avenue K, Block 7604, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 1, 2011, at 1:30 P.M., for decision, hearing closed.

186-10-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for NYU Hospital Center, owner; New York University, lessee.

SUBJECT – Application September 28, 2010 – Variance (§72-21) to allow for the construction of two community facility buildings (*NYU Langone Medical Center*), contrary to rear yard (§24-36), rear yard equivalent (§24-382), height and setback (§24-522), rear yard setback (§24-552), tower coverage (§24-54), maximum permitted parking (§13-132), minimum square footage per parking space (§25-62), and curb cut requirements (§13-142). R8 zoning district.

PREMISES AFFECTED – 400-424 East 34th Street, aka 522-566 & 596-600 First Avenue, East 34th Street, Franklin D. Roosevelt Drive, East 30th Street, and First Avenue, Block 962, Lot 80, 108 & 1001-1107, Borough of

MINUTES

Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Elise Wagner, Vicki Math Suna, Duncan Hazard and Erich Arcement.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 1, 2011, at 1:30 P.M., for decision, hearing closed.

217-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Elizabeth Kopolovich & Harry Kopolovich, owner.

SUBJECT – Application November 15, 2010 – Special Permit (§73-622) for the enlargement of an existing single home, contrary to floor area and lot coverage (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 4009 Bedford Avenue, Bedford Avenue between Avenue S and Avenue T. Block 7304, Lot 82, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to February 15, 2011, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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February 9, 2011

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213-10-BZ	2071 Clove Road, Staten Island

DOCKET

New Case Filed Up to February 1, 2011

7-11-BZ

177 Dyckman Street, Southeast corner of the intersection of Dyckman Street and Vermilea Avenue., Block 2224, Lot(s) 1, Borough of **Manhattan, Community Board: 12**. Special Permit (§73-36) to legalize the operation of a PCE in a C4-4 zoning district. C4-4 district.

8-11-A

2781 Shell Road, Atwater Court bounded by Shell Road & West 3rd Street; Colby court bounded by Bokee Court & Atwater Court., Block 7232, Lot(s) 1,70, Borough of , **Community Board: .** Proposed reconstruction of a tennis club located within the bed of Atwater Court and Colby Court contrary to General City Law Section 35. R5 Zoning District district.

9-11-BZ

2129A-39A White Plains Road, Southeast corner of the intersection of White Plains Road and Lydig Avenue, Block 4286, Lot(s) 35, Borough of **Bronx, Community Board: 11**. Special Permit (§73-36) to permit the operation of the propsoed a PCE in a C4-4 zoning district. C4-4 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

FEBRUARY 15, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 15, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

703-80-BZ

APPLICANT – Joseph P. Morsellino, for Louis N. Petrosino, owner.

SUBJECT – Application July 1, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of an existing scrap metal storage establishment which expires on December 2, 2010 and an Amendment to Legalize the existing enclosure of an open storage area. C8-1 zoning district.

PREMISES AFFECTED – 2994/3018 Cropsey Avenue, southwest corner of Bay 54th Street, Block 6947, Lot 260, Borough of Brooklyn.

COMMUNITY BOARD #13BK

172-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Samson Associates LLC, owner; TSI West 14 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application November 10, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*New York Sports Club*) which expired on August 13, 2009; Waiver of the Rules of Practice and Procedure. C6-2M/C6-2 zoning district.

PREMISES AFFECTED – 34-42 West 14th Street, south side of West 14th Street, between Fifth Avenue and Sixth Avenue, Block 577, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #2M

289-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 160 Water Street Associates, owner; TSI Water Street LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 29, 2010 – Extension of Term of a previously approved Special Permit (§73-36) for the continued operation of a Physical Cultural Establishment (*New York Sports Club*) which expires on March 6, 2011. C5-5 (LM) zoning district.

PREMISES AFFECTED – 160 Water Street, northwest corner of Water Street and Fletcher Street, Block 70, Lot 43, Borough of Manhattan.

COMMUNITY BOARD #1M

122-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Revlation Development Incorporated, owner. Bensonhurst MRI, P.C., lessee.

SUBJECT – Application January 26, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the enlargement of an existing medical office building and the construction of residences which expired on February 6, 2011. R5 and C2-3/R5 zoning district.

PREMISES AFFECTED – 2671 86th Street, West 11th and West 12th Streets, Block 7115, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEALS CALENDAR

220-10-BZY

APPLICANT – D.A.B. Group, LLC, for D.A.B. Group, LLC, owner.

SUBJECT – Application November 18, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior C6-1 Zoning District. C4-4A Zoning District.

PREMISES AFFECTED – 77, 79, 81 Rivington Street, aka 139, 141 Orchard Street, northern portion of block bound by Orchard Street, to the east Rivington to the north, Allen Street to the west and Delancy street to the south, Block 415, Lot 61, 62, 63, 66, 67, Borough of Manhattan.

COMMUNITY BOARD #3M

FEBRUARY 15, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 15, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

218-10-BZ

APPLICANT – Simons & Wright LLC, for Bermuda Realty LLC, owner.

SUBJECT – Application November 19, 2010 – Special Permit (§73-19) to permit the operation of a four-story charter school (Brownsville Ascend Charter School) located within a C8-2 zoning district.

PREMISES AFFECTED – 123 East 98th Street, aka 1 Blake Avenue, corner of the intersection of East 98th and Blake Avenue between Ralph Avenue and Union Street, Block 3531, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

CALENDAR

226-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Montbatten Equities, LLP, owner; Equinox Fitness, lessee.
SUBJECT – Application December 10, 2010 – Special Permit (§73-36) to allow a PCE (*Equinox Fitness*) on the first, ninth and tenth floors in an existing ten-story mixed-use building. M1-5 zoning district.

PREMISES AFFECTED – 405/42 Hudson Street, southwest corner of Hudson and Leroy Streets, Block 601, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #2M

606-75-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Montbatten Equities, LP, owner; Equinox Fitness, lessee.
SUBJECT – Application December 10, 2010 – Amendment to a prior variance to reflect the change in operation of the PCE (*Equinox Fitness*) to include the first floor and roof. M1-5 zoning district.

PREMISES AFFECTED – 405/42 Hudson Street, southwest corner of Hudson and Leroy Streets, Block 601, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #2M

234-10-BZ

APPLICANT – Moshe M. Friedman, for Labe Twerski, owner.

SUBJECT – Application December 28, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR §23-141(a)) and less than the required rear yard (ZR §23-47). R-2 zoning district.

PREMISES AFFECTED – 2115 Avenue K, north side, 100' east of intersection of Avenue K and East 21st Street, Block 7603, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 1, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

1095-64-BZ

APPLICANT – Garo Gumusvan, R.A., for 605 Apartment Corporation, owner; Park & 65 Garage Corporation, lessee. SUBJECT – Application August 31, 2010 – Extension of Term of an approval pursuant to the Multiple Dwelling Law for transient parking spaces, which expired on March 9, 1980. R8B/R-10 zoning district.

PREMISES AFFECTED – 605 Park Avenue, south east corner of Park Avenue and East 65th Street, Block 1399, Lot 74, 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, Commissioner Hinkson and Commissioner Montanez5

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 transient parking garage, which expired on May 13, 1990; and

WHEREAS, a public hearing was held on this application on January 11, 2011, after due notice by publication in *The City Record*, and then to decision on February 1, 2011; and

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

WHEREAS, the subject site is located on the southeast corner of Park Avenue and East 65th Street, partially within an R8B zoning district and partially within an R10 zoning district; and

WHEREAS, portions of the cellar and basement are occupied by a 50-space accessory parking garage; and

WHEREAS, on March 9, 1965, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law (“MDL”) to permit a maximum of 20 surplus parking spaces to be used for transient parking for a term of 15 years; and

WHEREAS, most recently, on May 13, 1980, the Board granted a ten-year extension of term, which expired on May 13, 1990; and

WHEREAS, the applicant now requests an additional

extension of term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents’ right to recapture the surplus parking spaces; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain 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 having been adopted on March 9, 1965, so that, as amended, this portion of the resolution shall read: “to permit an extension of term for an additional 10 years from the date of this grant, to expire on February 1, 2021; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans and that all work shall substantially conform to drawings filed with this application and marked ‘Received August 31, 2010’-(2) sheets; and *on further condition*:

THAT this term shall expire on February 1, 2021;

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 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 Application No. 120379544)

Adopted by the Board of Standards and Appeals, February 1, 2011.

119-07-BZ

APPLICANT – Sheldon Lobel, P.C., for SCO Family of Services, owner.

SUBJECT – Application November 15, 2010 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (§72-21) permitting a four-story community facility building (UG4A) which expires on January 27, 2011. M1-2 zoning district.

PREMISES AFFECTED – 443 39th Street, rectangular mid-block lot with 35’ of frontage on the north side of 39th Street, 275’ west of 5th Avenue, Block 705, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Nora Martins.

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ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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 four-story community facility building; and

WHEREAS, a public hearing was held on this application on January 11, 2011, after due notice by publication in *The City Record*, and then to decision on February 1, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the north side of 39th Street, between Fourth Avenue and Fifth Avenue, within an M1-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 27, 2009 when, under the subject calendar number, the Board granted a variance to permit the legalization, conversion and enlargement of a three-story and mezzanine commercial building to a four-story community facility building without parking; a condition of the grant was that a new certificate of occupancy be obtained by January 27, 2011; and

WHEREAS, the applicant now seeks a two-year extension of time to obtain a new certificate of occupancy; and

WHEREAS, the applicant represents that it has not commenced construction at the site or obtained a certificate of occupancy by the stipulated date due to financing delays; and

WHEREAS, the applicant states that, due to funding availability, the project is now being planned in two separate stages: the first stage will consist of building out the first floor, and the second stage will consist of building out the existing mezzanine into a full floor; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to obtain a certificate of occupancy 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, dated January 27, 2009, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to February 1, 2013; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by February 1, 2013;

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

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 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. 302325936)

Adopted by the Board of Standards and Appeals February 1, 2011.

55-45-BZ

APPLICANT – Walter C. Maffei, AIA, for Donato Passarella, owner.

SUBJECT – Application August 31, 2010 – Extension of Term (§11-411) for an existing Gasoline Service Station (*Spirit*) which expired on February 27, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on May 2, 2001; waiver of the rules. C2-4/R6B zoning district. **PREMISES AFFECTED** – 51 Kingsland Avenue, Woodpoint Road, Frost Street, Block 2866, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Walter C. Maffei.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 1, 2011, at 10 A.M., for decision, hearing closed.

964-87-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum Incorporated, owner.

SUBJECT – Application October 18, 2010 – Extension of Term for the continued operation of (UG16) Gasoline Service Station (*Getty*) which expired on February 6, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on January 15, 2003; Amendment to the hours of operation and Waiver of the Rules. C1-3/R6 zoning district.

PREMISES AFFECTED – 780-798 Burke Avenue, southwest corner of Burke and Barnes Avenue, Block 4571, Lot 28, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to March 15, 2011, at 10 A.M., for continued hearing.

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217-96-BZ

APPLICANT – Eric Palatnik, P.C., for Silverbell Investment Company, Incorporated, owner; Enterprise Rent-A-Car, lessee.

SUBJECT – Application December 17, 2010 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) of a car rental facility (*Enterprise*) with accessory outdoor storage of cars which expired on July 12, 2010; Waiver of the Rules. C1-2/R-2 zoning district.

PREMISES AFFECTED – 165-01 Northern Boulevard, northeast corner of 165th Street and Northern Boulevard, Block 53340, Lot 8, Borough of Queens.

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APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

ACTION OF THE BOARD – Laid over to March 1, 2011, at 10 A.M., for decision, hearing closed.

230-98-BZ

APPLICANT – Mitchell S. Ross, Esq., for JC's Auto Enterprises, Limited, owners.

SUBJECT – Application July 22, 2010 – Extension of Term of a previously granted Variance (§72-21) for an automotive repair shop and car sales which expired on June 22, 2010. R-5 zoning district.

PREMISES AFFECTED – 5820 Bay Parkway, northwest corner of 59th Street, Block 55508, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 8, 2011, at 10 A.M., for adjourned hearing.

10-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for D & M Richmond Realty LLC, owner; TSI Staten Island LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 25, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on October 26, 2009; Waiver of the Rules. M2-1 zoning district.

PREMISES AFFECTED – 300 West Service Road, northwesterly corner of West Service Road and Wild Avenue, Block 270, Lot 135, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 1, 2011, at 10 A.M., for decision, hearing closed.

93-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker for Green 19 W44 Owner, LLC, owner; TSI West 44 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application August 25, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on July 25, 2010. C6-4.5 (MID) zoning district.

PREMISES AFFECTED – 19 West 44th Street, northerly side of West 44th Street, 150' west of 5th Avenue, Block 1260, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

ACTION OF THE BOARD – Laid over to March 1, 2011, at 10 A.M., for decision, hearing closed.

328-04-BZ

APPLICANT – Goldman Harris LLC, for Rockaway Improvements, LLC, owner.

SUBJECT – Application December 21, 2010 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) of a UG2 four-story residential building with 12 dwelling units which expired on November 21, 2010. M1-1 zoning district.

PREMISES AFFECTED – 108 Franklin Avenue, aka 108-110 Franklin Avenue between Park and Myrtle Avenues, Block 1898, Lot (tent) 49, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Vivien R. Krieger.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

ACTION OF THE BOARD – Laid over to March 1, 2011, at 10 A.M., for decision, hearing closed.

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APPEALS CALENDAR

264-08-A

APPLICANT – Slater & Beckerman, LLP, for Wilshire Hospitality, LLC, owner.

SUBJECT – Application December 22, 2010 – Extension of Time to complete construction and obtain a Certificate of Occupancy for a previously-granted Common Law vesting application which expires on February 3, 2011. M1-3D previous zoning districts; M1-3/R7X current zoning district. PREMISES AFFECTED – 29-23 40th Road, aka 30-02 40th Avenue, through lot, bounded by 40th Road to the south, 40th Avenue to the north, 29th Street to the west, Northern Boulevard to the east. Block 402, Lots 12 & 35. Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Stefanic Marazzi

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previous grant to permit an extension of time to complete construction and obtain a certificate of occupancy for a prior Board determination that the owner of the premises obtained the right to complete construction of a 14-story hotel under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this appeal on January 25, 2011, after due notice by publication in *The City Record*, and then to decision on February 1, 2011; and

WHEREAS, the site was inspected by Chair Srinivasan; and

WHEREAS, the subject site is located on an irregular through lot bounded by 40th Road to the south, and 40th Avenue to the north, located between 29th Street and Northern Boulevard, within an M1-3/R7X zoning district; and

WHEREAS, the subject site has a frontage of 75 feet on 40th Road and frontage of 25 feet on 40th Avenue, and a total lot area of approximately 12,137 sq. ft.; and

WHEREAS, the applicant proposes to construct a 14-story hotel (the “Building”); and

WHEREAS, the Building is proposed to have a total floor area of approximately 60,446 sq. ft. (4.98 FAR); and

WHEREAS, the site was formerly located within an M1-3D zoning district; and

WHEREAS, on July 17, 2008, New Building Permit No. 410123021 (the “Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the Building, and work commenced on July 22, 2008; and

WHEREAS, on October 7, 2008, (hereinafter, the “Rezoning Date”), the City Council voted to enact the Dutch Kills Rezoning, which changed the zoning district to M1-3/R7X; and

WHEREAS, the applicant represents that the Building complies with the former M1-3D zoning district parameters; specifically, the total building height of 142’-8” was permitted; and

WHEREAS, because the site is now within an M1-3/R7X zoning district, the Building would not comply with the maximum total building height of 125’-0”;

WHEREAS, because the Building is not in compliance with these provisions of the M1-3/R7X zoning district and work on the foundation was not completed as of the Rezoning Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on October 8, 2008 halting work on the Building; and

WHEREAS, because DOB did not find that work was completed as of the Rezoning Date, the applicant filed a request to continue construction pursuant to the common law doctrine of vested rights; and

WHEREAS, on February 3, 2009, the Board determined that, as of the Rezoning Date, the owner had undertaken substantial construction and made substantial expenditures on the project, and that serious loss would result if the owner was denied the right to proceed under the prior zoning, such that the right to continue construction was vested under the common law doctrine of vested rights; and

WHEREAS, the Board granted the applicant two years to complete construction and obtain a certificate of occupancy, which will expire on February 3, 2011; and

WHEREAS, accordingly, the applicant is now seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant states that the Building was not completed by the stipulated date due to financing delays; and

WHEREAS, however, the applicant states that the following work has been performed since February 3, 2009, when the permits were reinstated: completion of the footings and pile-driving; construction of the underground parking area; and completion of 19 percent of the masonry work, 14 percent of the concrete pours, 12 percent of the plumbing systems, ten percent of the elevator systems, eight percent of the fire system installation, and eight percent of the electrical work; and

WHEREAS, the applicant further states the owner has expended \$2,895,535 or 32 percent, out of the \$10,224,088 budgeted for the entire project; the applicant represents that the remaining unpaid expenses are subject to contracts; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site evidencing the amount of work completed and an affidavit from the owner’s Director of Operations detailing the status of the construction work and the amount of expenditures; and

WHEREAS, the Board has reviewed the evidence and has determined that an extension of time is warranted; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction and obtain a certificate of occupancy; and

Therefore it is Resolved that this application to renew

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DOB Permit No. 410123021, 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 building and obtain a certificate of occupancy for two years from the expiration date of the prior term, to expire on February 3, 2013.

Adopted by the Board of Standards and Appeals, February 1, 2011.

216-10-A

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 1466 Broadway LP c/o Highgate Holdings, Incorporated, owner.

SUBJECT – Application November 12, 2010 – Appeal pursuant to Section 310(2) of the Multiple Dwelling Law seeking to vary the court requirements under Section 26 of the Multiple Dwelling Law to permit the hotel conversion of an existing commercial building. C6-7 Zoning District.

PREMISES AFFECTED – 1466 Broadway, southeast corner of Broadway and West 42nd Street, Block 994, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 28, 2010, acting on Department of Buildings Application No. 120483912 reads, in pertinent part:

“Legally required windows open into two inner courts which do not comply with the requirements of MDL § 26(7);” and

WHEREAS, this is an application pursuant to Multiple Dwelling Law (“MDL”) § 310, to vary court requirements in order to allow for the proposed conversion of the subject building from office and retail uses (Use Groups 6, 9 and 10) to a transient hotel (Use Group 5), contrary to MDL § 26(7); and

WHEREAS, a public hearing was held on this application on January 11, 2011, after due notice by publication in *The City Record*, and then to decision on February 1, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Vice-Chair Collins and Commissioner Montanez; and

WHEREAS, the subject site is an irregularly-shaped lot located on the southeast corner of West 42nd Street and Broadway, with a portion of the site along the eastern lot line extending through the block to West 41st Street; and

WHEREAS, the site has approximately 186 feet of frontage along West 42nd Street, 103 feet of frontage along Broadway, and 17 feet of frontage along West 41st Street, and

is located in a C6-7 zoning district within the Theater Subdistrict of the Special Midtown District; and

WHEREAS, the site is occupied by two adjacent buildings; a 15-story building located on the portion of the lot with frontage on West 42nd Street and Broadway (the “Main Building”) and an eight-story building located on the portion of the lot with frontage on West 41st Street (the “Annex”); and

WHEREAS, the applicant states that the Main Building was constructed in 1906 and was used as a hotel, known as the Knickerbocker Hotel, until the early 1920s; the Annex was constructed in the 1890s and was used as a small hotel until the completion of the Main Building, at which point the Annex was incorporated into that building and served as the service entrance to the Knickerbocker Hotel; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1921 when, under BSA Cal. No. 127-21-A, the Board granted an appeal of a DOB order associated with window materials, in connection with the conversion of the Main Building and the Annex from transient hotel use to retail and office use; and

WHEREAS, in 1979 the owner proposed to convert the Main Building and the Annex to residential use and, under BSA Cal. No. 798-79-A, the Board granted an appeal pursuant to MDL § 310(2) to allow for the proposed residential conversion, which did not comply with the requirement that at least one window in each apartment open onto a street, yard or lawful court, pursuant to MDL §277(7); and

WHEREAS, the applicant notes that, despite the Board’s action under BSA Cal. No. 798-79-A, the Main Building and the Annex were not converted to residential use; and

WHEREAS, currently, the Main Building is partially occupied by office and retail uses and is partially vacant; the Annex is entirely vacant; and

WHEREAS, the applicant proposes to convert the Main Building and the Annex to their original use as a transient hotel with 395 hotel units (the “Proposed Hotel”), which is a permitted use in the underlying zoning district but does not comply with the court requirements of MDL § 26(7); and

WHEREAS, the applicant states that there are currently two narrow courts located at the rear of the Main Building, each less than 16 feet wide, and in order to provide more light and air to the units located in the Proposed Hotel, a portion of the Main Building will be demolished and reconstructed to create a single large court with a width of 68’-9” and a depth of at least 20’-0” (the “Rear Court”); and

WHEREAS, the applicant also proposes to make extensive alterations to the interior of the Main Building in order to provide the Proposed Hotel with 395 hotel units, and to alter the Annex to provide a loading dock on West 41st Street and support space for the Proposed Hotel; and

WHEREAS, the Board notes that pursuant to MDL § 4(9), transient hotels are considered “class B” multiple dwellings; therefore the proposed hotel use must comply with the relevant provisions of the MDL; and

WHEREAS, pursuant to MDL § 30(2), every room in a multiple dwelling must have one window opening directly upon a street or upon a lawful yard, court or space above a setback located on the same lot as that occupied by the multiple

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dwelling; and

WHEREAS, the applicant states that, of the 395 hotel units in the Proposed Hotel, 200 units will have required windows that open onto a street, 105 units will have required windows that open upon the newly created Rear Court, and 90 units will have required windows that open onto an existing court located along the eastern lot line of the site (the "Side Court"); and

WHEREAS, pursuant to MDL § 4(32), both the Rear Court and the Side Court are considered "inner courts;" and

WHEREAS, MDL § 26(7) states that, except as otherwise provided in the Zoning Resolution, (1) an inner court shall have a minimum width of four inches for each one foot of height of such court and (2) the area of such inner court shall be twice the square of the required width of the court, but need not exceed 1,200 sq. ft. so long as there is a horizontal distance of at least 30 feet between any required living room window opening onto such court and any wall opposite such window; and

WHEREAS, the applicant states that the proposed 68'-9" width of the Rear Court complies with the minimum width requirement of MDL § 26(7), however, the Rear Court will have an area of 1,685 sq. ft., which will not equal twice the square of the required width of that court (6,074 sq. ft.), and although the area of the Rear Court will exceed 1,200 sq. ft., not all of the windows opening onto that court will be located at least 30 feet from an opposite-facing wall; thus, the Rear Court will not comply with MDL § 26(7); and

WHEREAS, the applicant further states that the proposed width of the Side Court of 92'-5" complies with the minimum width requirement of MDL § 26(7), however, the Side Court has an area of only 811 sq. ft., which does not equal twice the square of the required width of that court (6,074 sq. ft.) and is less than 1,200 sq. ft.; thus, the Side Court will not comply with MDL § 26(7); and

WHEREAS, pursuant to MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done; and

WHEREAS, as noted above, the Main Building was constructed in 1906 and the Annex was constructed in the 1890s; therefore both buildings are subject to MDL § 310(2)(a); and

WHEREAS, specifically, MDL § 310(2)(a) empowers the Board to vary or modify provisions or requirements related to: (1) height and bulk; (2) required open spaces; (3) minimum dimensions of yards or courts; (4) means of egress; and (5) basements and cellars in tenements converted to dwellings; and

WHEREAS, the Board notes that MDL § 26(7) specifically relates to the minimum dimensions of courts; therefore the Board has the power to vary or modify the subject provision pursuant to MDL § 310(2)(a)(3); and

WHEREAS, the applicant represents that practical difficulty and unnecessary hardship would result from strict

compliance with the MDL; and

WHEREAS, the applicant notes that the proposed conversion of the Main Building and the Annex to hotel use will require extensive and costly alterations to both buildings, including the demolition of a significant portion of the Main Building in order to create the Rear Court, major alterations to the Annex, including the construction of a new loading dock and hotel support facilities, and extensive interior alterations to the Main Building in order to convert its existing office and retail uses into a modern, code-compliant hotel; and

WHEREAS, the applicant states that, in order for all of the hotel units in the Proposed Hotel to have windows that open onto a street or a lawful yard or court, as required by MDL § 30(2), even greater portions of the Main Building would have to be demolished and significant modifications to the layout of the Proposed Hotel would have to be made; and

WHEREAS, specifically, the applicant states that: (1) in order for the Rear Court to meet the minimum area requirements of MDL § 26(7), it would have to be enlarged from a depth of approximately 20 feet to a depth of at least 30 feet; (2) a 20-ft. deep rear yard, as required pursuant to ZR § 33-26, would have to be provided at the eastern end of the Main Building; and (3) none of the Main Building's hotel units could have windows that open onto the existing non-complying Side Court; instead, all of the units that did not face a street would have to have windows that open onto the complying Rear Court or the 20-ft. deep rear yard; and

WHEREAS, the applicant submitted alternate plans for a complying hotel, which reflect that a substantially greater portion of the Main Building would have to be demolished under the complying scenario than would be required under the proposed scenario, and as a result, a complying hotel would yield only 359 hotel units as compared to the 395 hotel units in the Proposed Hotel; and

WHEREAS, the applicant states that, due to the need to create a new 20-ft. rear yard, the complying scenario also results in a significantly greater amount of structural work, including: (1) providing temporary support and bracing for the existing building during and after demolition; (2) installing new columns and beams at the new rear of the Main Building to support the existing framing at each floor; (3) making field welded connections between the existing framing and the new building; (4) installing new structural slabs at the new building rear; (5) providing new transfer framing to support the new columns; (6) providing structural protection for nearby buildings during demolition and construction; and (7) constructing a new building façade in the area adjacent to the newly created rear yard; and

WHEREAS, the applicant represents that, although some of the additional costs associated with the complying scenario would be offset by the reduced costs associated with fitting out the smaller number of hotel units, the complying scenario would nonetheless result in significantly higher costs per hotel unit than the Proposed Hotel; and

WHEREAS, in support of this statement, the applicant submitted a study comparing the construction costs associated with the complying hotel design and the Proposed Hotel design, and a letter from the proposed operator which estimates

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the revenues that would be generated by each scenario; these documents indicate that the complying hotel scenario would have significantly higher costs on a per room basis and would generate substantially less annual revenue than the Proposed Hotel; and

WHEREAS, based on the above, the Board agrees that the applicant has established a sufficient level of practical difficulty and unnecessary hardship in complying with the requirements of MDL § 26(7); and

WHEREAS, the applicant states that the requested variance of MDL §26(7) is consistent with the spirit and intent of the MDL, and will preserve public health, safety and welfare, and substantial justice; and

WHEREAS, as noted above, the Main Building and Annex were originally operated as a transient hotel; and

WHEREAS, the applicant notes that, given that the use of the Main Building and the Annex as a transient hotel pre-dated the 1929 enactment of the MDL, the existing court configuration would be permitted as a pre-existing non-compliance if the buildings had not been subsequently converted to office and retail use; and

WHEREAS, the applicant represents that the subject proposal merely seeks to return the buildings to their original use as a transient hotel, which will have the additional benefits of complying with all other modern code requirements and providing increased access to light and air for the hotel units facing the Rear Court as compared to the previous hotel use; and

WHEREAS, the applicant states that, during the site's previous operation as a hotel, the Main Building had its present configuration, including the two narrow courts now located at the rear of that building and the existing Side Court, and a substantial number of the hotel units had windows that opened onto these courts; and

WHEREAS, the applicant further states that the Rear Court for the Proposed Hotel will be substantially larger than the narrow rear courts that served the former hotel; and

WHEREAS, specifically, the Rear Court will have an area of 1,685 sq. ft., which exceeds the generally prescribed area of 1,200 sq. ft. set forth in MDL § 26(7), and will have a depth of at least 20 feet, therefore providing the hotel units that face it with as much light and air as a 20-ft. rear yard, which is the rear yard that is required under the Zoning Resolution for commercial uses, including transient hotels; and

WHEREAS, the applicant states that although the Side Court has a relatively shallow depth of nine feet, the windows in the Proposed Hotel that open onto the court will receive light and air as a result of the conditions on the subject site and the adjacent sites; and

WHEREAS, as to the conditions on the subject site, the applicant notes that the eight-story Annex is located at the southern end of the site, directly opposite the Side Court; therefore, the ninth through 15th stories of the Main Building rise above the Annex and the windows in these upper story units that open onto the Side Court will be exposed to light and air from the south; and

WHEREAS, the applicant states that the southernmost hotel units on the ninth through 15th floors that face the Side

Court to the east will also have south-facing windows, and will therefore receive light and air from the Side Court as well; and

WHEREAS, as to the conditions on adjacent sites, the applicant states that four of the sites located directly to the east of the subject premises constitute a single zoning lot for which a zoning lot development agreement ("ZLDA") has been executed; the relevant adjacent sites include the lot that abuts the Annex to the east on West 41st Street (Lot 16), the lot that abuts the Main Building to the east on West 42nd Street (Lot 49), and the two lots located directly east of Lot 49 (Lots 148 and 47); and

WHEREAS, the applicant notes that Lot 16 has a depth of 98'-8" and is occupied by a five-story building located on the street line at West 41st Street to a depth of 61'-0", with the remaining 37'-8" of Lot 16, including the segment that abuts the Side Court, occupied by a one-story building and a shallow rear yard; therefore, Lot 16 allows a significant amount of light and air to reach the Side Court; and

WHEREAS, the applicant represents that the aforementioned ZLDA imposes a light and air easement on Lot 16 prohibiting any new construction that significantly exceeds the height of the existing five-story and one-story building elements; thereby largely preserving the light and air that currently reaches the Side Court; and

WHEREAS, the applicant submitted a copy of the ZLDA into the record; and

WHEREAS, the applicant states that Lots 49 and 148 are currently vacant and any new development on these sites will likely include a rear yard, which will allow additional light and air to reach the Side Court; and

WHEREAS, the applicant further states that the units in the Proposed Hotel that face the Side Court, along with all other units in the hotel, will be air conditioned and mechanically ventilated, ensuring that adequate fresh air reaches these units; and

WHEREAS, at the Board's request, the applicant analyzed a scenario whereby the MDL non-compliance related to the Side Court was eliminated by having the corridor leading to the units in the southeastern portion of the Main Building located adjacent to the Side Court and having the windows in those units open onto the Rear Court; and

WHEREAS, the applicant submitted alternate plans for this lesser variance scenario, which reflect that the revised arrangement would require that the number of units in the Proposed Hotel be reduced from 395 to 371; and

WHEREAS, the applicant also submitted a revenue estimate indicating that the lesser variance scenario would generate substantially less annual revenue than the proposed scenario, thereby creating practical difficulty and unnecessary hardship; and

WHEREAS, the applicant also notes that in the lesser variance scenario the required windows in a number of the Main Buildings most southerly units would open onto an 8'-3" wide portion of the Rear Court, which is even narrower than the Side Court and directly abuts a 16-story building that is located on the adjacent lot to the west (Lot 9); therefore, the lesser variance scenario would provide certain units with less light and air than the proposed scenario; and

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WHEREAS, the applicant notes that the Landmarks Preservation Commission (“LPC”) designated the Main Building and the Annex (together, the former Knickerbocker Hotel) as an individual landmark in 1988; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission approving the proposed exterior alterations, dated December 17, 2010; and

WHEREAS, based on the above, the Board finds that the proposed variance to MDL § 26(7) will maintain the spirit and intent of the MDL, preserve public health, safety and welfare, and ensure that substantial justice is done; and

WHEREAS, accordingly, the Board finds that the Appellant has submitted adequate evidence in support of the findings required to be made under MDL § 310(2)(a) and that the requested variance of MDL § 26(7) is appropriate, with certain conditions set forth below.

Therefore it is Resolved, that the decision of the Manhattan Borough Commissioner, dated October 28, 2010, is modified and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the plans filed with the application marked, "Received December 23, 2010" - two (2) sheets; and on further condition:

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections related to the MDL;

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 1, 2011.

70-08-A thru 72-08-A

APPLICANT – Eric Palatnik, P.C., for TOCS Developers Incorporated, owner.

SUBJECT – Application December 17, 2010 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously-granted Common Law vesting which expired on January 13, 2011. R3A zoning district. PREMISES AFFECTED – 215A, 215B, 215C Van Name Avenue, north of the corner formed by intersection of Van Name and Forest Avenues, Block 1194, Lot 42, 41 & 40, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 8, 2011, at 10 A.M., for decision, hearing closed.

73-08-A thru 75-08-A

APPLICANT – Eric Palatnik, P.C., for S. B. Holding, owner.

SUBJECT – Application December 17, 2010 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously-granted Common Law vesting which expired on January 13, 2011. R3-A zoning district. PREMISES AFFECTED – 345A, 345B, 345C Van Name Avenue, northeast of the corner formed by Van Name and Forest Avenues, Block 1198, Lot 42, 43, 44, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 8, 2011, at 10 A.M., for decision, hearing closed.

201-10-BZY

APPLICANT - Law Offices of Marvin B. Mitzner, for LES Realty Group LLC, owner.

SUBJECT – Application October 29, 2010 – Extension of Time (§11-332) to complete construction of a minor development commenced under the prior C6-1 zoning district. C4-4A zoning district.

PREMISES AFFECTED – 180 Orchard Street, through lot extending from Orchard Street to Ludlow Street. Block 412, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner

ACTION OF THE BOARD – Laid over to March 1, 2011, at 10 A.M., for continued hearing.

215-10-A

APPLICANT – James Chin et al, for Saint Mary’s Hospital for Children, owner.

SUBJECT – Application November 20, 2010 – An appeal challenging the issuance of permits and approvals for the expansion of a community facility (*St. Mary’s Hospital*) related to use (§22-14), floor area (§24-111) and setbacks (§24-34). R2A Zoning District.

PREMISES AFFECTED – 29-01 216th Street, west of Cross Island Expressway, east of intersection of 29th Avenue and 216th Street, Block 6059, Lot 1, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

MINUTES

For Applicant: Albert K. Butzel, Karen Pender, James Chin, Robert Bassocino and Tim Vance.

For Opposition: Lisa Orrantia of Department of Buildings and Karen Binder.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 8, 2011, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

**REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 1, 2011
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

150-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Lyle Broochian, owner.

SUBJECT – Application August 16, 2010 – Special Permit (§73-622) for the legalization of the enlargement of an existing single family home, contrary to floor area (§23-141); side yard (§23-461) and rear yard regulations (§23-47). R2 zoning district.

PREMISES AFFECTED –1124 East 26th Street, west side of East 26th Street, between Avenue K and Avenue L, Block 7625, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #14BK

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 29, 2010, acting on Department of Buildings Application No. 320176108, reads in pertinent part:

- “1. Floor area is contrary to ZR 23-141a
2. Side yard requirements are contrary to ZR 23-461a
3. Rear yard requirements are 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 and partial legalization of a single-family home, which does not comply with the zoning requirements for floor area, 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 November 23, 2010, after due notice by publication in *The City Record*, with a continued hearing on January 11, 2011, and then to decision on February 1, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn,

MINUTES

recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 26th Street, between Avenue K and Avenue L, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 3,750 sq. ft., and is occupied by a single-family home with a floor area of approximately 2,573 sq. ft. (0.69 FAR); and

WHEREAS, the applicant states that the subject home was previously enlarged by an addition to the rear of the building of approximately 450 sq. ft.; this addition resulted in non-compliances associated with floor area and rear yard depth, which the owner now proposes to legalize; 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 approximately 2,573 sq. ft. (0.69 FAR) to 2,771 sq. ft. (0.74 FAR); the maximum permitted floor area is 1,875 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 3'-10" along the northern lot line (a minimum width of 5'-0" is required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-10 1/4" (a minimum rear yard of 30'-0" is required); and

WHEREAS, at hearing, the Board questioned whether portions of the attic exceeded floor-to-ceiling height of 8'-0" and therefore should be counted as floor area; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the floor-to-ceiling height in the attic has a maximum height of 7'-11", and therefore is exempt from floor area calculations; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement and partial legalization 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, within an R2 zoning district, the proposed enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements for floor area, 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 December 30, 2010"-(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,771 sq. ft. (0.74 FAR); a side yard with a minimum width of 3'-10" along the northern lot line; and a rear yard with a minimum depth of 20'-10 1/4", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 1, 2011.

240-09-BZ

APPLICANT – T-Mobile Northeast LLC f/k/a Omnipoint Communications Inc., for 452 & 454 City Island Avenue Realty Corp., owner; T-Mobile Northeast LLC, lessee.

SUBJECT – Application August 10, 2009 – Variance (§72-21) to construct a telecommunications facility on the rooftop of an existing building, contrary to height (Special City Island District (CD), §112-103, §33-431) and rear and side yard setback (§§23-47 and 23-464) requirements. R3A/C2-2/CD districts.

PREMISES AFFECTED – 454 City Island Avenue, east side of City Island Avenue bound by Browne Street, south and Beach Street to the north, Block 5646, Lot 3, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Robert Gaudio, Gregory Nowak and Donna-Marie Stipo.

ACTION OF THE BOARD – Laid over to April 12, 2011, at 1:30 P.M., for continued hearing.

35-10-BZ

APPLICATION – Sheldon Lobel, PC for Yuriy Pirov, owner.

SUBJECT – Application March 22, 2010 – Variance (§72-21) to permit the legalization of an existing synagogue (*Congregation Torath Haim Ohel Sara*), contrary to front

MINUTES

yard (§24-34), side yard (§24-35) and rear yard (§24-36). R4 zoning district.

PREMISES AFFECTED – 144-11 77th Avenue, approximately 65 feet east of the northeast corner of Main Street and 77th Avenue. Block 6667, Lot 45, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 8, 2011, at 1:30 P.M., for decision, hearing closed.

45-10-BZ

APPLICANT – Sheldon Lobel, PC, for Leemilt's Petroleum, Incorporated, owner.

SUBJECT – Application April 5, 2010 – Special Permit (§11-411 and §11-412) for the reinstatement of a Variance for the continued operation of a gasoline service station (*Getty*) which expired on June 23, 1986; Amendment to increase the size of the auto laundry; Extension of Time to obtain a Certificate of Occupancy. C1-4/R7-1 zoning district.

PREMISES AFFECTED – 1413-1429 Edward L. Grant Highway, southwest corner of Plimpton Avenue and Edward L. Grant Highway, Block 2521, Lot 15, Borough of Bronx.

COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to March 15, 2011, at 1:30 P.M., for adjourned hearing.

68-10-BZ

APPLICANT – Eric Palatnik, P.C., for CDI Lefferts Boulevard, LLC, owner.

SUBJECT – Application May 4, 2010 – Variance (§72-21) to allow a commercial building, contrary to use regulations (§22-00). R5 zoning district.

PREMISES AFFECTED – 80-15 Lefferts Boulevard, between Kew Gardens Road and Talbot Street, Block 3354, Lot 38, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 8, 2011, at 1:30 P.M., for decision, hearing closed.

130-10-BZ

APPLICANT – Sheldon Lobel, P.C., for John Ingravallo, owner.

SUBJECT – Application July 16, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141) and perimeter wall height (§23-631) regulations. R3X zoning district.

PREMISES AFFECTED – 1153 85th Street, north side of 85th Street, between 11th and 12th Avenue, Block 6320, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Jordan Most.

For Opposition: Eric Palatnik and Sal Genovese.

ACTION OF THE BOARD – Laid over to March 15, 2011, at 1:30 P.M., for continued hearing.

183-10-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application September 20, 2010 – Variance (§72-21) for the construction of a detached two-story, two family residence, contrary to front yard (§23-45) and side yard requirements (§23-461). R5 zoning district.

PREMISES AFFECTED – 873 Belmont Avenue, aka 240 Milford Street, northwest corner of Belmont Avenue and Milford Street, Block 4024, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to March 1, 2011, at 1:30 P.M., for continued hearing.

197-10-BZ thru 199-10-BZ

APPLICANT – Antonio S. Valenziano, AIA, for John Merolo, owner.

SUBJECT – Application October 26, 2010 – Variance (§72-21) to allow three residential buildings in a manufacturing district, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 59, 63 & 67 Fillmore Street, 491.88' west of York Avenue, Block 61, Lot 27, 29, 31, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Anthony S. Valenziano.

ACTION OF THE BOARD – Laid over to March 1, 2011, at 1:30 P.M., for continued hearing.

213-10-BZ

APPLICANT – EPDSO, Inc., for 2071 Clove LLC, owner; Grasmere Bodybuilding Inc. (d/b/a Dolphin Fitness), lessee.

SUBJECT – Application November 9, 2010 – Special Permit (§73-36) to legalize the operation of a Physical

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Culture Establishment (Dolphin Fitness Center). C8-1 zoning district.

PREMISES AFFECTED – 2071 Clove Road, Clove Road (Grasmere Commons Shopping Center) between Mosel Avenue and Hillcrest Terrace, Block 2921, Lot 6, Borough of Staten Island.

COMMUNITY BOARD #6SI

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 8, 2011, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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February 16, 2011

DIRECTORY

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10-11-BZ

115 Finely Avenue, Northwest side of Finely Avenue 100' southwest of Marine Way., Block 4050, Lot(s) 53,56,59, Borough of **Staten Island, Community Board: 2**. Variance to allow two, two story single family homes. R3-1 district.

11-11-BZ

121 Finely Avenue, Northwest side of Finely Avenue 100' southwest of Marine Way., Block 4050, Lot(s) 53,56,59, Borough of **Staten Island, Community Board: 2**. R3-1 district.

12-11-A

44 Beach 221st Street, West side of Beach 221st Street 100 feet north of Breezy Point Boulevard., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14**. Reconstruction and enlargement of an existing single family dwelling not fronting a mapped street contrary to General City Section 36 . R4 Zoning district . R4 district.

13-11-BZ

1040 East 26th Street, West side of East 26th Street between Avenue J and Avenue K, Block 7607, Lot(s) 66, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of a single family residence contrary to sections 23-141, 23-47, 23-461 and 23-48. R2 zoning district. R2 district.

14-11-A

1221 East 17th Street, East 22nd Street between Avenue K and Avenue L., Block 7622, Lot(s) 21, Borough of **Brooklyn, Community Board: 14**. Appeal challenging a determination by the Department of Building interpretation of the defination of accessory use. R2 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

MARCH 1, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 1, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

881-59-BZ

APPLICANT – Dorothy Ames, owner.
SUBJECT – Application November 19, 2010 – Extension of Term (11-411) of a previously granted application for the continued use of theatre (*Soho Playhouse*) and dwelling which expires on April 11, 2011. R6 zoning district.
PREMISES AFFECTED – 15 Vandam Street, between Avenue of the Americas and Varick Street, Block 506, Lot 47, Borough of Manhattan.
COMMUNITY BOARD #2M

164-60-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Luciani Enrica Melchiorre, owner; Steven Scott, Inc., lessee.
SUBJECT – Application December 7, 2010 – Extension of Term (§11-411) of a previously approved Automotive Service Station (UG 16B) (*Sunoco*) with accessory uses which expired on April 10, 2010; Waiver of the Rules. C1-3/R3-2 zoning district.
PREMISES AFFECTED – 100-20 Metropolitan Avenue, southeast corner of Metropolitan Avenue and 70th Road, Block 3895, Lot 32, Borough of Queens.
COMMUNITY BOARD #6Q

197-00-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for SLG Graybar Sublease, LLC, owner; Equinox 44th Street, Inc., lessee.
SUBJECT – Application January 4, 2011 – Extension of Term of a previously approved special permit (§73-36) permitting the operation of a physical culture establishment (*Equinox*) which expired on December 4, 2010. C5-3(Mid) zoning district.
PREMISES AFFECTED – 420 Lexington Avenue, west side of Lexington Avenue, 208’-4” north of East 42nd Street, Block 1290, Lot 60, Borough of Manhattan.
COMMUNITY BOARD #5M

236-07-BZ

APPLICANT – Jay A. Segal, Esq./Greenberg Traurig, LLP, for Hope Lofts LLC c/o Stein, Simpston & Rosen, PA, owner; 53 Hope Street LLC c/o Gershon & Company, lessee.
SUBJECT – Application December 2, 2010 – Amendment to previously approved Special Permit (ZR 73-46) to allow additional dwelling units and waiver of parking spaces. M1-2/R6A (MX-8) zoning district.
PREMISES AFFECTED – 53-65 Hope Street, north side of Hope Street, between Havemeyer Street and Marcy Avenue, Block 2369, Lots 40 & 47, Borough of Brooklyn.
COMMUNITY BOARD #1BK

APPEALS CALENDAR

189-10-A

APPLICANT – Bracewell & Giuliani, LLP on behalf of Chelsea Business & Property Owners, for 127 West 25th LLC, owner; Bowery Residents’ Committee, Incorporated, lessee.
SUBJECT – Application October 8, 2010 – Appeal challenging the issuance of permits by the Department of Buildings to allow the construction of a health care facility in an M1-6 zoning district.
PREMISES AFFECTED – 127-131 West 25th Street, between 6th and 7th Avenue, Block 801, Lot 21, Borough of Manhattan.
COMMUNITY BOARD #4M

MARCH 1, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 1, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

90-10-BZ

APPLICANT – James Chin & Associates, LLC, for Chan Ahn, owner.
SUBJECT – Application August 14, 2010 – Variance (§72-21) to permit a house of worship contrary to front yard (§24-34), side yard (§24-35), and rear yard (§24-36). R2A zoning district.
PREMISES AFFECTED – 58-06 Springfield Boulevard, corner of the west side of Springfield Boulevard, west north side of the Horace Harding Expressway, Block 7471, Lots 7 and 48, Borough of Queens.
COMMUNITY BOARD #11Q

CALENDAR

156-10-BZ thru 172-10-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for City of New York c/o Housing Preservation Development (HPD), owner.

SUBJECT – Application August 26, 2010 – Variance (§72-21) to allow residential buildings, contrary to rear yard (ZR 23-47) and minimum distance between windows and lot lines (ZR 23-861) regulations. M1-2/R6A zoning district.

PREMISES AFFECTED – 1204, 1208, 1214, 1220, 1226, 1232, 1264, 1270, 1276, 1304, 1310, 1316, 1322, 1328, 1334, 1362, 1368 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue, Block 5295, Lots 4,104, 105, 106, 107, 108, 111, 112, 113, Block 5300, Lots 9, 109, 110, 111, 112, 113, 115, 116, Borough of Brooklyn.

COMMUNITY BOARD #12BK

227-10-BZ

APPLICANT – Eric Palatnik, P.C., for Power Test Realty Company Limited Partnership, owner.

SUBJECT – Application December 14, 2010 – Reinstatement (§11-411) of a previously approved variance permitting the operation of an automotive service station (UG 16B) (Getty) which expired on October 11, 2000; Amendment to legalize modifications to the fuel dispensing islands; Extension of Time to obtain a certificate of occupancy which expired on November 17, 1993; Waiver of the rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 204-12 Northern Boulevard, Northern Boulevard and 204th Street. Block 7301, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 8, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

128-00-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for CRP/Capstone 14W Property Owner, LLC c/o CB Richard Ellis, owner; Equinox Wall Street Incorporated, lessee.

SUBJECT – Application September 30, 2010 – Extension of Term of a Special Permit (ZR §73-36) for the continued operation of a physical culture establishment (*Equinox*) which expired on September 12, 2010. C5-5(LM) zoning district.

PREMISES AFFECTED – 10/16 Wall Street, north west corner of Wall Street and Nassau Street, Block 46, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on September 12, 2010; and

WHEREAS, a public hearing was held on this application on December 14, 2010, after due notice by publication in *The City Record*, and then to decision on February 8, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the PCE is located on a corner lot bounded by Pine Street to the north, Nassau Street to the east, and Wall Street to the south, in a C5-5 zoning district within the Special Lower Manhattan District; and

WHEREAS, the PCE occupies a total of 32,294 sq. ft. of floor area on portions of the first floor and second floor of a 32-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 12, 2000 when, under the

subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on September 12, 2010; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, at hearing, the Board raised concerns about the signage at the site, particularly regarding the flagpole and banner signage on the exterior of the building; and

WHEREAS, in response, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission, reflecting that the flagpole and banner signage has been approved; and

WHEREAS, based upon its review of the record, the Board finds 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 *reopens* and *amends* the resolution, as adopted on September 12, 2000, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from September 12, 2010, to expire on September 12, 2020, *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 30, 2010’-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on September 12, 2020;

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

THAT signage at the site shall comply with C5 district regulations;

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;

THAT the Department of Buildings must ensure compliance 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. 102658786)

Adopted by the Board of Standards and Appeals, February 8, 2011.

379-01-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Consolidated Edison of New York, owner; TSI Irving LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 22, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of physical culture establishment (*New York Sports Club*), located in portions of the basement, first floor and second floor, in a 33 story office building, which expires on April 16, 2011. C6-3X/C1-9 zoning district.

PREMISES AFFECTED – 4 Irving Place, northeast corner of Irving Place and East 14th Street, Block 870, Lot 24, Borough of Manhattan.

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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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term of a previously granted special permit for a physical culture establishment (“PCE”), which expires on April 16, 2011; and

WHEREAS, a public hearing was held on this application on January 25, 2011, after due notice by publication in *The City Record*, and then to decision on February 8, 2011; and

WHEREAS, Community Board 6, Manhattan, states that it has no objection to this application; and

WHEREAS, the PCE is located on the southeast corner of Irving Place and East 15th Street, partially within a C6-3X zoning district and partially within a C1-9 zoning district; and

WHEREAS, the PCE occupies a total of 20,919 sq. ft. of floor area in portions of the basement, first floor and second floor of a 33-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 16, 2002 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of nine years, to expire on April 16, 2011; and

WHEREAS, most recently, on February 5, 2003, the Board issued a letter of substantial compliance permitting certain modifications to the interior layout of the site; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

WHEREAS, based upon its review of the record, the Board finds 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 *reopens* and *amends* the resolution, as adopted on April 16, 2002, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from April 16, 2011, to expire on April 16, 2021, *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 21, 2010’-(7) sheets; and *on further condition*:

THAT the term of this grant shall expire on April 16, 2021;

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;

THAT the Department of Buildings must ensure compliance 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. 102552514)

Adopted by the Board of Standards and Appeals, February 8, 2011.

132-58-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms Inc., owner.

SUBJECT – Application July 9, 2010 – Extension of Term (§11-411) of a previously approved automotive service station (UG 16B) (*Gulf*) with accessory uses which expired on June 18, 2010. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 17-45 Francis Lewis Boulevard, aka 17-55 Francis Lewis Boulevard, east side of Francis Lewis Boulevard, between 17th Road and 18th Avenue, Block 4747, Lot 31, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 8, 2011, at 10 A.M., for decision, hearing closed.

433-65-BZ

APPLICANT – Andrea Claire/Peter Hirshman, for 15 West 72 Owner Corporation, owner; Mafair Garage Corporation, lessee.

SUBJECT – Application July 22, 2010 – Extension of Term of an approval pursuant to the Multiple Dwelling Law for transient parking, which expired on June 22, 2010. R8B/R10A zoning district.

PREMISES AFFECTED – 15 West 72nd Street, 200’-2½ west of Central Park West 72nd Street, Block 1125, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 29, 2011, at 10 A.M., for continued hearing.

749-65-BZ

APPLICANT – Sheldon Lobel, P.C., for Henry Koch, owner.

SUBJECT – Application October 14, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG16 Gasoline Service Station (*Getty*) with accessory uses which expired on November 3, 2010; Extension of Time to obtain a Certificate of

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Occupancy which expired on December 19, 2002; Waiver of the Rules. R3X zoning district.

PREMISES AFFECTED – 1820 Richmond Road, southeast corner of Richmond Road and Stobe Avenue, Block 3552, Lot 39, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 8, 2011, at 10 A.M., for decision, hearing closed.

899-65-BZ

APPLICANT – Sheldon Lobel, P.C., for Rengency Towers, LLC, owner.

SUBJECT – Application December 3, 2010 – Extension of Term permitting 75 surplus tenant parking spaces, within an accessory garage, for transient parking pursuant to §60 (3) of the Multiple Dwelling Law (MDL), which expired on November 16, 2010. C2-8/R8B zoning district.

PREMISES AFFECTED – 231-245 East 63rd Street, aka 1201-1222 2nd Avenue. Located along the entire west block front of Second Avenue between 63rd and 64th Streets. Block 1418, Lot 21. Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 15, 2011, at 10 A.M., for decision, hearing closed.

197-02-BZ

APPLICANT – Gary Silver Architects, for Nostrand Kings Management, ower; No Limit LLC, lessee.

SUBJECT – Application November 9, 2010 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Culture Establishment which expired on November 26, 2007; Extension of Time to obtain a Certificate of Occupancy; Waiver of the Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 2825 Nostrand Avenue, East side of Nostrand Avenue 129.14 feet south of the corner of Kings Highway. Block 7692, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Albert Morengo and Gary Silver.

ACTION OF THE BOARD – Laid over to March 15, 2011, at 10 A.M., for continued hearing.

259-08-BZ

APPLICANT – Jeffrey A. Chester/Einbinder & Dunn, for AAC Douglaston Plaza, LLC, owner; Fairway Douglaston LLC, lessee.

SUBJECT – Application October 18, 2010 – Amendment of a variance (§72-21) permitting the expansion of a non-conforming supermarket (UG 6). The amendment would remove a condition limiting the signage to C1 regulations. R4 zoning district.

PREMISES AFFECTED – 242-02 61st Avenue, Douglaston Parkway and 61st Avenue, Block 8286, Lot 185, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Jeffrey A. Chester and Edward Wienstein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 15, 2011, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

96-10-A & 97-10-A

APPLICANT – Rothkrug Rothkrug & Spector,for Hub Development Corporation, owner.

SUBJECT – Application June 1, 2010 – Proposed construction of a single family home located within the bed of a mapped street (Jay Street), contrary to General City Law Section 35. R3-1 Zoning District.

PREMISES AFFECTED – 673 & 675 Hunter Avenue, north side of Hunter Avenue, bed of Jay Street, Block 3864, Lot 98 & 99, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to March 29, 2011, at 10 A.M., for continued hearing.

214-10-A

APPLICANT – Carol E. Rosenthal, Esq./Fried Frank, for Boulevard Leasing Limited Partnership, owner.

SUBJECT – Application November 10, 2010 – Appeal challenging the Department of Buildings determination regarding maximum number of dwelling units (§23-22) allowed in a residential conversion of an existing building. C4-2 zoning district.

PREMISES AFFECTED – 97-45 Queens Boulevard, bounded by Queens Boulevard, 64th Road and 64th Avenue, Block 2091, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

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APPEARANCES –

For Applicant: Carol E. Rosenthal.

For Opposition: John Egnatos-Berne.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 15, 2011, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING TUESDAY AFTERNOON, FEBRUARY 8, 2011 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

192-09-BZ

CEQR #09-BSA-119K

APPLICANT – Richard Lobel, for Leon Mann, owner.
SUBJECT – Application June 16, 2009 – Special Permit (§72-52) to allow for the construction of a commercial building with accessory parking. R6 and R6/C2-3 zoning districts.

PREMISES AFFECTED – 912 Broadway, northeast corner of the intersection of Broadway and Stockton Street, Block 1584, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, February 8, 2011.

55-10-BZ

CEQR #10-BSA-063Q

APPLICANT – Eric Palatnik, P.C., for FAS Main Street Family Limited Partnership, owner.

SUBJECT – Application April 19, 2010 – Special Permit (§73-44) to permit a reduction in required parking for an

ambulatory or diagnostic treatment center. C4-2/C4-3 zoning districts.

PREMISES AFFECTED – 40-22 Main Street, northwest corner of Main Street, northwest corner of Main Street and 40th Street, Block 5036, Lot 42, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 1, 2010, acting on Department of Buildings Application No. 420111220, reads in pertinent part:

“Apply for reduction of parking spaces for Ambulatory Diagnostic or Treatment Facilities Listed in Use Group 4. Contrary to ZR 73-44;”
and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, on a site partially within a C4-2 zoning district and partially within a C4-3 zoning district, a reduction in the required number of accessory parking spaces for a mixed-use retail/office/community facility building from 32 to 24, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on October 19, 2010, after due notice by publication in The City Record, with a continued hearing on December 14, 2010, and then to decision on February 8, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends disapproval of this application; and

WHEREAS, the subject site is located on the northwest corner of Main Street and 40th Avenue, and has a lot area of 2,933 sq. ft.; and

WHEREAS, the site is currently occupied by a four-story mixed-use retail/office/community facility building with no accessory parking spaces; and

WHEREAS, the applicant proposes to convert the third floor and third floor mezzanine of the subject building from its current use as a day care center to an ambulatory diagnostic or treatment facility space (Use Group 4); and

WHEREAS, specifically, the proposed uses at the site are as follows: (1) offices at the cellar level; (2) retail use on the first floor, first floor mezzanine, and second floor; (3) ambulatory diagnostic or treatment facility use (Use Group 4) on the third floor and third floor mezzanine; and (4) offices (Use Group 6) on the fourth floor; and

WHEREAS, the applicant states that the required

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parking for the existing uses at the site is 24 spaces, and that the parking requirement was waived pursuant to ZR § 36-231, which permits a waiver of all required parking if the total number of required parking spaces is less than 25; and

WHEREAS, the applicant further states that the proposed conversion of the third floor and third floor mezzanine from a day care center, which has no parking requirement, to an ambulatory diagnostic or treatment facility (Use Group 4), which requires one parking space per 400 sq. ft. of floor area, increases the total number of required parking spaces at the site from 24 to 32, thereby making the site ineligible for the parking waiver under ZR § 36-231; and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject C4-2 and C4-3 zoning districts, 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 ambulatory diagnostic or treatment facilities and the noted Use Group 6 uses in the parking category B1; in the subject zoning district, the Board may reduce the required parking from one space per 400 sq. ft. of floor area to one space per 800 sq. ft. of floor area; and

WHEREAS, pursuant to ZR § 36-21 the total number of required parking spaces for all uses at the site is 32; and

WHEREAS, the applicant represents that the proposed use of the site does not require 32 accessory parking spaces; and

WHEREAS, the applicant notes that 6,576 sq. ft. of floor area in the subject building is occupied by retail space, which is not in parking category B1 and therefore has been excluded from the calculations for the requested reduction in parking; and

WHEREAS, the applicant states that the remaining 6,413 sq. ft. of floor area at the site will be occupied either by ambulatory diagnostic or treatment facility space (Use Group 4) or professional offices (Use Group 6), which are eligible for the parking reduction under ZR § 73-44; at a rate of one required parking space per 400 sq. ft. of floor area, 16 parking spaces are required for these uses; and

WHEREAS, accordingly, the total number of parking spaces which are eligible under the special permit is 16; as noted, the special permit allows for a reduction from one space per 400 sq. ft. of floor area to one space per 800 sq. ft. of floor area, which would reduce the required parking for these uses to eight spaces; and

WHEREAS, the applicant represents that an additional 16 parking spaces are required for the 6,576 sq. ft. of floor area occupied by retail space, which is not eligible for the special permit; and

WHEREAS, thus, a total of 24 parking spaces is required for the subject site; and

WHEREAS, the applicant represents that, should the Board grant the subject special permit application to reduce the number of required parking spaces to 24, the site will qualify for a waiver of all required parking pursuant to ZR § 36-231, because the total number of required accessory off-street parking spaces for all uses on the site would be less

than 25; and

WHEREAS, the Board notes that ZR § 73-44 only authorizes a reduction in the required number of parking spaces for floor area occupied by an ambulatory diagnostic or treatment facility or uses in parking requirement category B1; as noted above, the special permit would allow a reduction of the required number of parking spaces at the subject site from 32 to 24; and

WHEREAS, the Board takes no position as to whether approval of the subject special permit application qualifies the site for a parking waiver pursuant to ZR § 36-231, which is a determination subject to review by the Department of Buildings (“DOB”); and

WHEREAS, the applicant states that if DOB determines that the site does not qualify for a waiver of the 24 required parking spaces pursuant to ZR § 36-231, the required number of parking spaces will be provided at an off-site location within a 600-ft. radius of the site, as per ZR § 36-421; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the ambulatory diagnostic or treatment facility and Use Group 6 use in the B1 parking category are contemplated in good faith; and

WHEREAS, the applicant has submitted an affidavit from the owner of the premises stating that third floor and third floor mezzanine will be used for ambulatory diagnostic or treatment facility and the fourth floor will be used for Use Group 6 professional offices; and

WHEREAS, in addition, the applicant states that any Certificate of Occupancy for the building will state that no subsequent Certificate of Occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius; and

WHEREAS, accordingly, the applicant has submitted sufficient evidence of good faith in maintaining the noted uses at the site; and

WHEREAS, however, while ZR § 73-44 allows the Board to reduce the required accessory parking, the Board requested an analysis about the impact that such a reduction might have on the community in terms of available on-street parking; and

WHEREAS, in response, the applicant submitted a trip generation and parking accumulation analysis, which reflects that during peak periods, the maximum demand for parking at the site is 20 spaces; and

WHEREAS, the parking analysis provided by the applicant further reflects that there are 329 on-street parking spaces within a one-quarter mile radius of the site, and there is a minimum of 51 and a maximum of 152 available parking spaces throughout the course of the day; and

WHEREAS, the parking analysis also reveals that there are two off-street municipal parking facilities in close proximity to the site, with a total of 577, 56 and 382 available parking spaces during the morning, midday, and evening peak hours; and

WHEREAS, based upon this study, the Board agrees

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that the accessory parking space needs can be accommodated even with the parking reduction; 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. 10BSA063Q, dated March 24, 2010; 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, partially within a C4-2 zoning district, and partially within a C4-3 zoning district, a reduction in the required number of accessory parking spaces for a mixed-use retail/office/community facility building from 32 to 24, contrary to ZR § 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 January 18, 2011" - one (1) sheet and "Received September 11, 2010"-4 (four) sheets; on further condition:

THAT there shall be no change in the operation of the site without prior review and approval by the Board;

THAT DOB shall review the proposal to determine whether the site qualifies for a waiver of the required number of parking spaces pursuant to ZR § 36-231;

THAT in the event DOB determines that the site does not qualify for a parking waiver under ZR § 36-231, the location and configuration of the 24 required parking spaces shall be subject to review and approval by DOB;

THAT no certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless

additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius;

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

THAT any building enlargement shall be as approved by DOB and must comply with all relevant 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;

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 8, 2011.

**140-10-BZ/142-10-BZ/144-10-BZ/146-10-BZ
CEQR #11-BSA-010R**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Edward Lauria, owner.

SUBJECT – Application August 9, 2010 – Variance (§72-21) to allow four single-family homes on a zoning lot that does not meet the minimum lot width requirements (§23-32), and waiver to the General City Law, Section 36, for development not fronting a mapped street. R1-2 (NA-1) zoning district.

PREMISES AFFECTED – 160, 170, 181, 191, Edinboro Road, south of Meisner Avenue, east of intersection Lighthouse Avenue and Edinboro Road, Block 2267, Lot 55(tent), 50, 197, 168, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palantik.

ACTION OF THE BOARD – Applications granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated July 7, 2010, acting on Department of Buildings Application Nos. 520031581, 520027543, 520031590, and 520031607, read, in pertinent part:

- “1. GCL 36 – The street giving access to the building is not on the official map of the city of New York.
2. ZR 23-32 – The proposed zoning lot does not have a dimension of at least 60 feet along any street”; and

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WHEREAS, this is an application under ZR § 72-21, to permit, in an R1-2 zoning district mapped within a Special Natural Area District (NA-1) the construction of four three-story single-family homes on a zoning lot, which does not comply with minimum lot width requirements, contrary to ZR § 23-32; and

WHEREAS, the applicant concurrently filed companion applications under BSA Cal. Nos. 141-, 143-, 145-, and 147-10-A to allow for the construction of the homes which do not front on a mapped street; and

WHEREAS, the Board granted a waiver of General City Law (GCL) § 36 for all four homes on February 8, 2011; the approvals are discussed in a separate resolution; and

WHEREAS, a public hearing was held on this application on November 9, 2010, after due notice by publication in *The City Record*, with continued hearings on December 14, 2010 and January 25, 2010, and then to decision on February 8, 2011; and

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

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the applicant proposes to construct four single-family homes on a single zoning lot (four tax lots), with a total lot area of 95,566 sq. ft., but that does not provide 60 feet of frontage on a street and that does not front on a street on the official map of the City of New York; and

WHEREAS, the proposed homes, together will have the following complying parameters: a total floor area of 26,637 sq. ft. (including the lowest level, which may be deemed a cellar), a Floor Area Ratio (FAR) of 0.28, and individual floor area of 5,021 sq. ft. (191 Edinboro Road); 8,766 sq. ft. (170 Edinboro Road); 2,876 (160 Edinboro Road); and 5,021 sq. ft. (180 Edinboro Road); and

WHEREAS, the site is located on the north and south side of the unmapped Edinboro Road, south of Meisner Avenue, east of the intersection of Lighthouse Road and Edinboro Road; and

WHEREAS, the lot is irregularly-shaped with widths ranging from 12 feet for a sliver at the north of the site at Meisner Avenue to 473 feet at the southern boundary, with two connected square portions on either side of Edinboro Road, where the homes will be built; and

WHEREAS, the lot has a frontage of 12 feet on Meisner Avenue, a frontage of 25 feet on Edinboro Road, and a frontage of 45 feet on Lighthouse Road, none of which meet the requirement for 60 feet of frontage on a street; and

WHEREAS, the Lower Density Growth Management Area (LDGMA) regulations require that lot width requirements be met along at least one street line of the zoning lot; and

WHEREAS, the applicant notes that, despite the lot's large size, it does not meet the 60-ft. lot width requirement at any frontage; and

WHEREAS, in 1985, the property owner filed an application at the Board for six homes that did not front on a street mapped on the official City map, and for the proposed

use of drywells (BSA Cal. Nos. 324-85-A to 329-85-A); the owner withdrew the GCL portions of the applications, but obtained grants to permit drywells for storm water disposal; and

WHEREAS, further, the applicant represents that in 1999, prior to the enactment of the LDGMA regulations (including ZR § 23-32) it submitted an application to the City Planning Commission (N000190 ZAR) for approval under Natural Area District Regulations for modification to topography, alteration of botanic environment, and removal of trees and other natural features; the City Planning Commission approved the proposal in 2005; and

WHEREAS, however, in 2005, City Council adopted ZR § 23-32(b), which requires that the applicable lot width provisions of ZR § 23-32 be met along at least one street line of the zoning lot; and

WHEREAS, the applicant represents that it has provided the Department of City Planning with the proposed plans and is seeking a new authorization to correspond with the Board's approvals; 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 irregular shape of the lot; and

WHEREAS, as to the site's shape, that applicant states that although the site has a lot area of more than 95,000 sq. ft. and a width as great as 473 feet, the zoning lot has widths of only 12 feet, 25 feet, and 45 feet at the street frontages; and

WHEREAS, the applicant represents that absent the requested waiver, it would be permitted to develop only a single home on the premises per ZR § 23-33 (*Special Provisions for Existing Small Lots*) since the site is located in the LDGMA and fails to comply with the lot width provisions of § 23-32(a), and as the zoning lot has been owned separately and individually from adjoining tracts of land per § 23-33(b); and

WHEREAS, the applicant notes that a regularly-shaped lot with an alternate configuration, and the subject lot's lot area, could accommodate 16 homes, as opposed to the four homes that are proposed; and

WHEREAS, the Board notes that the lot's shape is unique and that the applicant has submitted evidence in the record to establish that the lot has existed in its current configuration and was owned separately and apart from all adjacent lots on December 15, 1961, at the 2005 adoption of the lot width restriction, and at the time of the subject application; and

WHEREAS, accordingly, 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 applicant provided a financial analysis for (1) the as-of-right one single-family home with a floor area of 8,300 sq. ft.; and (2) the proposed four single-family homes with a total floor area of 26,637 sq. ft. (including the lowest level/cellar floor area); and

WHEREAS, the study concluded that the as-of-right

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scenario would not result in a reasonable return, but that the proposal would realize 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 zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed homes 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 homes comply with all R1-2 (NA-1) zoning district parameters aside from lot width and that each of the four tax lots will be significantly larger than the minimum lot size permitted within the zoning district; and

WHEREAS, specifically, the applicant represents that the four proposed tax lots are 10,564 sq. ft. (Lot 168), 9,268 sq. ft. (Lot 197), 31,667 sq. ft. (Lot 50), and 43,790 sq. ft. (Lot 55) while the minimum required lot size is only 5,700 sq. ft.; and

WHEREAS, the applicant provided an analysis which reflects the parameters of the surrounding homes and found that the height, floor area, lot area, and FAR are compatible with nearby homes; and

WHEREAS, finally, the applicant notes that the design and location of the proposed homes are subject to review by 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, the applicant notes that Edinboro Road (with a width of 30 feet) will be extended to provide access to the site and that, per the Fire Department's direction related to the companion GCL cases, the homes will all be fully-sprinklered; 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 site's unique configuration, which existed on December 15, 1961 and at the time of the 2005 adoption of ZR § 23-32's lot width requirement along the street frontage; and

WHEREAS, the applicant notes that the four proposed homes reflect a total FAR of 0.28 and that the lot's area supports an FAR of 0.5 and up to 12 more homes; and

WHEREAS, 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. 11BSA010R, dated November 8, 2010; 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 the required findings under ZR § 72-21, to permit, in an R1-2 zoning district mapped within a Special Natural Area District, the construction of four three-story single-family homes, which do not comply with minimum lot width, contrary to ZR § 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 December 23, 2010" – one (1) sheet and "Received December 3, 2010" – twenty (20) sheets; and *on further condition*:

THAT all bulk parameters shall be as reflected on the BSA-approved plans;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT no building permit shall be issued until the proposal has received an authorization from the City Planning Commission for its location within a Special Natural Area District;

THAT all interior layouts and exits 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 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 8, 2011.

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141-10-A/143-10-A/145-10-A/147-10-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Edward Lauria, owner.

SUBJECT – Application August 9, 2010 – Variance (§72-21) to allow four single-family homes on a zoning lot that does not meet the minimum lot width requirements (§23-32), and waiver to the General City Law, Section 36, for development not fronting a mapped street. R1-2 (NA-1) zoning district.

PREMISES AFFECTED – 160, 170, 181, 191, Edinboro Road, south of Meisner Avenue, east of intersection Lighthouse Avenue and Edinboro Road, Block 2267, Lot 55(tent), 50, 197, 168, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palantik.

ACTION OF THE BOARD – Applications granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated July 7, 2010, acting on Department of Buildings Application Nos. 520031581, 520027543, 520031590, and 520031607, read in pertinent part:

- “1. GCL 36 – The street giving access to the building is not on the official map of the city of New York.
2. ZR 23-32 – The proposed zoning lot does not have a dimension of at least 60 feet along any street.”; and

WHEREAS, this is an application to permit, in an R1-2 zoning district mapped within a Special Natural Area District (NA-1) the construction of four three-story single-family homes which do not front on a legally mapped street, contrary to Section 36 of the General City Law; and

WHEREAS, the applicant concurrently filed companion applications under BSA Cal. Nos.140-, 142-, 144-, and 146-10-A, for a variance to permit the construction of the proposed homes on a zoning lot that does not comply with minimum lot width requirements, contrary to ZR § 23-32; and

WHEREAS, the Board granted variances under ZR § 72-21 for all four homes on February 8, 2011; the approvals are discussed in a separate resolution; and

WHEREAS, a public hearing was held on this application on November 9, 2010, after due notice by publication in the *City Record*, with continued hearings on December 14, 2010 and January 25, 2010, and then to decision on February 8, 2011; and

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

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the applicant proposes to construct four single-family homes on a single zoning lot (four tax lots), with a total lot area of 95,566 sq. ft., but that does not provide 60 feet of frontage on a street and that does not front on a street on the official map of the City of New York; and

WHEREAS, the applicant states that Edinboro Road will be extended onto the subject zoning lot to provide access to each of the proposed homes; and

WHEREAS, specifically, the applicant states that Edinboro Road, as depicted on the official City map, terminates at the western lot line of Lot 168, and the extension of Edinboro Road will be paved to 30 feet wide and culminate in a cul-de-sac situated on Lot 55; and

WHEREAS, by letter dated August 26, 2009, the Fire Department states that it has reviewed the site plan and has no objections provided that: (1) all of the proposed homes are fully sprinklered in conformance with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code; and (2) no parking shall be permitted on the street and street signs shall be provided throughout the development to read “NO PARKING – FIRE LANE;” and

WHEREAS, in response, the applicant submitted a revised site plan reflecting that all of the homes will be fully sprinklered and states that no parking will be permitted on the street; and

WHEREAS, by letter dated January 24, 2011, the Fire Department confirms that it has no objection to the proposal; and

WHEREAS, based upon the above, the Board has determined that the applicant has submitted adequate evidence to warrant this approval.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated July 7, 2010, acting on Department of Buildings Application Nos. 520031581, 520027543, 520031590, and 520031607 are 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 drawings filed with the application marked “Received December 23, 2010”-(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 all of the proposed homes shall be fully sprinklered in conformance with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code;

THAT there shall be no parking permitted on the portion of Edinboro Road adjacent to the subject homes and street signs shall be installed to read “NO PARKING – FIRE LANE;”

THAT DOB shall approve the lot subdivision prior to the issuance of permits;

THAT the approved plans shall be considered approved

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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 8, 2011.

173-10-BZ

CEQR #11-BSA-020Q

APPLICANT – Nasir J. Khanzada, for Olympia Properties, LLC., owner.

SUBJECT – Application August 26, 2010 – Special Permit (§73-30) to legalize the operation of a physical culture establishment (*Olympia Spa*). C2-4/R6B zoning district.

PREMISES AFFECTED – 65-06 Fresh Pond Road, west side of Fresh Pond Road, 45.89’ south of corner of Linden Street and Fresh Pond Road, Block 3526, Lot 67, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated December 22, 2010, acting on Department of Buildings Application No. 420139273, reads in pertinent part:

“Proposed physical culture establishment is not permitted in R6B zoning district with overlay C2-4 unless permitted by the Board of Standards and Appeals as per ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-4 (R6B) zoning district, the legalization of a physical culture establishment (PCE) on the first floor and second floor of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 11, 2011, after due notice by publication in the *City Record*, and then to decision on February 8, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 5, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Fresh Pond Road between Gates Avenue and Linden Street, in an R6B (C2-4) zoning district; and

WHEREAS, the site is occupied by a two-story commercial building; and

WHEREAS, the PCE has a total floor area of 2,740 sq. ft. on the first floor and second floor of the building; and

WHEREAS, the PCE is operated as Olympia Spa; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 5:00 a.m. to 11:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the applicant initially represented that the PCE use was not currently in operation at the subject site; and

WHEREAS, at hearing, the Board questioned whether the PCE is currently in operation, based on the Board’s observations during its site visit; and

WHEREAS, in response, the applicant acknowledged that they are seeking to legalize the operation of the PCE; 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 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 Board notes that the PCE has been in operation since March 1, 2010, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between March 1, 2010 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; 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. 11BSA020Q, dated August 26, 2010; and

WHEREAS, the EAS documents 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

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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; 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 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, on a site within an R6B (C2-4) zoning district, the legalization of a physical culture establishment on the first floor and second floor of an existing two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 30, 2010"- Four (4) sheets and *on further condition*:

THAT the term of this grant shall expire on March 1, 2020;

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 all massages shall be performed by New York State licensed massage therapists;

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);

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 8, 2011.

174-10-BZ

CEQR #11-BSA-021Q

APPLICANT – The Briarwood Organization, LLC, for English Evangelical Church of Redeemer, owner.

SUBJECT – Application August 27, 2010 – Special Permit (§73-44) to allow for a reduction in parking for a mixed office and community facility building. R4/C2-2 zoning district.

PREMISES AFFECTED – 36-29 Bell Boulevard, between 36th Avenue and 38th Avenue, Block 6176, Lot 61 p/o 2, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eldad Gothelf.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 28, 2010, acting on Department of Buildings Application No. 420044133, reads in pertinent part:

“Get approval for insufficient parking spaces ZR 36-21”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, within a C2-2 (R4) zoning district, a reduction in the required number of accessory parking spaces for a mixed-use office/community facility building from 114 to 60, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on December 7, 2010, after due notice by publication in The City Record, with a continued hearing on January 25, 2011, and then to decision on February 8, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Queens, recommends approval of this application, with the condition that the ADA-accessible parking spaces be moved closer to the entrance of the building; and

WHEREAS, certain members of the community provided oral testimony in opposition to this application, citing concerns with its effect on parking in the surrounding neighborhood; and

WHEREAS, the subject site is located on the east side of Bell Boulevard, between 36th Avenue and 38th Avenue, and has a lot area of 24,240 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story residential building, which is proposed to be demolished, and two two-story office buildings which will remain on the site (the “Existing Buildings”); and

WHEREAS, the Existing Buildings have a total floor area of 16,273 sq. ft., with 42 accessory parking spaces located at the cellar and first floor, in the rear of the buildings; and

WHEREAS, the applicant proposes to construct a three-story mixed-use office/community facility building with 17,904 sq. ft. of floor area and 18 additional parking spaces at the cellar and first floor, which will be constructed adjacent to and as an enlargement of the Existing Buildings;

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and

WHEREAS, specifically, the proposed uses at the site are as follows: (1) offices (Use Group 6) and 29 accessory parking spaces at the cellar level; (2) offices (Use Group 6), ambulatory diagnostic or treatment facility space (Use Group 4), and 31 accessory parking spaces on the first floor; (3) offices (Use Group 6) and ambulatory diagnostic or treatment facility space (Use Group 4) on the second floor; and (4) offices (Use Group 6) on the third floor; and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject C2-2 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 ambulatory diagnostic or treatment facilities and the noted Use Group 6 uses in the parking category B1; in the subject zoning district, 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, pursuant to ZR § 36-21 the total number of required parking spaces for all uses at the site is 114; and

WHEREAS, the applicant represents that the proposed use of the site does not require 114 accessory parking spaces; and

WHEREAS, the applicant notes that 1,613 sq. ft. of floor area in the Existing Buildings is occupied by a dance studio (Use Group 9), which is not in parking category B1 and therefore has been excluded from the calculations for the requested reduction in parking; and

WHEREAS, the applicant states that the remaining 32,564 sq. ft. of floor area at the site will be occupied either by ambulatory diagnostic or treatment facility space or professional offices, which are eligible for the parking reduction under ZR § 73-44; at a rate of one required parking space per 300 sq. ft. of floor area, 109 parking spaces are required for these uses; and

WHEREAS, accordingly, the total number of parking spaces which are eligible under the special permit is 109; as noted, the special permit allows for a reduction from one space per 300 sq. ft. of floor area to one space per 600 sq. ft. of floor area, which would reduce the required parking for these uses to 55 spaces; and

WHEREAS, the applicant states that an additional five parking spaces are required for the 1,613 sq. ft. of floor area occupied by a dance studio (Use Group 9), which is not eligible for the special permit; these five spaces will remain; and

WHEREAS, thus, the applicant proposes to provide a total of 60 parking spaces; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the ambulatory diagnostic or treatment facility and Use Group 6 use in the B1 parking category are contemplated in good faith; and

WHEREAS, the applicant has submitted sufficient evidence of good faith in maintaining the noted uses at the site; and

WHEREAS, in addition, the applicant states that any Certificate of Occupancy for the building will state that no subsequent Certificate of Occupancy may be issued if the

use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius; and

WHEREAS, however, while ZR § 73-44 allows the Board to reduce the required accessory parking, the Board requested an analysis about the impact that such a reduction might have on the community in terms of available on-street parking; and

WHEREAS, in response, the applicant submitted a parking analysis, which reflects that the parking structure is underutilized and that during peak periods there is a demand for only 27 parking spaces; and

WHEREAS, the parking analysis provided by the applicant further reflects that, throughout the course of the day, there is a minimum of 38 available metered parking spaces on the streets within the immediate vicinity of the site; and

WHEREAS, based upon this study, the Board agrees that the accessory parking space needs can be accommodated even with the parking reduction; and

WHEREAS, in response to the concerns raised by the community board, the applicant submitted revised plans reflecting that one of the ADA-accessible parking spaces has been relocated closer to the building entrances; 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. 11BSA021Q, dated June 30, 2010; 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

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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 C2-2 (R4) zoning district, a reduction in the required number of accessory parking spaces for a mixed-use office/community facility building from 114 to 60, contrary to ZR § 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 January 11, 2011"- eighteen (18) sheets and on further condition:

THAT there shall be no change in the operation of the site without prior review and approval by the Board;

THAT a minimum of 60 parking spaces shall be provided in the accessory parking lot for the existing and proposed uses;

THAT no certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius;

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

THAT any building enlargement shall be as approved by DOB and must comply with all relevant zoning district regulations;

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 8, 2011.

24-09-BZ

APPLICANT – Sheldon Lobel, PC, for Meadows Park Rehabilitation and Health Care Center, LLC, owners.

SUBJECT – Application February 12, 2009 – Variance to allow the enlargement of a community facility (*Meadow Park Rehabilitation and Health Care Center*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), height (§24-521) and rear yard (§24-382) regulations. R3-2 district.

PREMISES AFFECTED – 78-10 164th Street, Located on the western side of 164th Street between 78th Avenue and 78th Road, Block 6851, Lot 9, 11, 12, 23, 24, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 15, 2011, at 1:30 P.M., for adjourned hearing.

118-10-BZ

APPLICANT – Eric Palatnik, P.C., for Arkady Nabatov, owner.

SUBJECT – Application June 28, 2010 – Reinstatement (§11-411 & §11-413) of an approval permitting the operation of an automotive service station (UG 16B), with accessory uses, which expired on December 9, 2003; amendment to legalize a change in use from automotive service station to automotive repair, auto sales and hand car washing. R4 zoning district.

PREMISES AFFECTED – 2102/24 Avenue Z, aka 2609/15 East 21st Street. Block 7441, Lot 371. Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Katherine D'Ambrosio and Margherita D'Anna.

ACTION OF THE BOARD – Laid over to March 15, 2011, at 1:30 P.M., for continued hearing.

127-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Aleksandr Goldshmidt and Inna Goldshmidt, owners.

SUBJECT – Application July 12, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space, lot coverage (§23-141), exceeds the maximum perimeter wall height (§23-631) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 45 Coleridge Street, east side of Coleridge Street, between Shore Boulevard and Hampton Avenue, Block 8729, Lot 65, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to March 8, 2011, at 1:30 P.M., for continued hearing.

134-10-BZ

APPLICANT – Stuart Beckerman, for Passiv House Xperimental LLC, owner.

SUBJECT – Application July 30, 2010 – Variance (§72-21) to allow a residential building, contrary to floor area (§43-12), height (§43-43), and use (§42-10) regulations. M1-1 zoning district.

PREMISES AFFECTED – 107 Union Street, north side of Union Street, between Van Brunt and Columbia Streets, Block 335, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

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For Applicant: Neil Weisbard.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD –Laid over to March 29,
2011, at 1:30 P.M., for decision, hearing closed.

192-10-BZ

APPLICANT – Vincent L. Petraro, PLLC, for The Leavitt
Street LLC, owner.

SUBJECT – Application October 20, 2010 – Special Permit
(§73-66) to allow for a waiver of height restrictions around
airports. C4-2 zoning district.

PREMISES AFFECTED – 39-16 College Point Boulevard,
west side of College Point Boulevard, at the cross section of
Roosevelt Avenue and College Point Boulevard, Block 462,
Lot 4, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Steven Simicich.

ACTION OF THE BOARD –Laid over to March 8,
2011, at 1:30 P.M., for continued hearing.

193-10-BZ

APPLICANT – Vincent L. Petraro, PLLC, for Jia Ye
Realty, LLC, owner.

SUBJECT – Application October 20, 2010 – Special Permit
(§73-66) to allow for a waiver of height restrictions around
airports. C4-3 zoning district.

PREMISES AFFECTED – 35-27 Prince Street, at the
congruence of 36th Road and Prince Street, Block 4971, Lot
8, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Steven Simicich.

ACTION OF THE BOARD –Laid over to March 8,
2011, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

MINUTES

*CORRECTION

This resolution adopted on December 12, 2006, under Calendar No. 139-95-BZ and printed in Volume 91, Bulletin Nos. 49-51, is hereby corrected to read as follows:

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted special permit for a Physical Culture Establishment (PCE), which expired on October 8, 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 12, 2006; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the subject premises is located on the southwest corner of East 54th Street and Second Avenue; and

WHEREAS, the site is occupied by a forty-story mixed-use building, located within a C1-9 zoning district within the Special Transit Land Use District; and

WHEREAS, the PCE occupies portions of the sub-cellar, cellar, and first floor; and

WHEREAS, the PCE is operated as an Equinox Fitness; and

WHEREAS, on October 8, 1996, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-36, to permit the operation of a PCE in the subject building for a term of ten years; and

WHEREAS, on March 30, 1999, under the subject calendar number, the Board granted an application to permit a change in operator and certain site modifications; and

WHEREAS, the instant application seeks to extend the term of the variance for an additional ten years; 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 October 8, 1996, 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 *on condition* that all work and the site layout shall substantially conform to drawings as filed with this application, marked “October 4, 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 October 8, 2006, expiring October 8, 2016;

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 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. 104439555)

Adopted by the Board of Standards and Appeals, December 12, 2006.

***This resolution replaces the earlier version which was publish in error. Corrected in Bulletin No. 7, Vol. 96, dated February 16, 2011.**

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*CORRECTION

This resolution adopted on June 17, 2008, under Calendar No. 38-08-BZ and printed in Volume 93, Bulletin Nos. 24-25, is hereby corrected to read as follows:

38-08-BZ

CEQR #09-BSA-059M

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for 40 Broad LLC, owner; 40 Broad Spa Owner LLC, lessee.

SUBJECT – Application February 22, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the second and third floors of an existing 25-story commercial building. The proposal is contrary to §32-10. C5-5 within the Historic & Commercial Core Area of the Special Lower Manhattan District.

PREMISES AFFECTED – 40 Broad Street (a/k/a 34-40 New Street) lot fronting Broad Street and New Street, south of Exchange Place, north of Beaver Street, Block 24, Lot 32, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Sidney N. Hockens.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated January 23, 2008, acting on Department of Buildings Application No. 110069372, reads in pertinent part:

“A Physical Culture Establishment is not a permitted as of right use in a C5-5 district;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-5 zoning district within the Historic and Commercial Core Area of the Special Lower Manhattan District, the establishment of a physical culture establishment (PCE) on portions of the second and third floors of a 25-story mixed use residential/commercial office building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 13, 2008, after due notice by publication in *The City Record*, and then to decision on June 17, 2008; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the subject site occupies a through lot located on the west side of Broad Street and the east side of New Street between Exchange Place and Beaver Street; and

WHEREAS, a 25-story mixed-use commercial/

residential building is currently under construction at the site; and

WHEREAS, the PCE will occupy a total of approximately 8,320 sq. ft. of floor area on portions of the second and third floors; and

WHEREAS, the PCE will be operated as Setai Club Spa; and

WHEREAS, the applicant represents that the services at the PCE will include cardiovascular exercise machines, weight-training equipment, and individual and group instruction; and

WHEREAS, the building plans reflect that the PCE will be located at least four stories below the residential portions of the building; 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 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 617.2 ak); 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. 08BSA059M, dated February 22, 2008; and

WHEREAS, the EAS documents 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, 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

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with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and 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, on a site within a C5-5 zoning district within the Historic and Commercial Core Area of the Special Lower Manhattan District, the establishment of a physical culture establishment on portions of the second and third floors of a 25-story mixed use residential/commercial office building, contrary to ZR § 32-10, *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 18, 2008”–(2) sheets and “Received February 22, 2008”–(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on June 17, 2018;

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 all massages shall be performed by New York State licensed massage therapists;

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 prior to the issuance of any permits, DOB shall review the floor area and location of the PCE for compliance with all relevant commercial use 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);

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, June 17, 2008.

***The resolution has been corrected to reflect the change of name in the lessee which read. “40 Broad Commercial LLC,” now reads: “40 Broad Spa Owner LLC”. Corrected in Bulletin No. 7, Vol. 96, dated February 16, 2011.**

*CORRECTION

This resolution adopted on October 19, 2010, under Calendar No. 112-10-BZ and printed in Volume 95, Bulletin Nos. 42-43, is hereby corrected to read as follows:

112-10-BZ

CEQR #10-BSA-081K

APPLICANT – Sheldon Lobel, P.C., for John Grant, owner.
SUBJECT – Application June 18, 2010 – Special Permit (§73-44) to permit reduction in required parking in connection with change of use from UG 16 to UG 6 in an existing building. M1-1 zoning district.

PREMISES AFFECTED – 915 Dean Street, north side of Dean Street between Classon and Grand Avenues, Block 1133, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #8BK

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, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 19, 2010, acting on Department of Buildings Application No. 320155522, reads in pertinent part:

“Proposed number of accessory parking spaces for the building at the premises is less than required pursuant to ZR 44-21”; 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 a proposed conversion of the second story of a two-story building from Use Group 16 warehouse to UG 6 professional office building parking category B1, from 38 to 28 attended spaces, contrary to ZR § 44-21; and

WHEREAS, a public hearing was held on this application on September 21, 2010, after due notice by publication in *The City Record*, and then to decision on October 19, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 8, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Dean Street, between Classon Avenue and Grand Avenue, and has a lot area of 11,440 sq. ft.; and

WHEREAS, the site is currently occupied by an 11,414 sq. ft. two-story building with professional offices on the first floor and warehouse/storage on the second floor with open parking for 21 vehicles; and

WHEREAS, the applicant proposes to convert the

MINUTES

entire 5,707 sq. ft. second floor to UG 6 professional offices; 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 parking category B1; in the subject zoning district, 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, pursuant to ZR § 44-21 the total number of required parking spaces for the existing and proposed office use at the site is 38; and

WHEREAS, the applicant represents that the proposed use of the site does not require 38 accessory parking spaces; and

WHEREAS, the applicant states that the immediate vicinity is served by numerous bus lines and subway lines, as well as the Long Island Rail Road; and

WHEREAS, based on the facility's users (dialysis patients) it is anticipated that many users will arrive by mass transit or be dropped off via ambulette, car service or taxi, lessening the demand for on-site parking; and

WHEREAS, the proposed second floor of the office building (Use Group 6) on the premises will occupy 5,707 sq. ft., and under the special permit authorized by ZR § 73-44 the number of parking spaces could be reduced to 19 for the proposed use; and

WHEREAS, the applicant proposes to provide a total of 28 attended parking spaces; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the Use Group 6 use in the B1 parking category is contemplated in good faith; and

WHEREAS, the applicant has submitted an affidavit from the owner of the premises stating that the second floor will be used for Use Group 6 professional offices; and

WHEREAS, in addition, the applicant states that any Certificate of Occupancy for the building will state that no subsequent Certificate of Occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius; and

WHEREAS, the applicant has submitted sufficient evidence of good faith in limiting the use of the premises to professional offices; and

WHEREAS, the Board agrees that the accessory parking space needs can be accommodated even with the parking reduction; 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 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.10BSA081K, dated June 18, 2010; 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 M1-1 zoning district, a reduction in the required number of accessory parking spaces for conversion of the second story of a two-story building from Use Group 16 warehouse to UG 6 professional office building from 38 to 28 attended spaces, contrary to ZR § 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 October 12, 2010"- (2) sheets and *on further condition*:

THAT there shall be no change in the operator of the site without prior review and approval by the Board;

THAT a minimum of 28 attended parking spaces shall be provided in the accessory parking lot for the proposed use;

THAT no certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius;

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

THAT any building enlargement shall be as approved by DOB and must comply with all relevant zoning district regulations;

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

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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, October 19, 2010.

***The resolution has been corrected to replace the first condition which read. “THAT there shall be no change in ownership of the site or the building without prior application to and approval from the Board;” now reads: “THAT there shall be no change in the operator of the site without prior review and approval by the Board”. Corrected in Bulletin No. 7, Vol. 96, dated February 16, 2011.**

BULLETIN

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February 23, 2011

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DOCKET

New Case Filed Up to February 15, 2011

15-11-A

860 Sixth Avenue, Through lot on the north side of West 30th Street, between Broadway and Avenue of the Americas., Block 832, Lot(s) 1, Borough of **Manhattan, Community Board: 5**. An appeal challenging the Department of Building for a decision that an advertising sign is not legally non-conforming. C6-4X district.

16-11-BZ 181-30 Aberdeen Road, Aberdeen Road, between Surrey and Tyron Place., Block 7224, Lot(s) 34, Borough of **Queens, Community Board: 8**. Special Permit (§73-621) for the enlargement of an existing two story with attic single family home contrary to floor area and open space §23-141(a). R1-2 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

MARCH 8, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 8, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

677-53-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for James Marchetti, owner.

SUBJECT – Application April 22, 2010 – Pursuant to (§11-411) for an Extension of Term of a previously granted Variance for the operation of a UG16 Auto Body Repair Shop (*Carriage House*) with incidental painting and spraying which expired on March 24, 2007; Extension of Time to Obtain a Certificate of Occupancy which expired on January 13, 1999; Amendment (§11-412) to enlarge the building 1076.2 square feet; Waiver of the Rules. R4/C2-2 zoning district.

PREMISES AFFECTED – 61-26/30 Fresh Meadow Lane, west side of Fresh Meadow Lane, 289' northerly of the intersection with 65th Avenue, Block 6901, Lot 48, Borough of Queens.

COMMUNITY BOARD #8Q

198-00-BZ

APPLICANT – C. Anthony LoPresti, owner.

SUBJECT – Application January 31, 2011 – Extension of Term of a previously granted Special Permit (§73-125) for the conversion of a portion of the first floor community facility to medical offices which expired on December 12, 2010. R1-2 zoning district.

PREMISES AFFECTED – 4641 Hylan Boulevard, Hylan Boulevard and Arden Avenue, Block 5386, Lot 76, Borough of Staten Island.

COMMUNITY BOARD #3SI

122-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Revlation Development Incorporated, owner. Bensonhurst MRI, P.C., lessee.

SUBJECT – Application January 26, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the enlargement of an existing medical office building and the construction of residences which expired on February 6, 2011. R5 and C2-3/R5 zoning district.

PREMISES AFFECTED – 2671 86th Street, West 11th and West 12th Streets, Block 7115, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #15BK

215-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 92-16 95th Avenue Realty Corporation by Alfred Smith, owners.

SUBJECT – Application February 17, 2011 – Extension of Time to obtain a Certificate of Occupancy, which expired on May 17, 2010, for a previously approved amendment granted pursuant to §§11-411 & 11-413 which permitted a change of use from wholesale (Use Group 7) to a retail (Use Group 6) use on the ground floor of a three story building; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 92-16 95th Avenue, southwest corner of 93rd Street and 95th Avenue, Block 9032, Lot 8, Borough of Queens.

COMMUNITY BOARD #9Q

APPEALS CALENDAR

837-85-A

APPLICANT – Angelo F. Liarkos, R.A., for Cesar A. Linares, D.D.S., owner.

SUBJECT – Application December 23, 2010 – Extension of term to allow the continued operation of a medical office (UG4) in an existing frame structure which expired on December 17, 2010. R2 Zoning District.

PREMISES AFFECTED – 166-18 73rd Avenue, southwest corner of 73rd Avenue and 167th Street, Block 6974, Lot 19, Borough of Queens.

COMMUNITY BOARD #8Q

MARCH 8, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 8, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

61-10-BZ

APPLICANT – James Chin & Associates, LLC, for Norman Wong, owner.

SUBJECT – Application April 26, 2010 – Variance (§72-21) to legalize an existing building contrary to height (§23-692), lot coverage (§23-245), rear yard (§23-532) and floor area (§23-145) regulations. R7-2/C1-5 zoning district.

PREMISES AFFECTED – 183 East Broadway, 43.5' frontage on Henry Street and 26.1 frontage on East Broadway, Block 284, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #3M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 15, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

758-84-BZ

APPLICANT – David L. Businelli, R.A., for Richard Sgarato, owner.

SUBJECT – Application August 30, 2010 – Extension of Term of a variance (§72-21) to legalize a two-story and cellar commercial building contrary to use regulations. R3X zoning district.

PREMISES AFFECTED –1444 Clove Road, 61' North of intersection Tioga Street and Clove Road, Block 658, Lot 20, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: David L. Businelli.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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 of a previously granted variance permitting the legalization of a two-story and cellar commercial building contrary to use regulations, which expired on July 2, 2010; and

WHEREAS, a public hearing was held on this application on December 12, 2010 after due notice by publication in *The City Record*, with a continued hearing on January 25, 2011, and then to decision on February 15, 2011; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, the site is located on the west side of Clove Road, between Tioga Street and Oswego Street, within an R3X zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 2, 1985 when, under the subject calendar number, the Board granted a variance to permit the enlargement and legalization of a two-story and cellar commercial building, for a term of five years; and

WHEREAS, subsequently, the grant was amended and

the term extended by the Board at various times; and

WHEREAS, most recently, on March 19, 2002, the Board granted a ten year extension of term, which expired on July 2, 2010; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, at hearing, the Board directed the applicant to provide screening for the trash container on the site and to relocate the FedEx drop box away from the curb; and

WHEREAS, in response, the applicant submitted a revised site plan and a photograph reflecting the enclosure of the trash container and the relocation of the FedEx drop box; and

WHEREAS, based upon its review of the record, 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, as adopted on July 2, 1985, so that as amended this portion of the resolution shall read: “to extend the term for ten years from July 2, 2010, to expire on July 2, 2020, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received August 30, 2010”-(1) sheet and “January 25, 2011”-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on July 2, 2020;

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 App. No. 510066768)

Adopted by the Board of Standards and Appeals, February 15, 2011.

238-07-BZ

APPLICANT – Goldman Harris LLC, for OCA Long Island City LLC; OCAII & III c/o O'Connor Capital, owner.

SUBJECT – Application July 1, 2010 – Amendment of a previously approved Variance (§72-21) to permit a residential/commercial building and community facility/dormitory building. The amendment will divide the project into two separate buildings and allow the construction and occupancy of one building prior to the construction and occupancy of the other. M-4/R6A (LIC) and M1-4 zoning districts.

PREMISES AFFECTED – 5-11 47th Avenue, 46th Road at north, 47th Avenue at south, 5th Avenue at west, Vernon

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Boulevard at east. Block 28, Lot 12, 15, 17, 18, 21, 38. Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Howard Goldman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted, on a site partially within an M1-4 zoning district and partially within an M1-4/R6A district within the Special Long Island City Mixed-Use District, the construction of a 12-story mixed-use residential/commercial retail building (the “Mixed-Use Building”) and a six-story student dormitory building (the “Dormitory Building”) for the City University of New York (“CUNY”) Graduate Center, contrary to use and bulk regulations; and

WHEREAS, a public hearing was held on this application on October 19, 2010, after due notice by publication in *The City Record*, with a continued hearing on January 25, 2011, and then to decision on February 15, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Queens, recommends disapproval of this application, and requests that the Board limit the occupancy of the Dormitory Building to graduate student and faculty housing only; and

WHEREAS, certain members of the community provided written and oral testimony in opposition to this application (the “Opposition”), citing the following primary concerns: (1) the scope of the proposed amendment is not minor in nature, and therefore the subject application should be placed on the Board’s Zoning Calendar rather than the Special Order Calendar; (2) the Board’s original grant was contingent upon the Dormitory Building being occupied by the CUNY Graduate Center and faculty housing, and should be limited to such use; and (3) the purpose of the proposed amendment is to allow the applicant to construct only the Mixed-Use Building, contrary to the original grant; and

WHEREAS, the subject site is a through-block site bounded by Fifth Street to the west, 46th Road to the north, and 47th Avenue to the south, with a total lot area of 66,838 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the site since September 23, 2008 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted the construction of a 12-story mixed-use

residential/commercial retail building and a six-story student dormitory building and faculty housing building connected by a cellar-level accessory parking garage, contrary to ZR §§ 42-00, 117-21, 23-145, 24-632, 23-633, and 23-711; and

WHEREAS, a letter of substantial compliance was issued by the Board on June 10, 2009, to permit certain modifications to the approved plans, and to acknowledge that although the project was originally filed at the Department of Buildings (“DOB”) under a single permit application (NB # 402661945, the project was subsequently filed as two separate projects, with the Mixed-Use Building retaining the original application number, and the Dormitory Building filed under new NB # 420006111; and

WHEREAS, a second letter of substantial compliance was issued by the Board on December 8, 2009, stating that the Board has no objection to the issuance of a temporary and permanent certificate of occupancy for the Mixed-Use Building prior to the construction of the Dormitory Building and the connection between the two buildings; and

WHEREAS, the applicant states that the issuance of the December 8, 2009 letter was based on the anticipated occupancy of the Dormitory Building by the CUNY Graduate Center; however, subsequent to the issuance of the letter, the CUNY Graduate Center withdrew from the project; and

WHEREAS, the applicant now requests that the Board amend the grant to clarify that either the Mixed-Use Building or the Dormitory Building may be constructed prior to the construction and occupancy of the other building and the connection between the buildings; and

WHEREAS, the applicant states that the amendment is requested because: (1) following CUNY Graduate Center’s withdrawal, the applicant is in the process of seeking alternative student housing users, and until a new user is identified it is not possible to secure the financing required to construct the Dormitory Building; (2) construction of the Mixed-Use Building has been delayed due to difficult market conditions and financing issues; and (3) the potential for financing the Dormitory Building and the Mixed-Use Building simultaneously is remote; and

WHEREAS, the applicant represents that the proposed amendment will allow each building to proceed independently, providing flexibility for the commencement of construction at the earliest possible time; and

WHEREAS, the Opposition argues that modifying the grant to permit the buildings to be constructed separately constitutes a major amendment, and therefore is not permitted to be heard on the Special Order Calendar, pursuant to the Board’s Rules of Practice and Procedure; and

WHEREAS, pursuant to the § 1-05(e) of the Board’s Rules of Practice and Procedure, applications for amendment of variances “may be considered on the Special Order Calendar of the Board provided the Board determines that the scope of the amendment is minor;” and

WHEREAS, the Board notes that the determination of whether the scope of a requested amendment is minor, such that it belongs on the Special Order Calendar, is solely within

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the Board's discretion; and

WHEREAS, the applicant notes that the original variance did not preclude the independent construction of the buildings, but was rather silent with respect to construction sequencing; the requested amendment is minor in that it merely clarifies that the buildings may be constructed either at the same time or separately, in order to allow construction to proceed at the earliest possible time depending on such factors as the availability of financing and the identification of users for the Dormitory Building; and

WHEREAS, the Board agrees with the applicant that the scope of the proposed amendment is minor in nature and therefore may be considered on the Special Order Calendar in accordance with the Board's Rules of Practice and Procedure; and

WHEREAS, the Opposition argues that the original grant was specific to graduate student and faculty housing in the Dormitory Building, and that any change in the occupancy of that building, such as to undergraduate use, should be prohibited; and

WHEREAS, in response, the applicant states that the issue of undergraduate use of the Dormitory Building is not the subject of the instant application, but notes that such use is permitted as-of-right in the portion of the site located within the R6A zoning district and that the Zoning Resolution makes no distinction between graduate and undergraduate dormitories; ZR § 22-13 (Use Group 3) merely lists "colleges or school student dormitories," which includes graduate, undergraduate, and other types of students attending school; and

WHEREAS, the Board notes that the proposed amendment would not permit a change in the program or operator of the Dormitory Building, and that in the event there is a change in the program and/or operator, such change will be subject to Board approval; and

WHEREAS, the Board further notes that any change to the BSA-approved plans for the Dormitory Building, which allowed 21 faculty housing units and 228 student dormitory suites (housing 380 students), would need to seek an amendment from the Board; and

WHEREAS, the Opposition also contends that the proposed amendment will enable the applicant to construct only the Mixed-Use Building, which was not contemplated in the Board's original grant and would not have been approved without the inclusion of the Dormitory Building; and

WHEREAS, the Board notes that the CUNY Graduate Center's programmatic needs served as the basis for the requested waivers for the Dormitory Building in the original grant, however, the waivers granted by the Board for the Mixed-Use Building were based on the unique degree of contamination on the site, which the Board determined created unnecessary hardship in complying with the applicable zoning requirements; and

WHEREAS, the applicant notes that the community facility space proposed in the Mixed-Use Building will be occupied by the Queens Council for the Arts, a nonprofit organization, in accordance with the Board's original grant;

and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment does not alter the Board's findings made for the original variance; and

WHEREAS, accordingly, the Board finds that the proposed variance, as amended, is appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated September 23, 2008, so that as amended this portion of the resolution shall read: "to permit the independent construction of the Mixed-Use Building and the Dormitory Building, such that either building may be constructed prior to the construction and occupancy of the other building and the connection between the buildings; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT the Dormitory Building shall be limited to graduate student and faculty housing with approximately 21 faculty housing units and 228 student dormitory suites (housing 380 students);

THAT any change to the program shall be subject to Board review and approval and that the process for such review shall be determined by the Board;

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. 402661945)

Adopted by the Board of Standards and Appeals, February 15, 2011.

703-80-BZ

APPLICANT – Joseph P. Morsellino, for Louis N. Petrosino, owner.

SUBJECT – Application July 1, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of an existing scrap metal storage establishment which expires on December 2, 2010; Amendment to legalize the enclosure of an open storage area. C8-1 zoning district. PREMISES AFFECTED – 2994/3018 Cropsey Avenue, southwest corner of Bay 54th Street, Block 6947, Lot 260, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 29, 2011, at 10 A.M., for continued hearing.

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95-97-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 700 West 178th Street Associates, LLC, owner; TSI Forest Hills LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 14, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on May 1, 2007; Waiver of the Rules. C4-5X zoning district.

PREMISES AFFECTED – 69-47 Austin Street, northwest corner of Austin Street and 70th Avenue, Block 3237, Lot 30, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to March 29, 2011, at 10 A.M., for continued hearing.

172-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Samson Associates LLC, owner; TSI West 14 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application November 10, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*New York Sports Club*) which expired on August 13, 2009; Waiver of the Rules. C6-2M/C6-2 zoning district.

PREMISES AFFECTED – 34-42 West 14th Street, south side of West 14th Street, between Fifth Avenue and Sixth Avenue, Block 577, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 15, 2011, at 10 A.M., for decision, hearing closed.

299-99-BZ

APPLICANT – Carl A. Sulfaro, Esq., for M & V, LLC, owner.

SUBJECT – Application August 4, 2010 – Extension of Term for the continued operation of a gasoline service station (*Getty*) which expired on July 25, 2010. C2-3/R6 zoning district.

PREMISES AFFECTED – 8-16 Malcom X Boulevard, northwest corner of DeKalb Avenue, Block 599, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Carl A. Sulfaro.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 15, 2011, at 10 A.M., for decision, hearing closed.

259-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 26 Court Associates, LLC, owner; TSI Court Street, LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application January 25, 2011 – Extension of Term of a Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*New York Sports Club*) which expires on February 6, 2011. C5-2A (DB) zoning district.

PREMISES AFFECTED – 26 Court Street, northwest corner of Court Street and Remsen Street, Block 250, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 15, 2011, at 10 A.M., for decision, hearing closed.

289-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 160 Water Street Associates, owner; TSI Water Street LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 29, 2010 – Extension of Term of a previously approved Special Permit (§73-36) for the continued operation of a Physical Cultural Establishment (*New York Sports Club*) which expires on March 6, 2011. C5-5 (LM) zoning district.

PREMISES AFFECTED – 160 Water Street, northwest corner of Water Street and Fletcher Street, Block 70, Lot 43, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to March 15, 2011, at 10 A.M., for continued hearing.

276-02-BZ

APPLICANT – Eric Palatnik, P.C., for Elad Ryba, owner.

SUBJECT – Application September 13, 2010 – Extension of Time to Complete Construction and an Amendment to a previously approved Special Permit (§73-622) to an existing

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one family dwelling, contrary to lot coverage and floor area (§23-141) and side yard (§23-461). R3-1 zoning district. PREMISES AFFECTED – 160 Norfolk Street, west side, 300’ north of Oriental Boulevard and south of Shore Boulevard, Block 8756, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 1, 2011, at 10 A.M., for continued hearing.

APPEALS CALENDAR

220-10-BZY

APPLICANT – D.A.B. Group, LLC, for D.A.B. Group, LLC, owner.

SUBJECT – Application November 18, 2010 – Extension of Time (§11-332) to complete construction of a minor development commenced under the prior C6-1 Zoning District. C4-4A Zoning District.

PREMISES AFFECTED – 77, 79, 81 Rivington Street, aka 139, 141 Orchard Street, northern portion of block bound by Orchard Street, to the east Rivington to the north, Allen Street to the west and Delancy street to the south, Block 415, Lot 61, 62, 63, 66, 67, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Nick Zagami and Steven Weiss.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 15, 2011, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

**REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 15, 2011
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

29-10-BZ

CEQR #11-BSA-008Q

APPLICANT – Sheldon Lobel, P.C., for R.A.S. Associates, owner; Mojave Restaurant, lessee.

SUBJECT – Application March 4, 2010 – Special Permit (§73-52) to allow for an outdoor eating and drinking establishment within a residential district. C1-2 and R5 zoning districts.

PREMISES AFFECTED – 22-32/36 31st Street, Ditmas Boulevard and 23rd Avenue, Block 844, Lot 49, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Irving Minkin.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated July 30, 2010, acting on Department of Buildings Application No. 402623103, reads in pertinent part:

“The proposed expansion of an Eating and Drinking Establishment in Use Group 6 twenty-five (25) feet into the portion of the zoning lot within the R5 District is contrary to section 22-00 ZR and requires a Special Permit from the BSA, pursuant to Section 73-52 of the Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-52 and 73-03, to permit, on a site partially within a C1-2 (R5) zoning district and partially within an R5 zoning district, the extension of the C1-2 zoning district regulations 25 feet into the R5 zoning district, to allow an outdoor dining area as an extension of the existing eating and drinking establishment (Use Group 6) at the site, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on September 14, 2010 after due notice by publication in *The City Record*, with continued hearings on October 26, 2010, December 7, 2010 and January 25, 2010, and then to decision on February 15, 2011; and

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WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Queens, recommends approval of this application, with the following conditions: (1) no smoking in the outdoor area; (2) closing hours no later than 10:00 p.m. Sunday through Thursday and 11:00 p.m. on Friday and Saturday; (3) no outside music; and (4) plantings on perimeter of outdoor seating no higher than six feet; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application, subject to the conditions cited by the Community Board; and

WHEREAS, at hearing, a member of the community provided oral testimony in support of this application; and

WHEREAS, certain members of the community provided written testimony in opposition to this application; and

WHEREAS, the subject site is located on an irregularly-shaped through lot with 75 feet of frontage on 31st Street and ten feet of frontage on 29th Street, between Ditmars Boulevard and 23rd Avenue; and

WHEREAS, the site is currently occupied by a one-story commercial building fronting on 31st Street; and

WHEREAS, the applicant requests a special permit pursuant to ZR § 73-52 to extend the C1-2 zoning district regulations 25 feet into the portion of the zoning lot located within an R5 district; and

WHEREAS, the applicant notes that the site has a total lot area of 17,159 sq. ft., and is a through lot with frontages on both 31st Street and 29th Street; and

WHEREAS, the applicant states that the majority of the zoning lot is located within a C1-2 (R5) zoning district that extends 147'-6" into the site from 31st Street, but that the remaining portion of the zoning lot is located within an R5 zoning district; and

WHEREAS, the portion of the site that is within the C1-2 (R5) zoning district occupies 11,063 sq. ft. (64 percent) of the zoning lot, and the portion of the site that is within the R5 zoning district occupies 6,096 sq. ft. (36 percent) of the zoning lot; and

WHEREAS, the R5 portion fronts on 29th Street and occupies an irregularly-shaped portion of the site, located to the west of the C1-2 portion of the site; and

WHEREAS, the C1-2 district permits the Use Group 6 eating and drinking establishment; the R5 district permits only residential or community facility uses; and

WHEREAS, the applicant states that the proposed expansion of the existing eating and drinking establishment will extend only 25 feet into the R5 zoning district; therefore, by allowing the C1-2 use regulations to apply to 25 feet of the total width of the R5 portion of the lot, the proposed outdoor portion of the eating and drinking establishment will be permitted at the subject site; and

WHEREAS, however, the remainder of the lot will

remain solely within the R5 district, even after the boundary line is moved 25 feet west, and may only be used for community facility or residential use; and

WHEREAS, ZR § 73-52 provides that when a zoning lot, in single ownership as of December 15, 1961, is divided by district boundaries in which two or more uses are permitted, the Board may permit a use which is permitted in the district in which more than 50 percent of the lot area of the zoning lot is located to extend not more than 25 feet into the remaining portion of the zoning lot where such use is not permitted, provided: (a) that, without any such extension, it would not be economically feasible to use or develop the remaining portion of the zoning lot for a permitted use; and (b) that such extension will not cause impairment of the essential character or the future use or development of the surrounding area; and

WHEREAS, as to the threshold single ownership requirement, the applicant submitted deeds, tax maps, and Department of Buildings ("DOB") records establishing that the subject property has existed in single ownership since prior to December 15, 1961; and

WHEREAS, the evidence submitted by the applicant reflects that the site formerly consisted of three separate tax lots (Lots 49, 119 and 149) which were under single ownership since prior to December 15, 1961, and which have been merged into a single tax lot (Lot 49); and

WHEREAS, accordingly, the Board finds that the applicant has provided sufficient evidence showing that the zoning lot was in single ownership prior to December 15, 1961 and continuously from that time onward; and

WHEREAS, as to the threshold 50 percent requirement, 11,063 sq. ft. (64 percent) of the site's total lot area of 17,159 sq. ft. is located within the C1-2 zoning district, which is more than the required 50 percent of lot area; and

WHEREAS, as to the first finding, the applicant represents that it would not be economically feasible to use or develop the R5 portion of the zoning lot for a permitted use; and

WHEREAS, specifically, the applicant states that the R5 portion is irregularly shaped, with a narrow width of 9'-9" fronting on 29th Street and extending 90'-0" into the site, then expanding to a width ranging between 75'-0" and 95'-4" at the interior of the site; and

WHEREAS, the applicant states that, because the R5 portion of the site only has 9'-9" of frontage on 29th Street, the building frontage requirements of the Building Code would preclude any conforming development on the interior of the lot within the R5 portion of the zoning lot; and

WHEREAS, the applicant further states that the rear yard requirements of the Zoning Resolution would preclude a residential development on the R5 portion of the zoning lot, and although a one-story community facility building with a height of 23 feet would meet the rear yard requirements, such a building would not meet the egress requirements of the Building Code; and

WHEREAS, based upon the above, the Board finds

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that it would not be economically feasible to use or develop the remaining portion of the zoning lot, zoned R5, for a permitted use; and

WHEREAS, as to the second finding, the applicant states that the proposed development is consistent with existing land use conditions and anticipated projects in the immediate area; and

WHEREAS, the applicant states that the surrounding area is characterized by commercial retail stores fronting on 31st Street and residential uses fronting on 29th Street; and

WHEREAS, specifically, the applicant states that there are commercial retail uses immediately adjacent to the north and south of the subject building along 31st Street, and there are five attached homes immediately behind the subject building, fronting on 29th Street; and

WHEREAS, the applicant notes that the proposed outdoor dining area will be located entirely within the interior of the block between 31st Street and 29th Street, which is abutted by fully developed zoning lots fronting on both streets; and

WHEREAS, at hearing, the Board raised concerns about the impacts the proposed outdoor dining area would have on the surrounding residential uses, particularly with regards to noise; and

WHEREAS, in response, the applicant states that the block has a depth of 295 feet, and the distance between the rear walls of the homes fronting on 29th Street and the rear wall of the proposed outdoor dining area exceeds 65 feet, which is more than the width of most residential streets; and

WHEREAS, the applicant further states that the outdoor dining area is completely screened from all abutting lots by an existing stucco wall with a height of seven feet; and

WHEREAS, the applicant also submitted revised drawings and an operational plan which includes the following additional measures to mitigate any impact of the proposed outdoor dining area on the surrounding residential uses: (1) noise attenuating metal wall panels will be installed on the existing stucco wall; (2) a retractable awning will be installed to provide overhead coverage of the entire outdoor dining area when in use; (3) landscaping will be planted on both sides of the existing stucco wall, and several trees will be planted within the landscaped area; (4) the hours of operation for the outdoor dining area will be limited to Sunday through Thursday, from 11:00 a.m. to 10:00 p.m.; and Friday and Saturday, from 11:00 a.m. to 11:00 p.m.; (6) the outdoor dining area will be closed during winter months; (7) all lighting will be directed down and away from adjacent residential uses; (7) outdoor music will not be permitted; and (8) smoking will not be permitted in the outdoor dining area; and

WHEREAS, the Board questioned whether it would be feasible to fully enclose the proposed rear extension of the eating and drinking establishment; and

WHEREAS, in response, the applicant represents that, because patrons will be able to enter and exit the rear of the

site from 29th Street, enclosing the proposed rear extension could result in problems related to the travel distance and egress door swing at the rear of the existing building, and potential confusion by patrons as to the location of the exits in the building; and

WHEREAS, the applicant further represents that the proposed installation of noise-attenuating metal wall panels on the existing stucco wall and the installation of a retractable motorized awning will effectively encapsulate any noise emanating from the outdoor dining area; and

WHEREAS, accordingly, the Board finds that the proposed extension of the C1-2 zoning district portion of the lot into the R5 portion will not cause impairment of the essential character or the future use or development of the surrounding area, nor will it be detrimental to the public welfare; 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 proposed action 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 §§ 73-52 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 17.2; 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.11BSA008Q, dated July 22, 2010; and

WHEREAS, the EAS documents 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, 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 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 §§ 73-52 and 73-03, to permit, on a site partially within a C1-2 (R5) zoning district and partially within an R5 zoning district, the extension of the C1-2 zoning district regulations 25 feet into the R5 zoning district, to allow an outdoor dining area as an extension of the existing eating and drinking establishment (Use Group 6) at the site, contrary to ZR § 22-00; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 11, 2011” – two (2) sheets and “Received February 4, 2011” – two (2) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 15, 2014;

THAT noise-attenuating metal wall panels shall be installed on the existing stucco wall in accordance with the BSA-approved plans;

THAT a retractable awning shall be installed over the outdoor dining area, in accordance with the BSA-approved plans and subject to DOB review and approval;

THAT landscaping and trees shall be planted on both sides of the existing stucco wall, in accordance with the BSA-approved plans;

THAT the hours of operation for the outdoor dining area shall be limited to Sunday through Thursday, from 11:00 a.m. to 10:00 p.m.; and Friday and Saturday, from 11:00 a.m. to 11:00 p.m.;

THAT the outdoor dining area shall be closed during winter months;

THAT all lighting shall be directed down and away from adjacent residential uses;

THAT there shall be no outdoor music at the site;

THAT there shall be no smoking permitted in the outdoor dining area;

THAT the above conditions shall be implemented prior to the opening date of the outdoor dining area;

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

THAT substantial construction shall be completed in accordance with ZR § 73-70;

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

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 15, 2011.

101-10-BZ

CEQR #10-BSA-076M

APPLICANT – Sheldon Lobel, P.C., for Crosby 54 LLC, owners.

SUBJECT – Application June 4, 2010 – Variance (§72-21) to allow a commercial use below the floor level of the second story, contrary to use (§42-14(D)(2)(b)). M1-5B zoning district.

PREMISES AFFECTED – 54 Crosby Street, west side of Crosby Street between Broome and Spring Streets, Block 483, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #2M

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 6, 2010, acting on Department of Buildings Application No. 120319413, reads in pertinent part:

“ZR 42-14 – In building in an M1-5B zoning district only uses 7, 9, 11, 16, 17A, 17B, 17C and 17E are allowed below the level of the second story unless modified by CPC.

Therefore a Use Group 6 eating and drinking establishment is not allowed “as-of-right” on the sub-cellar/cellar/and ground floor levels in a M1-5B zoning district”; 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 an existing two-story building to a Use Group 6 use (including eating and drinking establishment) use, contrary to ZR § 42-14; and

WHEREAS, a public hearing was held on this application on September 14, 2010, after due notice by publication in the *City Record*, with continued hearings on October 26, 2010 and December 14, 2010, and then to decision on February 15, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, does not support the application unless eating and drinking establishments are prohibited and the exterior spaces are prohibited from being used; and

WHEREAS, City Council Member Margaret Chin provided testimony in opposition to an eating and drinking establishment; and

WHEREAS, the residents of the condominium building to the north of the site at 56 Crosby Street, represented by counsel, (the “Opposition”) provided written and oral

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testimony in opposition to the application; and

WHEREAS, specifically, the Opposition raises the following primary concerns: (1) there are not unique conditions on the site, which create a hardship, as required by ZR § 72-21(a); (2) a conforming use would provide a reasonable return, contrary to ZR § 72-21(b); (3) an eating and drinking establishment would not be compatible with adjacent uses as it has the potential to attract night life, contrary to ZR § 72-21(c); and (4) the proposal to include an eating and drinking establishment use does not reflect the minimum variance as required by ZR § 72-21(e); the Opposition also asserts that: (1) a special permit from the City Planning Commission, pursuant to ZR § 74-781, rather than a variance, is the appropriate form of relief; and (2) a restrictive declaration limits the use of the building to a Use Group 9 use; and

WHEREAS, other community members presented opposition to an eating and drinking establishment; and

WHEREAS, the subject site is located on the west side of Crosby Street, between Broome Street and Spring Street, within the SoHo Cast Iron Historic District; and

WHEREAS, the site has 20 feet of frontage on Crosby Street, a depth of 100 feet, and a lot area of approximately 2,001 sq. ft.; and

WHEREAS, the site is occupied with a vacant two-story building formerly used as a sculptor's residence/studio with a total floor area of 4,535 sq. ft. (2.27 FAR); and

WHEREAS, the applicant proposes to use the entire building for Use Group 6 use, which may include an eating and drinking establishment; and

WHEREAS, because the proposed Use Group 6 use is not permitted below the second floor in the subject M1-5B zoning district, the requested waiver is 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's narrow width; (2) the underbuilt nature of the existing building; and (3) the obsolescence of the existing building for manufacturing use; and

WHEREAS, as to the width of the lot, the applicant represents that the lot's narrow width of 20.1 feet at the front lot line and 19.92 feet at the rear lot line results in a usable floor plate of approximately 1,550 sq. ft., which is inefficient for conforming uses, such as warehouses and wholesale distributors; and

WHEREAS, as to the uniqueness of this condition, the applicant represents that of the 150 sites examined within the immediate vicinity - the M1-5B zoning district between Prince Street and Grand Street, and Mercer Street and Lafayette Street - only five (or three percent) had widths of less than 20 feet; and

WHEREAS, the applicant submitted a table, which identifies the lot widths, lot area, and existing and potential FAR for the sites in the study area, which reflects that the site is among the smallest and narrowest within the study area, as further evidenced by a radius diagram; and

WHEREAS, as to the underbuilt nature of the building, the applicant represents that the existing site has a

proportionately significant amount of development potential, in terms of FAR, compared to the vast majority of sites in the study area; and

WHEREAS, the applicant provided an analysis which reflects that only six lots within the study area with widths less than 25 feet are built to an FAR of less than 50 percent the maximum permitted, such as the subject site, which is at 2.27 FAR (5.0 FAR is the maximum permitted); and

WHEREAS, the applicant represents that the hardship at the site is primarily attributed to the limited and constrained floor plate, which significantly diminishes the viability and revenue that may be generated by a conforming use and; and

WHEREAS, as to the potential to enlarge the existing building or construct a new building at the site, the applicant asserts that enlarging the building would be both logistically and financially infeasible and that a proposal for a new or enlarged building would include considerable risk due to the zoning use limitations at the site and the small footprint, which would limit the use on the upper floors to Joint Living/Work Quarters for Artists (JLWQA); and

WHEREAS, as to the obsolescence of the building for a conforming use, the applicant cites to the following limitations: (1) the small floor plate; (2) the absence of a freight or passenger elevator; (3) the limits on access to the building; (4) the absence of a loading dock; and (5) the location on a narrow street; and

WHEREAS, as to the floor plate, the applicant states that the usable space in the building, after considering wall thickness of between 15 and 17 inches, is approximately 1,550 sq. ft., which the applicant states contributes to the inability to accommodate a modern conforming manufacturing use; and

WHEREAS, as to the absence of an elevator, the applicant asserts that the vertical transfer of goods between floors is difficult; and

WHEREAS, as to the building's accessibility, the applicant asserts that the accessibility is limited to two pedestrian-sized doors on the street frontage, rendering the transfer of goods in or out of the building difficult and, the absence of ramps limits access to the ground floor for bulk shipments; and

WHEREAS, the applicant asserts that the small size and narrowness of the lot precludes the site from accommodating a loading dock; and

WHEREAS, the applicant asserts that Crosby Street has a width of 50 feet, and is considered too constrained to reasonably accommodate large delivery trucks associated with a conforming manufacturing or warehouse use; and

WHEREAS, the applicant notes that although the obsolescence affects the entire building, the proposed Use Group 6 use is permitted above the first floor and, thus, the applicant is only seeking relief for the first floor and cellar levels; and

WHEREAS, the Opposition asserts that the site can accommodate a conforming use either as the building exists or by enlarging the existing building or constructing a new one; and

WHEREAS, the applicant represents that modern manufacturing and commercial service operations require (1)

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large floor plates; (2) mechanical systems, such as elevators, that facilitate the vertical movement of goods; and (3) loading bays and wide streets to allow for truck access and that the unique conditions of the site cannot be overcome by enlarging the building or constructing a new one with the same small floor plates; and

WHEREAS, the Board agrees with the applicant that the site's narrow width (the second narrowest in the study area); inefficient floor plates, which limit the number of potential uses; and underbuilt condition, which does not allow for it to be enlarged or demolished and re-built in a practical and feasible manner, are unique physical conditions, when considered in the aggregate and create practical difficulties and unnecessary hardship in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the Board notes that the applicant submitted several previous Board grants, that identified site conditions that it accepted in its analysis of unique conditions, to support its assertion that the conditions on the subject site are similar; and

WHEREAS, the Board finds that the applicant's reliance on the Board's prior grants do not form the basis for granting or denying the subject application as each can be distinguished from the subject case and were mischaracterized in the parties' analyses; and

WHEREAS, as to the financial feasibility of the site, the applicant initially submitted a feasibility study analyzing the following scenarios: (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 proposal with ground floor and cellar Use Group 6 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, at the Board's direction, the applicant confirmed that the property valuation was based on accordingly adjusted comparables and the mezzanine space was included in the original calculations, and provided a discussion of a showroom alternative; and

WHEREAS, in response to the Board's and the Opposition's inquiry, the applicant submitted a supplemental analysis of (1) a new six-story building with business services on the first floor and JLWQA units on the upper floors and (2) an enlarged building with four additional floors to be occupied by business services on the first floor and JLWQA units on the upper floors; and

WHEREAS, the applicant's analysis concludes that neither the new or enlarged building alternatives would provide a reasonable return; and

WHEREAS, however, the Opposition asserts that both scenarios would generate reasonable rates of return; and

WHEREAS, the Board has reviewed both sets of financial analyses and concludes that the applicant's assumptions are reasonable and supported by appropriate valuation and comparables; and

WHEREAS, the Board identified several concerns with the Opposition's analysis, which contribute to its contrasting

conclusions: (1) it assumes a significantly greater amount of usable space in the business services alternatives; (2) it utilizes a capitalization rate to calculate the value of the net operating incomes of business service spaces that is low for such use and does not measure against market expectations; and (3) it does not factor premium or extraordinary costs into the calculations; and

WHEREAS, the Board accepts the applicant's analysis and based upon its review of the applicant's submissions, has determined that because of the subject site'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 many of the buildings in the immediate vicinity are used for Use Group 6 purposes on the first floor with residential or loft space above; and

WHEREAS, the applicant submitted a diagram and photographs of local uses which reflects that the block is occupied by a mix of ground floor commercial uses and JLWQA-studio-type uses; and

WHEREAS, the applicant notes that Use Group 6 use, including an eating and drinking establishment, would be permitted as of right on the building's second floor and that a Use Group 9 catering use would be permitted throughout the building; and

WHEREAS, the applicant notes that the adjacent building to the south is occupied by the six-story Bloomingdale's building, which is accessed from Broadway and Crosby Street and the adjacent building to the north is occupied by a ground floor clothing store with entrances on Broadway and Crosby Street; and

WHEREAS, the applicant notes that every lot with a width narrower than 25 feet, within the study area, is occupied by Use Group 6 retail or eating and drinking use on its first floor; the applicant acknowledges that Use Group 6 uses may not be legal as per the certificates of occupancy in all cases; and

WHEREAS, further, the applicant notes that the existing historic two-story building will remain and that it will not be enlarged and no bulk waivers are sought; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission, dated March 19, 2010; and

WHEREAS, the Opposition asserts that the characteristics of the subject block – Crosby Street between Broome Street and Spring Street – can be distinguished from other nearby blocks and that its particular characteristics are not compatible with an eating and drinking establishment use; and

WHEREAS, in response the applicant notes that (1) there are seven eating and drinking establishments operating on the first floor in the study area; and (2) eating and drinking establishments co-exist with residential use throughout the city; and

WHEREAS, the applicant notes that the nearby eating

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and drinking establishments include (1) a restaurant and bar at the northeast corner of Broome Street and Crosby Street (L'Orange Bleue), which has outdoor seating extending as far as 80 feet north of Broome Street along the east side of Crosby Street; (2) a restaurant and bar at the southwest corner of Spring Street and Crosby Street (Balthazar); and (3) a hotel and restaurant on Crosby Street, just north of Spring Street (the Crosby Street Hotel), which occupies the first floor, outdoors, and terrace level; and

WHEREAS, further, the applicant provided hours of operation and capacity for the noted establishments, which are as follows (1) L'Orange Bleue – bar closes at 2:00 a.m., capacity n/a; (2) Balthazar – bar closes at 2:00 a.m., capacity 221; (3) Crosby Street Hotel – bar closes at 1:00 a.m., capacity 112 for the first floor restaurant and 205 for the first floor total; and

WHEREAS, the Opposition also relies on the history of opposition to an eating and drinking establishment at the site, namely that associated with the application before the New York State Liquor Authority in 2002 and the Community Board's opposition; and concerns about the potential for disruptive night life to occupy the site; and

WHEREAS, the applicant asserts that it is amenable to a conditional approval of an eating and drinking establishment use to relieve concerns about night life activity that would be incompatible with nearby residential uses; and

WHEREAS, the applicant proposes the following conditions on an eating and drinking establishment use: (1) a closing time no later than 12:30 a.m., Sunday through Thursday; (2) a closing time no later than 1:30 a.m., Friday through Saturday; (3) no tables, seating or bar in the outdoor space; (4) no sound system or music in the outdoor space; and (5) a closing time of 12:00 a.m., daily, for the outdoor space; and

WHEREAS, the Board agrees with the applicant that there is a context for eating and drinking establishments within the vicinity of the site and is not persuaded by the Opposition's assertion that it should isolate a single block-long street frontage from the remainder of the applicant's study area and that, even if it did so, the Board is not persuaded that an eating and drinking establishment cannot be operated in a way that is compatible with residential use; and

WHEREAS, however, the Board believes restrictions on eating and drinking establishment use at the site, such as (1) hours of operation, (2) exclusion of the outdoor space, (3) restrictions on noise, and (4) limiting the use to a restaurant, rather than a bar, are appropriate; 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 due to the unique conditions of the site; and

WHEREAS, the applicant asserts that the proposal for Use Group 6 use represents the minimum variance needed to allow for a reasonable and productive use of the site; and

WHEREAS, the applicant represents that the site's location, with limited foot traffic, does not support a retail use and that the narrow building design and multiple floors is only suitable for a single user; and

WHEREAS, the Opposition asserts that restricted Use Group 6 use, which would exclude an eating and drinking establishment would represent a lesser variance yet still be feasible; and

WHEREAS, the Opposition asserts that the site is not uniquely narrow and has identified 11 sites with frontage of less than 20 feet, which are occupied by retail use along Crosby Street; and

WHEREAS, the Opposition also asserts that retail use has been successful along Crosby Street; and

WHEREAS, the applicant responded that (1) four of the businesses with narrow frontage on Crosby Street, prohibit general access from Crosby Street and direct patrons to their other, wider frontage on another street; and that (2) three other retailers use Crosby Street as a secondary access point to their primary access on a busier street, such as Broadway, Lafayette Street, or Spring Street; and

WHEREAS, the applicant also asserts that a number of sites with narrow frontages have narrow frontage just at the street line and then widen to a more standard width, unlike the subject site, which is narrow throughout; and

WHEREAS, the applicant adds that its research of the retail market in the near vicinity reflects that there is a significant turnover rate of retailers with frontage on Crosby Street; and

WHEREAS, as noted above, the Board has reviewed its prior decisions that the applicant and the Opposition have presented either in support or opposition to the inclusion of eating and drinking establishments and can distinguish them and, thus does not find they form the basis for a grant or denial; the Board has included a prohibition on eating and drinking establishments in at least two instances where the Community Board recommended such a limitation and the applicant obliged, which is not the situation in the subject case; and

WHEREAS, the Board notes that the inclusion of potential eating and drinking establishment use in the subject proposal which maintains the existing undersized building for occupancy by a single Use Group 6 tenant, reduces the risk and increases the viability of the site, which can only feasibly accommodate a single user and a single income stream, unlike the majority of buildings in the area, which are larger and have multiple sources of income throughout the building; and

WHEREAS, further, the Board notes that in cases where it restricted eating and drinking use, the subject buildings were substantially larger and more fully developed and primarily with new residential use that it deemed to provide the required economic relief; the Board finds each of its prior cases to be distinguishable and directs its inquiry to the specific conditions of the subject site; and

WHEREAS, accordingly, the Board finds that the proposal, for the re-use of an existing building where the proposed use is permitted as of right on the second floor, without any enlargement of the building envelope, is the minimum necessary to afford relief, based on the analysis of

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the site and the economic feasibility; and

WHEREAS, the Opposition's supplemental arguments include (1) that the applicant is required to seek a special permit from the City Planning Commission in lieu of a variance, (2) a restrictive declaration associated with the caretaker's apartment limits the use of the building to Use Group 9 use, and (3) since the DOB notice of objections was revised during the hearing process, the process should begin a-new; and

WHEREAS, as to the special permit, the applicant notes that none of the case law submitted by the Opposition sets forth a requirement that an application for a special permit is a required predicate of discretionary relief available to the applicant; and

WHEREAS, specifically the applicant asserts that the case law, which addresses the distinction between the required analysis for a special permit compared to that for a variance and states that variances should be granted sparingly, whereas special permits, absent uniqueness and neighborhood character findings, among other things, require less scrutiny; and

WHEREAS, the applicant asserts that the case law, which confirms that variance standards are more restrictive than those for a special permit, actually supports the applicant's choice to file for the more restrictive form of relief; and

WHEREAS, the Board recognizes the principles set forth in the Opposition's case law that there is a higher threshold for obtaining a variance than for a special permit and that, due to the complexity of the findings, including that a site must have unique conditions, variances are granted sparingly; and

WHEREAS, however, the Board does not find that the case law supports the Opposition's assertion that the variance application is inappropriately before the Board; and

WHEREAS, instead, the Board finds that the variance process, with its five required findings, actually reflects the breadth of analysis that the Opposition seeks and that the Opposition's arguments that the special permit should be sought first are actually incompatible with the arguments that they request that the highest threshold be set for granting relief to allow the proposed Use Group 6 use throughout the building; and

WHEREAS, as to the restrictive declaration, the applicant states that it was required to allow for a caretaker's apartment accessory to the Use Group 9 use and that, without the Use Group 9 use, the restrictive declaration is moot; and

WHEREAS, the Board notes that the restrictive declaration is an agreement between the applicant's predecessor in interest and DOB and it is not subject to its review, but adds that DOB states that once the Use Group 9 use is eliminated, the restrictive declaration has no effect; 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 Type I Action

pursuant to Section 617.4 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. 10BSA076M, dated August 8, 2010; 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 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 an existing two-story building to a Use Group 6 use (including eating and drinking establishment), contrary to ZR § 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 6, 2010"—thirteen (13) sheets; and *on further condition*:

THAT if the site is operated as an eating and drinking establishment, the term of the grant shall expire on February 15, 2014;

THAT the following shall be the operating conditions for any eating and drinking establishment use at the site: (1) the use is limited to a restaurant which may include a bar only if it is accessory to the restaurant, but excludes a bar or a nightclub as the primary use; (2) the maximum seating capacity, including any accessory bar seating, is limited to 120 occupants; (3) a closing time no later than 11:00 p.m., Sunday through Thursday; (4) a closing time no later than 12:00 a.m., Friday through Saturday; and (5) any use of the outdoor space is prohibited;

THAT the operation of the site shall be in compliance with Noise Code regulations;

THAT the above conditions shall be noted on the Certificate of Occupancy;

THAT the internal floor layouts on each floor 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

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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)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 15, 2011.

178-10-BZ

CEQR #11-BSA-024K

APPLICANT – Law Office of Fredrick A. Becker, for Rebecca Leshkowitz and Naftuli Leshkowitz, owners.

SUBJECT – Application September 13, 2010 – Special Permit (§73-622) for the legalization and enlargement of a single family home, contrary to floor area and open space (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 943 East 24th Street, east side of East 24th Street, between Avenue I and Avenue J, Block 7588, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 13, 2010, acting on Department of Buildings Application No. 320192867, 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 of 150.

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard of 30 feet.

Proposed plans are contrary to ZR 23-461 in that the proposed side yard straight-line extension is less than the 5 foot minimum side yard permitted;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements for 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 November 16, 2010, after due notice by publication in *The City Record*, with continued hearings on December 14, 2010 and January 25, 2011, and then to decision on February 15, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 24th Street, between Avenue I and Avenue J, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of approximately 2,146 sq. ft. (0.54 FAR); 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 approximately 2,146 sq. ft. (0.54 FAR) to 4,013 sq. ft. (1.0 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 56 percent (the minimum required open space ratio is 150 percent); and

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 3’-8¾” along the northern lot line (a minimum width of 5’-0” is required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-0” (a minimum rear yard of 30’-0” is required); and

WHEREAS, at hearing, the Board questioned how much of the existing home is being retained; and

WHEREAS, in response, the applicant submitted revised plans reflecting that portions of the existing foundation walls, first and second floor walls, and floor joists on the first floor will remain; and

WHEREAS, at hearing, the Board also questioned the floor area calculations at the attic level; and

WHEREAS, in response, the applicant submitted revised plans clarifying which portions of the attic are included in the floor area calculations; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement and partial legalization 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

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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, within an R2 zoning district, the proposed enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements for 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 September 13, 2010”-(6) sheets and “January 19, 2011”-(6) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,013 sq. ft. (1.0 FAR); an open space ratio of 56 percent; a side yard with a minimum width of 3’-8¾” along the northern lot line; and a rear yard with a minimum depth of 20’-0”, as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 15, 2011.

181-10-BZ

CEQR #11-BSA-026K

APPLICANT – Patrick W. Jones, P.C., for Metroeb Realty Corporation, owner.

SUBJECT – Application September 20, 2010 – Special Permit (§73-46) to waive parking for a proposed residential conversion of an existing building. M1-2/R6A (MX-8) zoning district.

PREMISES AFFECTED – 143/155 Roebling Street, aka 314/330 Metropolitan Avenue and 1/10 Hope Street, corner of Roebling Street, Metropolitan Avenue and Hope Street, Block 2368, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated August 20, 2010, acting on Department of Buildings Application No. 320012525, reads in pertinent part:

“Provide off-street parking space under ZR 25-23 equal to at least 50% of the number of dwelling units or obtain waiver from the BSA under ZR 73-46”; and

WHEREAS, this is an application under ZR §§ 73-46 and 73-03, to permit on a site within an M1-2/R6A (MX-8) zoning district, a waiver of the required number of accessory parking spaces for the proposed residential conversion of an existing building, contrary to ZR § 25-23; and

WHEREAS, a public hearing was held on this application on December 7, 2010, after due notice by publication in *The City Record*, with a continued hearing on February 15, 2011, and then to decision on February 15, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application with the following conditions: (1) the applicant modifies its application to request a partial parking waiver rather than a full waiver; and (2) the applicant agrees to pursue a long term lease at one or more of the parking lots identified and continues to work with the Community Board to maximize parking opportunities on those lots through the utilization of alternative parking methods, such as stackers; and

WHEREAS, certain members of the community provided oral testimony in opposition to this application; and

WHEREAS, the subject site is located on an irregularly-shaped corner lot bounded by Metropolitan Avenue to the north, Roebling Street to the west, and Hope Street to the south, within an M1-2/R6A (MX-8) zoning district; and

WHEREAS, the site has a lot area of 31,615 sq. ft.; and

WHEREAS, the site is occupied by a six-story mixed-use commercial/residential building, with commercial uses on the first floor and residential apartments on the second floor through sixth floor; and

WHEREAS, the applicant states that the subject building lacks a certificate of occupancy for residential use and that the owner has applied for an alteration permit at the Department of Buildings for conversion of the second floor through sixth floors to a total of 90 residential apartments;

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and

WHEREAS, pursuant to ZR § 25-23, 45 parking spaces are required for the proposed 90 dwelling units; and

WHEREAS, the applicant requests that the Board grant a special permit under ZR § 73-46 to allow for the waiver of the required 45 parking spaces; and

WHEREAS, the applicant represents that the development and use of the site, other than the proposed parking, conforms with all zoning district regulations; and

WHEREAS, accordingly, the Board's review was limited to the request for a parking waiver pursuant to ZR § 73-46; and

WHEREAS, pursuant to ZR § 73-46, the Board may, in the subject zoning district, grant a special permit that would allow a waiver of the accessory off-street parking spaces required for the dwelling units created by a residential conversion under the applicable ZR provision; and

WHEREAS, specifically, ZR § 73-46(a) requires the Board to find that there is no practical possibility of providing the required number of parking spaces on the same zoning lot because of insufficient open space and the prohibitive cost of structural changes necessary to provide the required spaces within the building; and

WHEREAS, the applicant states that, pursuant to ZR § 25-62, an area of 300 sq. ft. is required for each parking space; therefore 45 unattended parking spaces would require a minimum of 13,500 sq. ft.; and

WHEREAS, the applicant states that there is only 360 sq. ft. of open space on the subject lot, which is sufficient to accommodate only one parking space; and

WHEREAS, the applicant further states that the 360 sq. ft. of open space on the lot is used as an off-street loading area for the building, and if it were eliminated in favor of a parking space loading would have to take place on the street; and

WHEREAS, due to the insufficiency of open space to accommodate parking, the applicant analyzed a scheme for providing the required spaces within the cellar level of the building; and

WHEREAS, the applicant represents that creating parking spaces in the cellar of the building entails structural challenges that would be cost-prohibitive to overcome and would result in the displacement of residents and businesses; and

WHEREAS, specifically, the applicant states that in order to provide cellar parking, a portion of the building on both Hope Street and Metropolitan Avenue would have to be demolished on the first floor in order to create access ramps, structural walls would have to be removed, and structural supports would have to be installed in their place; and

WHEREAS, the applicant further states that, due to the existence of a fire stair which cannot be legally eliminated, there would be an inadequate turning radius for a vehicle to turn westward into the cellar, and there would also be inadequate circulation space in general; and

WHEREAS, the applicant submitted a proposed

contract for the construction of a cellar parking area at the site, reflecting a cost of \$7,320,000; and

WHEREAS, based upon the above, the Board agrees that there is no practical possibility of providing the required number of parking spaces on the subject lot because of insufficient open space and the prohibitive cost of structural changes necessary to provide the required spaces within the building; and

WHEREAS, ZR § 73-46(b) requires the Board to determine that there is no practical possibility of providing the required number of parking spaces on a site located within 1,200 feet of the nearest boundary of the zoning lot; and

WHEREAS, according to the standard calculation set forth in the Zoning Resolution, at least 13,500 sq. ft. of lot area would be required to accommodate the 45 parking spaces that cannot be provided on-site; and

WHEREAS, the applicant submitted a survey of the 30 lots that have either all or part of their lot area within 1,200 feet of the site and have lot areas of at least 13,500 sq. ft.; and

WHEREAS, the lot survey indicates that 28 of these sites were found to be unsuitable because they were either occupied with substantial improvements or under construction; and

WHEREAS, the survey identified two vacant sites that appeared to be available for off-site parking: (1) a 17,604 sq. ft. site located on Lot 19 in Block 2369 ("Lot 19"); and (2) a 21,000 sq. ft. site located on Lot 10 in Block 2371 ("Lot 10"); and

WHEREAS, the applicant notes that only 9,000 sq. ft. of Lot 10 is located within a 1,200-ft. radius of the site, which is not suitable to accommodate all 45 of the required parking spaces; and

WHEREAS, the applicant submitted photographs and DOB records reflecting that a bank building is currently under construction on Lot 19; and

WHEREAS, based upon the above, the Board agrees that there is no practical possibility of providing the required number of parking spaces on a site located within 1,200 feet of the nearest boundary of the zoning lot; and

WHEREAS, however, while ZR § 73-46 permits the Board to waive the required accessory parking, the Board must analyze the impact that such a reduction might have on the surrounding community; and

WHEREAS, the applicant asserts that the conversion of the building will not generate significant parking demand; and

WHEREAS, the applicant states that the unit mix in the building of studio and one-bedroom apartments is amenable to single persons or young couples having no children, who depend on public transportation to travel to work and who will be able to shop in the neighborhood due to the recent growth in local services; and

WHEREAS, the applicant represents that the site is served by: (1) the Bedford Avenue and Lorimer Street stations of the L subway line; (2) the B62, B24 and Q69 bus lines; and (3) nearby bike lanes which are part of a citywide

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bike lane network; and

WHEREAS, the Board requested the applicant to explain whether there was sufficient off-site space to accommodate parking overflow; and

WHEREAS, in response, the applicant submitted a survey conducted between 7:00 p.m. and 10:00 p.m. on a weekday evening which reflected that 202 curbside parking spaces were available within an 800-foot radius of the site, with an additional 39 parking spaces available at off-street parking lots; and

WHEREAS, based upon its review of the record, the Board finds that the proposed waiver of required parking will neither alter the essential character of the neighborhood, nor impair the future use and development of the surrounding area;

WHEREAS, the special permit will not interfere with any public improvement projects; 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 §§ 73-46 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to pursuant to 6 NYCRR, Part 617.2; 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. 11BSA026K, dated September 20, 2010; 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. §§ 73-46 and 73-03, to permit on a site within an M1-2/R6A (MX-8) zoning district, the waiver of the 45 required accessory parking spaces for the proposed residential conversion of an existing building, contrary to ZR § 25-23; *on condition* that all work

shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received September 20, 2010" – thirteen (13) 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 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 15, 2011.

277-07-BZ

APPLICANT – Miele Associates, LLP, for Barnik Associates LLC & Lama Holdings, LLC, owner.

SUBJECT – Application December 3, 2007 – Variance (§72-21) for the development of a one-story automotive service station with accessory convenience store, contrary to §22-10. R3-1 zoning district

PREMISES AFFECTED – 165-35 North Conduit Avenue, North west corner of North Conduit Avenue & Guy R, Brewer Boulevard. Block 12318, Lot 10, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Hiram Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 12, 2011, at 1:30 P.M., for decision, hearing closed.

189-09-BZ

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace, west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 5,

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2011, at 1:30 P.M., for continued hearing.

190-09-A

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 5, 2011, at 1:30 P.M., for continued hearing.

309-09-BZ

APPLICANT – Harold Weinberg, P.E., for Ralph Strofolino, owner.

SUBJECT – Application November 20, 2009 – Variance (§72-21) to allow a mixed use building, contrary to lot coverage (§23-145), side yard (§35-541) and height (§35-542) regulations. R6A/C2-3 zoning district.

PREMISES AFFECTED – 2173 65th Street, between Bay Parkway and 21st Avenue, Block 5550, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 15, 2011, at 1:30 P.M., for adjourned hearing.

47-10-BZ

APPLICANT – Eric Palatnik, P.C., for 2352 Story Avenue Realty Corporation, owner; Airgas-East, Incorporated, lessee.

SUBJECT – Application April 8, 2010 – Variance (§72-21) to allow a manufacturing use in a residential district, contrary to ZR 22-00. M1-1/R3-2 zoning district.

PREMISES AFFECTED – 895 Zerega Avenue, aka 2352 Story Avenue, Block 3698, Lot 36, Borough of The Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Eric Palatnik and Robert B. Pauls.

ACTION OF THE BOARD – Laid over to March 15, 2011, at 1:30 P.M., for continued hearing.

128-10-BZ

APPLICANT – Eric Palatnik, P.C., for Merhay Yagaduyev, owner; Jewish Center of Kew Gardens Hill Inc., lessee.

SUBJECT – Application July 13, 2010 – Variance (§72-21) to permit proposed synagogue, religious school and Rabbi's residence (*Jewish Center of Kew Gardens*) contrary to floor area and lot coverage (§24-11), height, setback and sky exposure plane (§24-521), front yard (§24-34), side yards (§24-35), side setback (§24-551), and minimum distance between windows (§24-672 and §23-863). R4 zoning district.

PREMISES AFFECTED – 147-58 77th Road, 150th Street and 77th Road, Block 6688, Lot 31, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 29, 2011, at 1:30 P.M., for adjourned hearing.

149-10-BZ

APPLICANT – Eric Palatnik, P.C., for Chaya Singer, owner.

SUBJECT – Application August 13, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and lot coverage (§23-141); side yard (§23-461) and less than the minimum rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1415 East 29th Street, between Avenue N and Kings Highway, Block 7683, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik and Carlos deGonseca.

ACTION OF THE BOARD – Laid over to March 15, 2011, at 1:30 P.M., for continued hearing.

217-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Elizabeth Kopolovich & Harry Kopolovich, owner.

SUBJECT – Application November 15, 2010 – Special Permit (§73-622) for the enlargement of an existing single home, contrary to floor area and lot coverage (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 4009 Bedford Avenue, Bedford Avenue between Avenue S and Avenue T. Block 7304, Lot 82, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 8,

MINUTES

2011, at 1:30 P.M., for decision, hearing closed.

218-10-BZ

APPLICANT – Simons & Wright LLC, for Bermuda Realty LLC, owner.

SUBJECT – Application November 19, 2010 – Special Permit (§73-19) for the construction of a four-story school (*Brownsville Ascend Charter School*). C8-2 zoning district. PREMISES AFFECTED – 123 East 98th Street, aka 1 Blake Avenue, corner of the intersection of East 98th and Blake Avenue between Ralph Avenue and Union Street, Block 3531, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Emily Simons, Jeffrey Smithline and Soly Bawakeh.

ACTION OF THE BOARD – Laid over to March 8, 2011, at 1:30 P.M., for continued hearing.

226-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Montbatten Equities, LLP, owner; Equinox Fitness, lessee. SUBJECT – Application December 10, 2010 – Special Permit (§73-36) to allow a Physical Culture Establishment (*Equinox Fitness*) on the first, ninth and tenth floors of an existing 10-story mixed-use building; Amendment to a prior variance (§72-21) to reflect the proposed establishment. M1-5 zoning district.

PREMISES AFFECTED – 405/42 Hudson Street, southwest corner of Hudson and Leroy Streets, Block 601, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Andres Puerta and Dan Walcoff.

ACTION OF THE BOARD – Laid over to March 8, 2011, at 1:30 P.M., for continued hearing.

606-75-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Montbatten Equities, LP, owner; Equinox Fitness, lessee.

SUBJECT – Application December 10, 2010 – Special Permit (§73-36) to allow a Physical Culture Establishment (*Equinox Fitness*) on the first, ninth and tenth floors of an existing 10-story mixed-use building; Amendment to a prior variance (§72-21) to reflect the proposed establishment. M1-5 zoning district.

PREMISES AFFECTED – 405/42 Hudson Street, southwest corner of Hudson and Leroy Streets, Block 601, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Andres Puerta and Dan Walcoff.

ACTION OF THE BOARD – Laid over to March 8,

2011, at 1:30 P.M., for continued hearing.

234-10-BZ

APPLICANT – Moshe M. Friedman, for Labe Twerski, owner.

SUBJECT – Application December 28, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141(a)) and rear yard (§23-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 2115 Avenue K, north side, 100' east of intersection of Avenue K and East 21st Street, Block 7603, Lot 3, 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, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 8, 2011, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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March 10, 2011

DIRECTORY

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227-10-BZ 204-12 Northern Boulevard, Queens

DOCKET

New Case Filed Up to March 1, 2010

17-11-BZ

2255 East 2nd Street, East side of East 2nd Street, approximately 145 feet south of Gravesend Neck Road., Block 7154, Lot(s) 71 & 72, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area, lot coverage and open space §23-141(b) and less than the required rear yard §23-47. R4/OP zoning district. R4/OP district.

18-11-BZ

1025 East 22nd Street, East side of East 22nd Street between Avenue I and Avenue J., Block 7586, Lot(s) 26, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space §23-141; side yards §23-461 and less than the required rear yard §23-47. R-2 zoning district. R2 district.

19-11-BZ

1271 East 24th Street, East side of East 24th Street between Avenue L and Avenue M., Block 7642, Lot(s) 15, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space §23-141; side yards §23-461 and less than the required rear yard §23-47. R-2 zoning district. R2 district.

20-11-BZ

30 West 18th Street, Soysterly side of West 18th Street, 435' westerly of 5th Avenue., Block 819, Lot(s) 59, Borough of **Manhattan, Community Board: 5**. Special Permit (73-36) to allow the proposed physical culture establishment. C6-4A district.

21-11-BZ

1810 Voorhies Avenue, South side of Voorhies Avenue, between East 19th Street and Sheepheads Bay Road., Block 8772, Lot(s) 3, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-44) to permit the reduction in required parking for an ambulatory or diagnostic treatment facility. C1-2/R4 zoning district. C1-2/R-4 district.

22-11-BZ

184 North 8th Street, Between Driggs & Bedford Avenues., Block 2320, Lot(s) 16, Borough of **Brooklyn, Community Board: 1**. Variance to permit the conversion of a warehouse, contrary to use regulations. R6B 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

MARCH 15, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 15, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

516-75-BZ

APPLICANT – Tarter Krinsky & Drogin, LLP, for Vertical Projects LLC, owner; MP Sports Club Upper Eastside LLC, lessee.

SUBJECT – Application December 17, 2010 – Amendment of a previously approved variance (72-21) which permitted the operation of a Physical Culture Establishment (PCE) (*The Sports Club/LA*) to operate within a building that had received a variance regarding bulk. The amendment seeks to increase the "PCE" space from 100,272 square feet to 101,646 square feet and reflect a change in operator for the PCE; Extension of Term for the "PCE" which expired on October 17, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on October 17, 2002; Waiver of the Rules of Practice and Procedure. C8-4 zoning district.

PREMISES AFFECTED – 330 East 61st Street aka 328 East 61st Street, between First Avenue and ramp of Queensboro Bridge (NYS Route 25), Block 1435, Lots 16 & 37, Borough of Manhattan.

COMMUNITY BOARD #8M

866-85-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Anne Marie Cicciu Incorporated, owner.

SUBJECT – Application October 19, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG8 open parking lot and storage of motor vehicle which expired on May 12, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on November 23, 2000; Waiver of the Rules. R7-1 zoning district.

PREMISES AFFECTED – 2338 Cambreleng Avenue, east side of 2338 Cambreleng Avenue, 199.25' south of intersection of Cambreleng Avenue and Crescent Avenue, Block 3089, Lot 22, Borough of Bronx.

COMMUNITY BOARD #6BX

216-97-BZ

APPLICANT – Moshe M. Friedman, for King Carroll LLC, owner; Dr. Rosen M.D., lessee.

SUBJECT – Application December 28, 2010 – Pursuant to ZR §11-412 an Amendment to a previously granted special permit to convert UG2 cellar storage space to additional UG4 medical offices in an existing four story residential

building, R-2 zoning district.

PREMISES AFFECTED – 1384 Carroll Street aka 352 Kingston Avenue, south side of Carroll Street and Kingston Avenue, Block 1292, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #9BK

11-00-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for 601 Associates LLC, owner; Harbor Fitness Park Slope Incorporated, lessee.

SUBJECT – Application November 3, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Harbor Fitness*) in the cellar and first floor of an existing mixed use (commercial/residential) building which expired on October 3, 2010; Amendment for the increase in hours of operation. C4-3A/R6B zoning district.

PREMISES AFFECTED – 550 5th Avenue, northwest corner of 5th Avenue and 15th Street, Block 1041, Lot 43(1001), Borough of Bronx.

COMMUNITY BOARD #7BX

APPEALS CALENDAR

17-05-A

APPLICANT – Sheldon Lobel, P.C., for GRA V LLC, owner.

SUBJECT – Application February 15, 2011 – Application to reopen pursuant to a court remand for a determination of whether the property owner has established a common law vested right to continue construction under the prior R6 zoning district

PREMISES AFFECTED – 3329 Giles Place, west side of Giles Place between Canon Place and Fort Independence Street, Block 3258, Lots 5 & 7, Borough of Bronx.

COMMUNITY BOARD #8BX

222-10-A

APPLICANT – Laleh Hawa, for Yaelle Yoran –Wastin, owner.

SUBJECT – Application December 6, 2010 – An appeal challenging a determination of Department of Buildings revoking a permit that allowed a curb cut in violation of Section 25 -321 of the Administrative Code which requires Landmark Approval. R6B Zoning district

PREMISES AFFECTED – 97 Saint Marks Avenue, 392' west of Saint Marks Avenue and Carlton Avenue, Block 1143, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #8BK

CALENDAR

MARCH 15, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 15, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

119-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Samson and Rivka Molinsky, owners.

SUBJECT – Application June 28, 2010 – Variance (§72-21) to allow the legalization for the enlargement of a residential building, contrary to front yard (23-45) and height (23-631) regulations. R2X zoning district.

PREMISES AFFECTED – 787 Cornaga Avenue, southwest corner of Cornaga Avenue and Mador Court, Block 15571, Lot 133, Borough of Queens.

COMMUNITY BOARD #14Q

196-10-BZ

APPLICANT – James Chin & Associates, LLC, for Turtle Bay Inn, LLC., owner.

SUBJECT – Application October 25, 2010 – Variance (ZR §72-21) to allow for a commercial use in a residential zone, contrary to ZR §22-00. R8B zoning district.

PREMISES AFFECTED – 234 East 53rd Street, mid-block parcel located on the south side of 53rd Street, between 2nd and 3rd Avenue, Block 1326, Lot 34, Borough of Manhattan.

COMMUNITY BOARD #6M

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, MARCH 1, 2011 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

55-45-BZ

APPLICANT – Walter C. Maffei, AIA, for Donato Passarella, owner.

SUBJECT – Application August 31, 2010 – Extension of Term (§11-411) for an existing Gasoline Service Station (*Spirit*) which expired on February 27, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on May 2, 2001; waiver of the rules. C2-4/R6B zoning district. PREMISES AFFECTED – 51 Kingsland Avenue, Woodpoint Road, Frost Street, Block 2866, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Karen Foster.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Absent: Commissioner Hinkson.....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 term for the continued operation of a gasoline service station (Use Group 16), and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on December 14, 2010, after due notice by publication in *The City Record*, with a continued hearing on February 1, 2011, and then to decision on March 1, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on a corner lot bounded by Kingsland Avenue to the east and Woodpoint Road to the west, within a C2-2 (R6B) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 24, 1945 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with accessory uses, for a term of ten years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on May 2, 2000, the Board granted a ten-year extension of term, which expired on February 27, 2009; a condition of the grant was that a certificate of occupancy be obtained by May 2, 2001; and

WHEREAS, the applicant now requests an additional ten-year term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, at hearing, the Board raised concerns about the presence of a U-Haul franchise on the site, and directed the applicant to discontinue the operation of the U-Haul franchise; and

WHEREAS, in response, the applicant agreed to discontinue operation of the U-Haul franchise, and submitted: (1) photographs showing the removal of the U-Haul trucks; (2) an affidavit from the operator of the service station, stating that operation of the U-Haul franchise has been discontinued and will not be resumed; and (3) a copy of a “Closed Dealer Notification” from U-Haul; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and extension of time to obtain a certificate of occupancy 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 July 24, 1945, so that as amended this portion of the resolution shall read: “to extend the term for ten years from the expiration of the prior grant, to expire on February 27, 2019, and to grant an extension of time to obtain a certificate of occupancy to March 1, 2012; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked ‘Received August 31, 2010’-(3) sheets and ‘January 25, 2011’-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on February 27, 2019;

THAT a certificate of occupancy shall be obtained by March 1, 2012;

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

THAT the Department of Buildings must ensure compliance 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. 4688/53)

Adopted by the Board of Standards and Appeals, March 1, 2011.

217-96-BZ

APPLICANT – Eric Palatnik, P.C., for Silverbell Investment Company, Incorporated, owner; Enterprise Rent-A-Car, lessee.

SUBJECT – Application December 17, 2010 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) of a car rental facility

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(*Enterprise*) with accessory outdoor storage of cars which expired on July 12, 2010; Waiver of the Rules. C1-2/R-2 zoning district.

PREMISES AFFECTED – 165-01 Northern Boulevard, northeast corner of 165th Street and Northern Boulevard, Block 53340, Lot 8, Borough of Queens.

COMMUNITY BOARD #

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Absent: Commissioner Hinkson.....1

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 obtain a certificate of occupancy, which expired on July 12, 2010; and

WHEREAS, a public hearing was held on this application on February 1, 2011 after due notice by publication in *The City Record*, and then to decision on March 1, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the subject site is located on the northeast corner of Northern Boulevard and 165th Street, within a C1-2 (R2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 7, 1997 when, under the subject calendar number, the Board granted a variance to permit the legalization and expansion of an existing car rental facility with accessory outdoor storage of rental cars (Use Group 8) located in a portion of a one-story commercial building, for a term of ten years; and

WHEREAS, most recently, on January 12, 2010, the Board granted an extension of the term for an additional ten years, and an extension of time to obtain a certificate of occupancy, which expired on July 25, 2010; and

WHEREAS, the applicant now requests an extension of time to obtain a new certificate of occupancy; and

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the stipulated date due to administrative oversight; and

WHEREAS, at hearing, the Board directed the applicant to confirm whether it had installed a “No Left Turn” sign on the lot, in accordance with a condition from the previous grant; and

WHEREAS, in response, the applicant submitted a photograph reflecting that the “No Left Turn” sign has been installed on the site; and

WHEREAS, based upon the above, the Board finds that the requested extension of time 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 October 7, 1997, so that as amended this portion of the resolution shall read: “to permit an extension of time to obtain a certificate of occupancy, to expire on March 1, 2012; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans associated with the prior approval; and *on further condition*:

THAT the term of the grant shall expire on October 7, 2017;

THAT signage shall comply with C1 district regulations; THAT all landscaping shall be provided and maintained in accordance with the BSA-approved plans;

THAT the site shall be maintained free of debris and graffiti;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by March 1, 2012;

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. 420073039)

Adopted by the Board of Standards and Appeals, March 1, 2011.

10-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for D & M Richmond Realty LLC, owner; TSI Staten Island LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 25, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on October 26, 2009; Waiver of the Rules. M2-1 zoning district.

PREMISES AFFECTED – 300 West Service Road, northwesterly corner of West Service Road and Wild Avenue, Block 270, Lot 135, Borough of Staten Island.

COMMUNITY BOARD #3SI

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 Montanez.....4

Absent: Commissioner Hinkson.....1

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 of a previously granted special permit for a physical

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culture establishment (“PCE”), which expired on October 26, 2009; and

WHEREAS, a public hearing was held on this application on February 1, 2011, after due notice by publication in *The City Record*, and then to decision on March 1, 2011; and

WHEREAS, Community Board 3, Staten Island, recommends approval of this application; and

WHEREAS, the PCE is located on the northwest corner of West Service Road and Wild Avenue, within an M2-1 zoning district; and

WHEREAS, the PCE occupies a total of 35,594 sq. ft. of floor area in the basement and first floor of a two-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 26, 1999 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on October 26, 2009; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, based upon its review of the record, the Board finds 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, as adopted on October 26, 1999, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from October 26, 2009, to expire on October 26, 2019; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans associated with the prior approval; and *on further condition*:

THAT the term of this grant shall expire on October 26, 2019;

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;

THAT the Department of Buildings must ensure compliance 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.” (Alt. No. 287-1983)

Adopted by the Board of Standards and Appeals, March 1, 2011.

93-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker for Green 19 W44 Owner, LLC, owner; TSI West 44 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application August 25, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York*

Sports Club) which expired on July 25, 2010. C6-4.5 (MID) zoning district.

PREMISES AFFECTED – 19 West 44th Street, northerly side of West 44th Street, 150’ west of 5th Avenue, Block 1260, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #3M

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 Montanez.....4

Absent: Commissioner Hinkson.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on July 25, 2010; and

WHEREAS, a public hearing was held on this application on December 14, 2010, after due notice by publication in *The City Record*, with continued hearings on January 25, 2011 and February 1, 2011, and then to decision on March 1, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Manhattan, states that it has no objection to this application; and

WHEREAS, the PCE is located on a through lot with frontage on West 44th Street and West 45th Street, between Fifth Avenue and Avenue of the Americas, in a C6-4.5 zoning district within the Special Midtown District; and

WHEREAS, the PCE occupies a total of 21,693 sq. ft. of floor area in portions of the basement, first floor and second floor of a 20-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 25, 2000 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on July 25, 2010; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, at hearing, the Board questioned whether the signage on the site complies with the underlying zoning district regulations; and

WHEREAS, in response, the applicant submitted a Letter of Completion from the Department of Buildings (“DOB”), reflecting DOB approval of the signage on the site; and

WHEREAS, based upon its review of the record, the Board finds 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 *reopens* and *amends* the resolution, as adopted on July 25, 2000, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from July 25, 2010, to expire on July 25, 2020, *on condition* that all work

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shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked 'Received August 25, 2010'-(5) sheets and 'January 13, 2011'-(1) sheet; and *on further condition:*

THAT the term of this grant shall expire on July 25, 2020;

THAT signage at the site shall comply with C6 district regulations;

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;

THAT the Department of Buildings must ensure compliance 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. 102845735)

Adopted by the Board of Standards and Appeals, March 1, 2011.

328-04-BZ

APPLICANT – Goldman Harris LLC, for Rockaway Improvements, LLC, owner.

SUBJECT – Application December 21, 2010 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) of a UG2 four-story residential building with 12 dwelling units which expired on November 21, 2010. M1-1 zoning district.

PREMISES AFFECTED – 108 Franklin Avenue, aka 108-110 Franklin Avenue between Park and Myrtle Avenues, Block 1898, Lot (tent) 49, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Vivien Krieger.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Absent: Commissioner Hinkson.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit, within an M1-1 zoning district, the construction of a four-story and cellar residential building, which expired on November 21, 2010; and

WHEREAS, a public hearing was held on this application on February 1, 2011, after due notice by publication in *The City Record*, and then to decision on March 1, 2011; and

WHEREAS, the premises and surrounding area had site

and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, the subject site is located on the west side of Franklin Avenue between Park Avenue and Myrtle Avenue, within an M1-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since November 21, 2006 when, under the subject calendar number, the Board granted a variance to permit the proposed construction of a four-story and cellar residential building; and

WHEREAS, substantial construction was to be completed by November 21, 2010, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to funding delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction 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, dated November 21, 2006, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years, to expire on November 21, 2014; *on condition:*

THAT substantial construction shall be completed by November 21, 2014;

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. 301792503)

Adopted by the Board of Standards and Appeals, March 1, 2011.

881-59-BZ

APPLICANT – Dorothy Ames, owner.

SUBJECT – Application November 19, 2010 – Extension of Term (§11-411) for the continued use of a theatre (*Soho Playhouse*) which expires on April 11, 2011. R6 zoning district.

PREMISES AFFECTED – 15 Vandam Street, between Avenue of the Americas and Varick Street, Block 506, Lot 47, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 15, 2011, at 10 A.M., for postponed hearing.

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164-60-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Luciani Enrica Melchiorre, owner; Steven Scott, Inc., lessee.

SUBJECT – Application December 7, 2010 – Extension of Term (§11-411) for an automotive service station (UG 16B) (*Sunoco*) with accessory uses which expired on April 10, 2010; Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 100-20 Metropolitan Avenue, southeast corner of Metropolitan Avenue and 70th Road, Block 3895, Lot 32, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

ACTION OF THE BOARD – Laid over to March 29, 2011, at 10 A.M., for continued hearing.

197-00-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for SLG Graybar Sublease, LLC, owner; Equinox 44th Street, Inc., lessee.

SUBJECT – Application January 4, 2011 – Extension of Term of a special permit (§73-36) for the operation of a physical culture establishment (*Equinox*) which expired on December 4, 2010. C5-3(Mid) zoning district.

PREMISES AFFECTED – 420 Lexington Avenue, west side of Lexington Avenue, 208’-4” north of East 42nd Street, Block 1290, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

ACTION OF THE BOARD – Laid over to March 29, 2011, at 10 A.M., for decision, hearing closed.

276-02-BZ

APPLICANT – Eric Palatnik, P.C., for Elad Ryba, owner.

SUBJECT – Application September 13, 2010 – Extension of Time to Complete Construction and an Amendment to a previously approved Special Permit (§73-622) to an existing one family dwelling, contrary to lot coverage and floor area (§23-141) and side yard (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 160 Norfolk Street, west side, 300’ north of Oriental Boulevard and south of Shore Boulevard, Block 8756, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Trevis Savage.

For Opposition: Judith Baron.

ACTION OF THE BOARD – Laid over to March 29, 2011, at 10 A.M., for continued hearing.

215-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owner.

SUBJECT – Application October 20, 2010 – Extension of Term of an existing Gasoline Service Station (*Gulf*) with accessory convenience store which expires on July 24, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on June 17, 2010; Waiver of the Rules. C1-2/R4 zoning district.

PREMISES AFFECTED – 202-06 Hillside Avenue, southeast corner of Hillside Avenue and 202nd Street, Block 10496, Lot 52, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

ACTION OF THE BOARD – Laid over to March 29, 2011, at 10 A.M., for decision, hearing closed.

236-07-BZ

APPLICANT – Jay A. Segal, Esq./Greenberg Traurig, LLP, for Hope Lofts LLC c/o Stein, Simpston & Rosen, PA, owner; 53 Hope Street LLC c/o Gershon & Company, lessee.

SUBJECT – Application December 2, 2010 – Amendment to previously approved Special Permit (§73-46) to allow additional dwelling units and waiver of parking spaces. M1-2/R6A (MX-8) zoning district.

PREMISES AFFECTED – 53-65 Hope Street, north side of Hope Street, between Havemeyer Street and Marcy Avenue, Block 2369, Lots 40 & 47, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jay Segal.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

ACTION OF THE BOARD – Laid over to March 29, 2011, at 10 A.M., for decision, hearing closed.

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APPEALS CALENDAR

155-80-A

APPLICANT – Raymond J. Irrera, for Dr. Jerold Blatt, owner.

SUBJECT – Application August 11, 2010 – Extension of Term to allow the continued operation of a medical office (UG4) in an existing frame structure which expired on June 10, 2000; Extension of time to obtain a Certificate of Occupancy; Waiver of the Rules. R2A Zoning District.

PREMISES AFFECTED – 75-72 185th Street, aka 184-17 Union Turnpike, northwest corner of 185th Street and Union Turnpike, Block 7201, Lot 42, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Gerald Blatt.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Absent: Commissioner Hinkson.....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 term of a previously granted appeal to permit the operation of medical offices (Use Group 4) in an existing frame structure, which expired on June 10, 2000, an extension of time to obtain a certificate of occupancy, and an amendment to permit a 20-year extension of term; and

WHEREAS, a public hearing was held on this application on January 25, 2011 after due notice by publication in *The City Record*, and then to decision on March 1, 2011; and

WHEREAS, Community Board 8, Queens, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, the site is located on the northwest corner of 185th Street and Union Turnpike, within an R2A zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1939 when, under BSA Cal. No. 783-39-A, the Board granted an appeal of a decision by the Department of Buildings (“DOB”), to permit the construction of a frame dwelling within the fire limits; and

WHEREAS, on June 10, 1980, under the subject calendar number, the Board granted an appeal of a subsequent DOB determination, to permit medical offices to be located in the subject building for a term of ten years, on condition that the second floor be used as a residence in conjunction with the first floor; and

WHEREAS, most recently, on November 7, 1990, the Board granted a ten-year extension of the term, which expired on June 10, 2000; and

WHEREAS, the applicant now requests an additional

extension of term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board questioned whether the applicant is in compliance with the condition from the prior grant that the second floor be occupied by residential use in conjunction with the first floor medical office; and

WHEREAS, in response, the applicant submitted photographs of the site and an affidavit from the owner stating that he uses the second floor as a residence in conjunction with his use of the first floor as a medical office; and

WHEREAS, the applicant also requests an amendment to permit an extension of the term for 20 years from the date of this grant, rather than the ten year terms that were provided in prior grants; and

WHEREAS, the applicant represents that the requested 20 year extension of term is warranted because the configuration and use of the building has not changed in any significant way since the Board’s original approval in 1980, and the longer term will mitigate the financial burden on the owner of returning to the Board periodically to continue his longstanding practice at this site; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and extension of time 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 June 10, 1980, so that as amended this portion of the resolution shall read: “to extend the term for 20 years from the date of this grant, to expire on March 1, 2031, and to grant an extension of time to obtain a certificate of occupancy to March 1, 2012; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans associated with the prior approval; and *on further condition*:

THAT the term of this grant shall expire on March 1, 2031;

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

THAT a new certificate of occupancy shall be obtained by March 1, 2012;

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 App. No. 420199635)

Adopted by the Board of Standards and Appeals, March 1, 2011.

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116-10-BZY

APPLICANT – Steven Sinacori, Esq., for Akerman Senterfitt, LLP, for 3516 Development LLC, owner.

SUBJECT – Application June 24, 2010 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior R6 zoning district. R6B zoning district.

PREMISES AFFECTED – 35-16 Astoria Boulevard, south side of Astoria Boulevard between 35th and 36th Streets, Block 633, Lots 39 and 140, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

Adopted by the Board of Standards and Appeals, March 1, 2011.

154-10-A

APPLICANT – Isaac Rosenberg, for Congregation Yetev Lev D'Satmar, owner.

SUBJECT – Application August 25, 2010 – Appeal challenging a determination by Department of Buildings to revoke permits and approvals based on failure to provide owner authorization in accordance with §28-104.8.2 of the Administrative Code. R7-1 Zoning District.

PREMISES AFFECTED – 540 Bedford Avenue, between Ross and Wilson Streets, Block 2181, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 29, 2011, at 10 A.M., for deferred decision.

189-10-A

APPLICANT – Bracewell & Giuliani, LLP on behalf of Chelsea Business & Property Owners, for 127 West 25th LLC, owner; Bowery Residents' Committee, Incorporated, lessee.

SUBJECT – Application October 8, 2010 – Appeal challenging the Department of Buildings' interpretation that the proposed use is a transient hotel. M1-6 zoning district.

PREMISES AFFECTED – 127-131 West 25th Street, between 6th and 7th Avenue, Block 801, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Daniel S. Connolly.

For Opposition: Amanda Derr, Randy Mastro and Ronald Livien.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

ACTION OF THE BOARD – Laid over to April 5, 2011, at 10 A.M., for decision, hearing closed.

201-10-BZY

APPLICANT - Law Offices of Marvin B. Mitzner, for LES Realty Group LLC, owner.

SUBJECT – Application October 29, 2010 – Extension of Time (§11-332) to complete construction of a minor development commenced under the prior C6-1 zoning district. C4-4A zoning district.

PREMISES AFFECTED – 180 Orchard Street, through lot extending from Orchard Street to Ludlow Street. Block 412, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

ACTION OF THE BOARD – Laid over to March 15, 2011, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 1, 2011
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

6-10-BZ

CEQR #10-BSA-039K

APPLICANT – Sheldon Lobel, P.C. for 2147 Mill Avenue, LLC, owner.

SUBJECT – Application January 8, 2010 – Variance (§72-21) to allow for legalization of an enlargement of a commercial building, contrary to §22-00. R2 zoning district.

PREMISES AFFECTED – 2147 Mill Avenue, Northeast side of Mill Avenue between Avenue U and Strickland Avenue. Block 8463, Lot 65, Borough of Brooklyn.

COMMUNITY BOARD #18BK

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 Montanez.....4

Absent: Commissioner Hinkson.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 9, 2009, acting on Department of Buildings Application No. 320080684, reads in pertinent part:

“Proposed restaurant (UG 6) within R2 zoning district is not permitted pursuant to ZR Section 22-00;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R2 zoning district, the legalization of an enlargement to a pre-existing non-conforming one-story restaurant (Use Group 6), contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on July 27, 2010, after due notice by publication in *The City Record*, with continued hearings on September 21, 2010, October 26, 2010, and January 25, 2011, and then to decision on March 1, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application; and

WHEREAS, City Council Member Lewis A. Fidler recommends approval of this application; and

WHEREAS, New York State Senator Carl Kruger provided written and oral testimony in support of this application; and

WHEREAS, a representative for New York State Assembly Member Alan Maisel provided oral testimony in support of this application; and

WHEREAS, a representative for the Middle Island Civic Association provided oral testimony in support of this application; and

WHEREAS, certain members of the community provided oral and written testimony in support of this application; and

WHEREAS, the subject premises is located on the east side of Mill Avenue, between Avenue U and Strickland Avenue, within an R2 zoning district, and

WHEREAS, the site has 40 feet of frontage on Mill Avenue, a depth of 100 feet, and a lot area of 4,000 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story restaurant with 3,725 sq. ft. of floor area (0.93 FAR); and

WHEREAS, the applicant states that the site was originally developed by a building with a floor area of approximately 1,400 sq. ft. (0.35 FAR) (the “Original Building”), which abutted the southern lot line adjacent to the residential property on Lot 62; and

WHEREAS, the applicant represents that the site has been continuously occupied by a restaurant use since at least 1951, and therefore the Original Building is a legal pre-existing non-conforming use on the site; and

WHEREAS, in support of the pre-existing use of the site, the applicant submitted a certificate of occupancy dated 1951, which permits a restaurant and bar use on the site; and

WHEREAS, however, the applicant states that, approximately ten years ago, the subject building was expanded in the rear and to the northern lot line, such that it now abuts the adjacent building on Lot 67, provides a rear yard with a minimum depth of 3’-10”, and has a floor area of 3,725 sq. ft.; and

WHEREAS, because the enlarged portion of the subject building is not a legal pre-existing non-conforming use it therefore requires a use waiver; thus, the instant variance application was filed; and

WHEREAS, the applicant initially proposed to legalize the subject building in its current condition, with a rear yard of only 3’-10” and a floor area of 3,725 sq. ft.; and

WHEREAS, at the Board’s direction, the applicant submitted revised plans reflecting the current proposal, which will remove approximately 8’-2” along the rear of the building in order to increase the depth of the rear yard to 12’-0” and to reduce the floor area to 3,425 sq. ft.; and

WHEREAS, the applicant now proposes to demolish a portion of the rear enlargement in order to provide a uniform rear yard depth of 12 feet and a reduced floor area of 3,475 sq. ft. (0.87 FAR), and to legalize the remainder of the enlargement; and

WHEREAS, the applicant states that the following unique physical conditions create unnecessary hardship and practical difficulties in developing the site with a complying development: (1) the underbuilt nature of the pre-existing non-

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conforming restaurant; and (2) the site's location adjacent to other non-conforming uses; and

WHEREAS, as noted above, the applicant represents that the site was in continuous use as a restaurant since 1951, and therefore the Original Building was a legal pre-existing non-conforming use; and

WHEREAS, the applicant notes that the Original Building had a floor area of approximately 1,400 sq. ft. (0.35 FAR) and abutted the southern lot line adjacent to the residential property on Lot 62; and

WHEREAS, the applicant states that the Original Building was underbuilt, even based on the 0.50 FAR permitted in the underlying R2 zoning district, and that the proposed enlargement was necessary to provide additional seating and a more complete kitchen area in order to make the site viable for a restaurant use; and

WHEREAS, the applicant represents that the mid-block location of the site results in less pedestrian traffic than would occur on a corner lot location which, in conjunction with the small size and underbuilt nature of the Original Building, made the pre-existing non-conforming use of the site infeasible; and

WHEREAS, the applicant further states that, in order to bring the site into conformance with the underlying R2 district regulations, the existing building would have to be demolished and a detached single-family home constructed in its place; and

WHEREAS, the applicant represents that it is not feasible to demolish the viable building currently located on the site in order to construct a single-family home as per the zoning regulations; and

WHEREAS, the applicant submitted a financial analysis in support of its contention that neither the pre-existing non-conforming use of the site nor the as-of-right residential use are viable; and

WHEREAS, as to the adjacent uses, the applicant states that the adjacent lot to the north of the site is occupied by a dental laboratory (Use Group 9) and dentist's office (Use Group 6); and

WHEREAS, the applicant notes that the dental laboratory and dentist's office are pre-existing non-conforming uses which are not permitted in the subject R2 zoning district, and that the dental laboratory/dentist's office building is fully built out at both the rear yard and the lot line adjacent to the subject building, and therefore does not comply with the underlying R2 zoning district requirements for rear yards and side yards; and

WHEREAS, the applicant states that the existence of the adjacent non-conforming dental laboratory/dentist's office further reduces the feasibility of as-of-right residential use, and that the proposed restaurant use is less intensive than the uses to the north of the site on Mill Avenue, which include an oil company, a wood products manufacturing company, and an automotive service station; and

WHEREAS, the applicant further states that the subject site will provide a larger rear yard than the dental laboratory/dentist's office building, thus serving as a buffer between the more intensive pre-existing non-conforming

uses to the north of the site and the residential uses to the south; and

WHEREAS, based upon the above, the Board finds that the underbuilt nature of the Original Building, when considered in the aggregate with the site's location adjacent to a non-conforming dental laboratory/dentist's office building, 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 which analyzed three scenarios: (1) a development consisting of an as-of-right detached single-family home; (2) a development consisting of the legal pre-existing non-conforming retail use; and (3) the first iteration of the proposal which sought to legalize the subject building in its current condition; and

WHEREAS, the study concluded that neither the as-of-right residential scenario nor the legal pre-existing non-conforming scenario would realize a reasonable return, but that the original proposal would realize a reasonable return; and

WHEREAS, at the Board's direction, the applicant modified its feasibility study to analyze whether the current proposal, which includes the partial demolition of the enlarged portion of the building, is financially feasible; and

WHEREAS, the study concluded that the proposed project, as modified, would realize 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 conformance with zoning district regulations 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 surrounding area is characterized by a mix of uses, including many long-standing non-conforming commercial and industrial uses on the subject block; and

WHEREAS, specifically, the applicant states that the adjacent lot to the north is occupied by the aforementioned dental laboratory/dentist's office building, and other uses along the east side of Mill Avenue on the subject block include an oil company, a wood products manufacturing company, and an automotive service station; and

WHEREAS, the applicant further states that the entire block front to the east across Mill Avenue is occupied by commercial and manufacturing uses, some of which are within a residential zoning district; and

WHEREAS, the Board notes that the façade of the building meets and matches that of the adjacent dental laboratory/dentist's office; and

WHEREAS, as to the adjacent residential use to the south of the site, the applicant states that, while the subject building abuts the lot line adjacent to the home, such was the historic location of the Original Building and therefore the non-complying side yard is a pre-existing condition which has existed for the majority of the depth of the subject building

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since at least 1951; and

WHEREAS, as to the adjacent residential use to the rear of the site, the applicant states that the proposed building will be partially demolished to provide a rear yard with a depth of 12 feet, and that the existing home to the rear has a rear yard with a depth of 32 feet, thereby providing a buffer of 44 feet between the subject site and the adjacent home to the rear; and

WHEREAS, the applicant further states that the subject site is separated from the adjacent residential uses by a fence; and

WHEREAS, the applicant also submitted letters from the adjacent neighbors, expressing their support for this application and the continued use of the site as a longstanding restaurant; 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 site's unique physical conditions; and

WHEREAS, as noted above, the applicant initially proposed to legalize the subject building in its current condition, with a rear yard of only 3'-10" and a floor area of 3,725 sq. ft.; and

WHEREAS, the Board notes that the applicant submitted interim proposals which provided floor areas of 3,550 sq. ft. (0.89 FAR) and 3,690 sq. ft. (0.92 FAR), respectively, and a minimum rear yard depth of 7'-4 1/2"; and

WHEREAS, at the Board's direction, the applicant submitted revised plans reflecting the current proposal, which will remove a portion of the building to a depth of approximately 8'-2" along the rear of the building in order to increase the depth of the rear yard to 12'-0" and to reduce the floor area to 3,425 sq. ft. (0.87 FAR); and

WHEREAS, accordingly, 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 6 NYCRR, Part 617.2; 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. 10-BSA-039K dated May 24, 2010; 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, accordingly, 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 DCP's Negative Declaration under 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 R2 zoning district, the proposed legalization of an enlargement to a pre-existing non-conforming one-story restaurant building (Use Group 6) which does not conform to use regulations, 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, 2011"- (9) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 3,475 sq. ft., an FAR of 0.87, and a minimum rear yard depth of 12'-0", as indicated on the BSA-approved plans;

THAT the term of the grant shall expire on March 1, 2021;

THAT signage shall comply with C1 district regulations;

THAT no garbage shall be stored in the rear yard;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all construction shall be completed and a new certificate of occupancy shall be obtained by September 1, 2012;

THAT 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 1, 2011.

182-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, Miriam Kirzner and Martin Kirzner, owners.

SUBJECT – Application September 20, 2010 – Special Permit (§73-622) for the enlargement of a single family home, contrary to floor area and open space (§23-141); side yard (§23-461) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1082 East 23rd Street, west side

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of East 23rd Street, between Avenue J and Avenue K, Block 7604, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Absent: Commissioner Hinkson.....1

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 20, 2010, acting on Department of Buildings Application No. 320205489, reads:

“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 is less than the minimum required rear yard of 30 feet.

Proposed plans are contrary to ZR 23-461 in that the proposed side yard straight-line extension is less than the 5 foot minimum side yard permitted;” 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 home, which does not comply with the zoning requirements for 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 November 16, 2010 after due notice by publication in *The City Record*, with continued hearings on December 14, 2010 and January 25, 2011, and then to decision on March 1, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 23rd Street, between Avenue J and Avenue K, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 5,000 sq. ft., and is occupied by a single-family home with a floor area of 2,534 sq. ft. (0.51 FAR); 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 2,534 sq. ft. (0.51 FAR) to 5,020 sq. ft. (1.0 FAR); the maximum permitted floor area is 2,500 sq. ft.

(0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 82 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 4’-9½” along the northern lot line (a minimum width of 5’-0” is required for each side yard); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-4” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, at hearing, the Board questioned how much of the existing home is being retained; and

WHEREAS, in response, the applicant submitted revised plans reflecting the portions of the foundation walls, first floor walls, floor joists and ceiling joists that will remain; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant provided an analysis of the FAR of homes in the surrounding area, which reflects that within one block of the site there are at least ten homes with an FAR of 1.0 or greater; and

WHEREAS, specifically, the evidence submitted by the applicant reflects that the property located to the rear of the subject site, at 1149 East 22nd Street, is occupied by a home with an FAR of 1.0, and the property located two houses to the north of the subject site, at 1070 East 23rd Street, is occupied by a home with an FAR of 1.18; and

WHEREAS, the applicant also submitted evidence reflecting that at least two homes within one block of the site have total heights which exceed the proposed total height of 38’-0”; and

WHEREAS, based upon its review of the record, 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, within an R2 zoning district, the enlargement of a single-family home, which

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does not comply with the zoning requirements for 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 September 20, 2010"-(8) sheets, "December 1, 2010"-(1) sheet and "January 19, 2011"-(3) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 5,020 sq. ft. (1.0 FAR); an open space ratio of 82 percent; a side yard with a minimum width of 8'-6" along the southern lot line; a side yard with a minimum width of 4'-9½" along the northern lot line; and a rear yard with a minimum depth of 20'-4", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 1, 2011.

187-07-BZ

APPLICANT – Dennis D. Dell'Angelo, for Michael Modatsos, owner.

SUBJECT – Application August 1, 2010 – Variance (§72-21) to permit accessory parking for an existing eating and drinking establishment, contrary to use regulations (§22-00). R3X zoning district.

PREMISES AFFECTED – 4677 Hylan Boulevard, North side of Hylan Boulevard 175.03 feet west of Arden Avenue. Block 5408, Lot 43, Borough of Staten Island.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Dennis D. Dell'Angelo.

For Opposition: Yury Gorokhovskiy.

ACTION OF THE BOARD – Laid over to March 29, 2011, at 1:30 P.M., for continued hearing.

194-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Dabes Realty Company, Incorporated, owner.

SUBJECT – Application June 17, 2009 – Variance to allow

the construction of a four story mixed use building contrary to floor area (§23-141), open space (§23-141), lot coverage (§23-141), front yard (§23-45), height (§23-631), open space used for parking (§25-64) and parking requirements (§25-23); and to allow for the enlargement of an existing commercial use contrary to §22-10. R3-2 zoning district.

PREMISES AFFECTED – 2113 Utica Avenue, 2095-211 Utica Avenue, East side of Utica Avenue between Avenue M and N, Block 7875, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Richard Lobel and Josh Rhinesmith.

ACTION OF THE BOARD – Laid over to April 5, 2011, at 1:30 P.M., for deferred decision.

304-09-BZ

APPLICANT – Stuart A. Klein, Esq. for Junius-Glenmore Development, LLC, owner; Women in Need, Inc., lessee.

SUBJECT – Application November 4, 2009 – Variance (§72-21) to allow the erection of a ten-story, mixed-use community facility (*Women In Need*) and commercial building, contrary to floor area (§42-00, §43-12 and §43-122), height and sky exposure plane (§43-43), and parking (§44-21). M1-4 zoning district.

PREMISES AFFECTED – 75-121 Junius Street, Junius Street, bounded by Glenmore Avenue and Liberty Avenue, Block 3696, Lot 1, 10, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Jay Goldstein, Tony Shitemi and Hiram Rothkrug.

For Opposition: Bill Wilkins.

ACTION OF THE BOARD – Laid over to April 5, 2011, at 1:30 P.M., for continued hearing.

90-10-BZ

APPLICANT – James Chin & Associates, LLC, for Chan Ahn, owner.

SUBJECT – Application August 14, 2010 – Variance (§72-21) to permit a house of worship (*Korean Central Presbyterian Church*), contrary to front yard (§24-34), side yard (§24-35), and rear yard (§24-36). R2A zoning district.

PREMISES AFFECTED – 58-06 Springfield Boulevard, corner of the west side of Springfield Boulevard, west north side of the Horace Harding Expressway, Block 7471, Lots 7 and 48, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: James Chin and Mindy Chin.

For Opposition: Henry Euler

ACTION OF THE BOARD – Laid over to April 12, 2011, at 1:30 P.M., for continued hearing.

MINUTES

156-10-BZ thru 164-10-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for City of New York c/o Housing Preservation Development (HPD), owner.

SUBJECT – Application August 26, 2010 – Variance (§72-21) to allow residential buildings, contrary to rear yard (§23-47) and minimum distance between windows and lot lines (§23-861) regulations. M1-2/R6A zoning district.

PREMISES AFFECTED – 1204, 1208, 1214, 1220, 1226, 1232, 1264, 1270, 1276 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue, Block 5295, Lots 4, 104, 105, 106, 107, 108, 111, 112, 113, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Adam Rothkrug and Fabiola Augustin.

ACTION OF THE BOARD – Laid over to March 29, 2011, at 1:30 P.M., for continued hearing.

165-10-BZ thru 172-10-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for City of New York c/o Housing Preservation Development (HPD), owner.

SUBJECT – Application August 26, 2010 – Variance (§72-21) to allow residential buildings, contrary to rear yard (§23-47) and minimum distance between windows and lot lines (§23-861) regulations. M1-2/R6A zoning district.

PREMISES AFFECTED – 1304, 1310, 1316, 1322, 1328, 1334, 1362, 1368 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue, Block 5300, Lots 9, 109, 110, 111, 112, 113, 115, 116, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Adam Rothkrug and Fabiola Augustin.

ACTION OF THE BOARD – Laid over to March 29, 2011, at 1:30 P.M., for continued hearing.

175-10-BZ

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

SUBJECT – Application September 1, 2010 – Special Permit (§11-411) for an Extension of Term of a previously approved Automotive Service Station (UG 16B) which expired on December 18, 2001; Extension of Time to obtain a certificate of occupancy which expired on September 21, 1994; Waiver of the Rules of Practice and Procedures. R4 zoning district.

PREMISES AFFECTED – 3400 Baychester Avenue, Northeast corner of Baychester and Tillotson Avenue, Block 5257, Lot 47, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Richard Lobel and Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner

Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

ACTION OF THE BOARD – Laid over to March 29, 2011, at 1:30 P.M., for decision, hearing closed.

183-10-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application September 20, 2010 – Variance (§72-21) for the construction of a detached two-story, two family residence, contrary to front yard (§23-45) and side yard requirements (§23-461). R5 zoning district.

PREMISES AFFECTED – 873 Belmont Avenue, aka 240 Milford Street, northwest corner of Belmont Avenue and Milford Street, Block 4024, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

ACTION OF THE BOARD – Laid over to March 29, 2011, at 1:30 P.M., for decision, hearing closed.

186-10-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for NYU Hospital Center, owner; New York University, lessee.

SUBJECT – Application September 28, 2010 – Variance (§72-21) to allow for the construction of two community facility buildings (*NYU Langone Medical Center*), contrary to rear yard (§24-36), rear yard equivalent (§24-382), height and setback (§24-522), rear yard setback (§24-552), tower coverage (§24-54), maximum permitted parking (§13-132), minimum square footage per parking space (§25-62), and curb cut requirements (§13-142). R8 zoning district.

PREMISES AFFECTED – 400-424 East 34th Street, aka 522-566 & 596-600 First Avenue, East 34th Street, Franklin D. Roosevelt Drive, East 30th Street, and First Avenue, Block 962, Lot 80, 108 & 1001-1107, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

ACTION OF THE BOARD – Laid over to March 15, 2011, at 1:30 P.M., for decision, hearing closed.

MINUTES

197-10-BZ thru 199-10-BZ

APPLICANT – Antonio S. Valenziano, AIA, for John Merolo, owner.

SUBJECT – Application October 26, 2010 – Variance (§72-21) to allow three residential buildings in a manufacturing district, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 59, 63 & 67 Fillmore Street, 491.88' west of York Avenue, Block 61, Lot 27, 29, 31, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Anthony S. Valenziano.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Negative:.....0

Absent: Commissioner Hinkson.....1

ACTION OF THE BOARD – Laid over to April 12, 2011, at 1:30 P.M., for decision, hearing closed.

227-10-BZ

APPLICANT – Eric Palatnik, P.C., for Power Test Realty Company Limited Partnership, owner.

SUBJECT – Application December 14, 2010 – Reinstatement (§11-411) of a previously approved variance permitting the operation of an automotive service station (UG 16B) (*Getty*) which expired on October 11, 2000; Amendment to legalize fuel dispensing islands; Extension of Time to obtain a certificate of occupancy which expired on November 17, 1993; Waiver of the rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 204-12 Northern Boulevard, Northern Boulevard and 204th Street. Block 7301, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Henry Euler and Christina Scherer.

ACTION OF THE BOARD – Laid over to April 12, 2011, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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March 16, 2011

DIRECTORY

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Tuesday, March 8, 2011**

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677-53-BZ	61-26/30 Fresh Meadow Lane, Queens
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103-10-BZ	1036 East 24 th Street, Brooklyn

DOCKET

New Case Filed Up to March 8, 2011

23-11-BZ

409 Fulton Street, A corner through lot on the west side of Bond Street between Fulton Street and Livingston Street., Block 159, Lot(s) 1, Borough of **Brooklyn, Community Board: 2**. Special Permit 973-36) to allow the operation of a physical culture establishment. C5-4/DB district.

24-11-BZ

44-50 East 2nd Street, North side of East 2nd Street between First Street and Second Avenues., Block 444, Lot(s) 59, Borough of **Manhattan, Community Board: 3**. C6-2A & R8B 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

MARCH 29, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 29, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

406-82-BZ

APPLICANT – Eric Palatnik, P.C., for Adolf Clause & Theodore Thomas, owner; Hendel Products, lessee.
SUBJECT – Application February 7, 2011 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Special Permit (§73-243), an eating and drinking establishment (McDonald's) with accessory drive-thru, which expired on January 22, 2009; waiver of the rules. C1-3/R5 zoning district.
PREMISES AFFECTED – 2411 86th Street, northeast corner of 24th Avenue and 86th Street, Block 6859, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #11BK

289-99-BZ

APPLICANT – Vito J. Fossella, LPEC, for Frances Gomez, owner.
SUBJECT – Application January 22, 2010 – Extension of Term of a previously granted variance (§72-21) which permitted on a site divided by zoning district boundary a parking facility accessory to a permitted use (UG16 automotive repair with accessory retail sales) which expired on December 12, 2010. C8-1/R3-1 zoning district.
PREMISES AFFECTED – 265 Hull Avenue, northeast side of Hull Avenue, 100' southeast of corner formed by the intersection of Hull Avenue and Hylan Boulevard, Block 3668, Lots 12, 13, 14, 27, 28 & 29, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEALS CALENDAR

137-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Richard & Jane O'Brien, lessees.
SUBJECT – Application August 3, 2010 – Reconstruction and enlargement of an existing single family home not fronting on a legally mapped street contrary to General City Law Section 36. R4 zoning district.
PREMISES AFFECTED – 103 Beach 217th Street, 40' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

185-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Raymond & Regina Walsh, lessees.
SUBJECT – Application September 24, 2010 – Proposed construction not fronting on a mapped street contrary to General City Law Section 36 within an R4 zoning district.
PREMISES AFFECTED – 115 Beach 216th Street, east side Beach 216th south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

12-11-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner.
SUBJECT – Application February 3, 2011 – Reconstruction and enlargement of an existing single family dwelling not fronting a mapped street contrary to General City Section 36. R4 Zoning district.
PREMISES AFFECTED – 44 Beach 221st Street, west side of Beach 221st Street, 100' north of Breezy Point Boulevard, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

MARCH 29, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 29, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

169-09-BZ

APPLICANT – Sheldon Lobel, for Saint Georges Crescent, LLC, owner.
SUBJECT – Application June 8, 2009 – Variance (§72-21) to allow a multi-family residential building, contrary to floor area (§23-145), rear yard (§23-47), height and setback (§23-633), rear setback (§23-663), minimum distance between windows and lot lines (§23-861), and maximum number of dwelling units (§23-22) regulations. R8 zoning district.
PREMISES AFFECTED – 186 Saint George's Crescent, east side of St. George's Crescent, 170' southeast of the corner formed by the intersection of Van Cortland Avenue, and Grand Concourse, Block 3312, Lot 12, Borough of Bronx.

COMMUNITY BOARD # 7BX

CALENDAR

177-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLC, for Cee Jay Real Estate Development, owner.

SUBJECT – Application September 9, 2010 – Variance (§72-21) for the construction of a detached three-story single family home contrary to open space (ZR §23-141); front yard (ZR §23-45); side yard (ZR §23-461) and location of the two parking spaces (ZR §23-622). R3A zoning district.

PREMISES AFFECTED – 8 Orange Avenue, south west corner of Decker Avenue and Orange Avenue, Block 1061, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

7-11-BZ

APPLICANT – Sheldon Lobel, P.C., for NRP LLC II, owners; Dyckman Fitness Group, LLC, lessee.

SUBJECT – Application January 26, 2011–Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Planet Fitness*) in a C4-4 zoning district.

PREMISES AFFECTED – 177 Dyckman Street, southeast corner of the intersection of Dyckman Street and Vermilyea Avenue, Block 2224, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #12M

Jeff Mulligan, Executive Director

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REGULAR MEETING TUESDAY MORNING, FEBRUARY 15, 2011 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

132-58-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms Inc., owner.

SUBJECT – Application July 9, 2010 – Extension of Term (§11-411) of a previously approved automotive service station (UG 16B) (*Gulf*) with accessory uses which expired on June 18, 2010. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 17-45 Francis Lewis Boulevard, aka 17-55 Francis Lewis Boulevard, east side of Francis Lewis Boulevard, between 17th Road and 18th Avenue, Block 4747, Lot 31, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Irving Minkin and Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for the continued use of an automobile service station with accessory uses, which expired on June 18, 2010, and for an amendment to permit limited automotive repair services on Sundays; and

WHEREAS, a public hearing was held on this application on November 23, 2010 after due notice by publication in *The City Record*, with continued hearings on January 11, 2011 and February 8, 2011, and then to decision on March 8, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends approval of this application, on condition that the hours of operation be limited to 7:00 a.m. to 7:00 p.m., and that the site be closed on Sundays; and

WHEREAS, the site is located on the east side of Francis Lewis Boulevard, between 17th Road and 18th Avenue, within a C1-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 31, 1959 when, under the subject calendar number, the Board granted a variance to

permit the premises to be occupied by a gasoline service station with accessory uses, for a term of 15 years; and

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

WHEREAS, most recently, on June 12, 2001, the grant was amended to permit a reduction in the number of pump islands from six to five and to allow a redesigning of the overhead canopy, and the term was extended for ten years from the expiration of the prior grant, to expire on June 18, 2010; 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; and

WHEREAS, the applicant also seeks an amendment to legalize Sunday hours of operation at the site for limited automotive repair services; and

WHEREAS, the Board notes that a condition of the prior grant stipulated that the hours of operation for the automotive repair service would be limited to Monday through Saturday, from 7:00 a.m. to 7:00 p.m., and closed on Sundays; and

WHEREAS, the applicant states that it complies with the hours of operation for the automotive repair service on Mondays through Saturdays, but seeks to operate the automotive repair service on Sundays from 8:00 a.m. to 6:00 p.m., with services limited to oil changes, tire repairs and rotations/changes, and New York State Inspections; and

WHEREAS, the applicant states that all work on Sundays will be conducted within the enclosed service station building, and if any vehicles require additional work their owners will be informed that the work will not commence until a certified mechanic arrives on Monday; and

WHEREAS, as to the Community Board's request that the automotive repair service remain closed on Sundays, the Board notes that the Community Board voted on an earlier iteration of the proposal which did not include a request for an amendment to allow Sunday hours of operation and an explanation of the limited nature of services that will be offered on Sundays; therefore, the requested amendment was not considered by the Community Board; and

WHEREAS, at hearing, the Board questioned whether the site is in compliance with the underlying C1 district signage regulations; and

WHEREAS, in response, the applicant submitted photographs reflecting that excess signage has been removed from the site, and submitted signage analyses indicating that the site is now in compliance with C1 district signage regulations; and

WHEREAS, at hearing, the Board raised concerns about the use of Lot 41, and directed the applicant to provide street trees and landscaping on the site; and

WHEREAS, in response, the applicant submitted a revised site plan reflecting that Lot 41 will remain a fenced-in grassed area, and reflecting the planting of street trees along 17th Road, 18th Avenue, and Francis Lewis Boulevard,

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and the addition of landscaping behind the convenience store building; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and amendment 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 March 31, 1959, so that as amended this portion of the resolution shall read: "to extend the term for ten years from the expiration of the prior grant, to expire on June 18, 2020, and to permit the noted amendment to the hours of operation on the site; on condition that all use and operations shall substantially conform to plans filed with this application marked "Received February 18, 2011"- (8) sheets; and on further condition:

THAT the term of the grant shall expire on June 18, 2020;

THAT the hours of operation for the automotive repair service shall be limited to: Monday through Saturday, from 7:00 a.m. to 7:00 p.m., and Sunday, from 8:00 a.m. to 6:00 p.m.;

THAT the Sunday operation of the automotive repair service shall be limited to oil changes, tire repairs and rotations/changes, and New York State inspections;

THAT all signage shall comply with C1 district regulations;

THAT landscaping shall be provided and maintained on the site in accordance with the BSA-approved plans;

THAT the site shall be maintained free of debris and graffiti;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by March 8, 2012;

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

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 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. 401839793 & 400479601)

Adopted by the Board of Standards and Appeals March 8, 2011.

749-65-BZ

APPLICANT – Sheldon Lobel, P.C., for Henry Koch, owner.

SUBJECT – Application October 14, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG16 Gasoline Service Station (Getty) with accessory uses which expired on November 3,

2010; Extension of Time to obtain a Certificate of Occupancy which expired on December 19, 2002; Waiver of the Rules. R3X zoning district.

PREMISES AFFECTED – 1820 Richmond Road, southeast corner of Richmond Road and Stobe Avenue, Block 3552, Lot 39, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Irving Minkin.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued use of an automotive service station, which expired on November 3, 2010, and an extension of time to obtain a certificate of occupancy, which expired on December 19, 2002; and

WHEREAS, a public hearing was held on this application on January 11, 2011, after due notice by publication in *The City Record*, with a continued hearing on February 8, 2011, and then to decision on March 8, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

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

WHEREAS, the site is located on the southeast corner of Richmond Road and Stobe Avenue, within an R3X zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 3, 1965 when, under the subject calendar number, the Board granted a variance to permit the reconstruction and rehabilitation of an automotive service station with accessory uses, for a term of 15 years; and

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

WHEREAS, most recently, on December 19, 2000, the Board granted an extension of term for ten years from the expiration of the prior grant, to expire on November 3, 2010, and permitted the construction of a new metal canopy over the existing pump islands; a condition of the grant was that a new certificate of occupancy be obtained by December 19, 2002; and

WHEREAS, the applicant now requests an additional ten-year term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board questioned what the hours of operation are at the site, and whether truck parking is permitted on the site; and

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WHEREAS, in response, the applicant states that the gasoline sales use operates Monday through Saturday, from 6:00 a.m. to 11:00 p.m., and Sunday from 6:00 a.m. to 10:00 p.m., and the automotive repair use operates Monday through Friday from 7:00 a.m. to 5:00 p.m., and Saturday from 7:00 a.m. to 12:00 p.m.; and

WHEREAS, in addition, the applicant states that the operator of the site does not permit the parking of any vehicles on the site that are not being serviced; 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 November 3, 1965, so that as amended this portion of the resolution shall read: "to extend the term for ten years from the expiration of the prior grant, to expire on November 3, 2020, and to grant an extension of time to obtain a certificate of occupancy to March 8, 2012; *on condition* that all use and operations shall substantially conform to plans filed with this application marked 'October 14, 2010'-(5) sheets; and *on further condition*:

THAT the term of the grant shall expire on November 3, 2020;

THAT the above condition shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by March 8, 2012;

THAT all conditions from the prior resolution not specifically waived by the Board 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. 520045816)

Adopted by the Board of Standards and Appeals March 8, 2011.

677-53-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for James Marchetti, owner.

SUBJECT – Application April 22, 2010 – Extension of Term (§11-411) of a Variance for the operation of a UG16 Auto Body Repair Shop (*Carriage House*) with incidental painting and spraying which expired on March 24, 2007; Extension of Time to Obtain a Certificate of Occupancy which expired on January 13, 1999; Amendment (§11-412) to enlarge the building; Waiver of the Rules. R4/C2-2 zoning district.

PREMISES AFFECTED – 61-26/30 Fresh Meadow Lane, west side of Fresh Meadow Lane, 289' northerly of the intersection with 65th Avenue, Block 6901, Lot 48, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to April 12, 2011, at 10 A.M., for continued hearing.

230-98-BZ

APPLICANT – Mitchell S. Ross, Esq., for JC's Auto Enterprises, Limited, owners.

SUBJECT – Application July 22, 2010 – Extension of Term of a previously granted Variance (§72-21) for an automotive repair shop and car sales which expired on June 22, 2010. R-5 zoning district.

PREMISES AFFECTED – 5820 Bay Parkway, northwest corner of 59th Street, Block 55508, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Mitchell Ross.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 8, 2011, at 10 A.M., for decision, hearing closed.

198-00-BZ

APPLICANT – C. Anthony LoPresti, owner.

SUBJECT – Application January 31, 2011 – Extension of Term of a Special Permit (§73-125) for the conversion of a portion of the first floor community facility to medical offices, which expired on December 12, 2010. R1-2 zoning district.

PREMISES AFFECTED – 4641 Hylan Boulevard, Hylan Boulevard and Arden Avenue, Block 5386, Lot 76, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: C. Anthony LoPresti.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 5, 2011, at 10 A.M., for decision, hearing closed.

122-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Revlation Development Incorporated, owner. Bensonhurst MRI, P.C., lessee.

SUBJECT – Application January 26, 2011 – Extension of Time to Complete Construction of a Variance (§72-21) for the enlargement of an existing medical office building and the construction of residences, which expired on February 6, 2011. R5 and C2-3/R5 zoning district.

PREMISES AFFECTED – 2671 86th Street, West 11th and

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West 12th Streets, Block 7115, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Irving Minkin.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 5, 2011, at 10 A.M., for decision, hearing closed.

215-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 92-16 95th Avenue Realty Corporation by Alfred Smith, owners. **SUBJECT** – Application February 17, 2011 – Extension of Time to obtain a Certificate of Occupancy, which expired on May 17, 2010, for a previously approved amendment (§§11-411 & 11-413) which permitted a change of use from a wholesale (Use Group 7) to a retail (Use Group 6) use on the ground floor of a three-story building; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 92-16 95th Avenue, southwest corner of 93rd Street and 95th Avenue, Block 9032, Lot 8, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 5, 2011, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

70-08-A thru 72-08-A

APPLICANT – Eric Palatnik, P.C., for TOCS Developers Incorporated, owner.

SUBJECT – Application December 17, 2010 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously-granted Common Law vesting which expired on January 13, 2011. R3A zoning district.

PREMISES AFFECTED – 215A, 215B, 215C Van Name Avenue, north of the corner formed by intersection of Van Name and Forest Avenues, Block 1194, Lot 42, 41 & 40, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previous grant to permit an extension of time to complete construction and obtain a certificate of occupancy for three detached two-family homes which the Board permitted to proceed under the common law doctrine of vested rights; and

WHEREAS, this application was heard concurrently with applications under BSA Cal. Nos. 73-08-A through 75-08-A, decided the date hereof, which also request an extension of time to complete construction and obtain a certificate of occupancy under the common law doctrine of vested rights for the site located at 345A, 345B, and 345C Van Name Avenue; and

WHEREAS, a public hearing was held on this application on February 1, after due notice by publication in *The City Record*, and then to decision on March 8, 2011; and

WHEREAS, the site was inspected by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, the subject site is located on the east side of Van Name Avenue between Forest Avenue and Netherland Avenue, within an R3A zoning district; and

WHEREAS, the subject site has a total lot area of 11,011 sq. ft.; and

WHEREAS, pursuant to a proposed subdivision, the subject site will comprise Block 1194, Tax Lot 40 (215C Van Name Avenue), Tax Lot 41 (215B Van Name Avenue) and Tax Lot 42 (215A Van Name Avenue); and

WHEREAS, the applicant proposed to construct a detached two-story, two-family dwelling on each tax lot (collectively, the “Proposed Development”); and

WHEREAS, on August 12, 2004 (the “Enactment Date”) the City Council adopted the Lower Density Growth Management Text Amendments (“LDGMA”); and

WHEREAS, New Building Permit Nos. 500705766, 500705775 and 500705784 were issued to the owner permitting the construction of the subject homes by the Department of Buildings (“DOB”) on June 29, 2004 (collectively, the “Permits”), prior to the Enactment Date; and

WHEREAS, the Proposed Development does not comply with the LDGMA regulations concerning open space, minimum distance between buildings, minimum distance between lot lines and building walls, maximum driveway grade, and parking; and

WHEREAS, the applicant represents that the Proposed Development complies with the relevant provisions of the Zoning Resolution prior to the adoption of the LDGMA text amendments; and

WHEREAS, the Board notes that the Proposed Development meets the definition of a “major development” pursuant to ZR § 11-31(c), and that construction was vested by DOB under ZR § 11-331 because the foundations for one of the homes on the site was complete as of the Enactment Date;

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and

WHEREAS, however, because construction on the site was not completed within two years of the Enactment Date, the Permits lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on March 13, 2008, halting construction of the Proposed Development; and

WHEREAS, because the Proposed Development was vested by DOB pursuant to ZR § 11-331, the developer would have been eligible to apply for an extension of time to complete construction under ZR § 11-332 within 30 days from the date the Permits lapsed; however, such an application was not filed; and

WHEREAS, because DOB did not find that work was completed within two years of the Enactment Date, and the applicant did not file an application for an extension of time to complete construction under ZR § 11-332, the applicant filed a request to continue construction pursuant to the common law doctrine of vested rights; and

WHEREAS, on January 13, 2009, the Board determined that, as of the Enactment Date, the owner had undertaken substantial construction and made substantial expenditures on the project, and that serious loss would result if the owner was denied the right to proceed under the prior zoning, such that the right to continue construction was vested under the common law doctrine of vested rights; and

WHEREAS, the Board granted the applicant two years to complete construction and obtain a certificate of occupancy, which expired on January 13, 2011; and

WHEREAS, accordingly, the applicant is now seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant states that the Building was not completed by the stipulated date due to financing delays and a 16-month delay related to the need to replace the engineering firm that was hired to update the paving plan and internal water main in order to install utilities at the site; and

WHEREAS, however, the applicant states that, since January 13, 2009, drywells have been installed at the site and the owner has expended an additional \$120,052 in construction related costs; and

WHEREAS, the Board has reviewed the evidence and has determined that an extension of time is warranted; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction and obtain certificates of occupancy; and

Therefore it is Resolved that this application to renew New Building Permit Nos. 500705766, 500705775, and 500705784, 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 building and obtain a certificate of occupancy for two years from the date of this resolution, to expire on March 8, 2013.

Adopted by the Board of Standards and Appeals, March 8, 2011.

73-08-A thru 75-08-A

APPLICANT – Eric Palatnik, P.C., for S. B. Holding, owner.

SUBJECT – Application December 17, 2010 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously-granted Common Law vesting which expired on January 13, 2011. R3-A zoning district.

PREMISES AFFECTED – 345A, 345B, 345C Van Name Avenue, northeast of the corner formed by Van Name and Forest Avenues, Block 1198, Lot 42, 43, 44, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....5

.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previous grant to permit an extension of time to complete construction and obtain a certificate of occupancy for three detached two-family homes which the Board permitted to proceed under the common law doctrine of vested rights; and

WHEREAS, this application was heard concurrently with applications under BSA Cal. Nos. 70-08-A through 72-08-A, decided the date hereof, which also request an extension of time to complete construction and obtain a certificate of occupancy under the common law doctrine of vested rights for the site located at 215A, 215B, and 215C Van Name Avenue; and

WHEREAS, a public hearing was held on this application on February 1, 2011, after due notice by publication in *The City Record*, and then to decision on March 8, 2011; and

WHEREAS, the site was inspected by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, the subject site is located on the east side of Van Name Avenue between Forest Avenue and Netherland Avenue, within an R3A zoning district; and

WHEREAS, the subject site has a total lot area of 11,009 sq. ft.; and

WHEREAS, pursuant to a proposed subdivision, the subject site will comprise Block 1198, Tax Lot 42 (345A Van Name Avenue), Tax Lot 43 (345B Van Name Avenue) and Tax Lot 44 (345C Van Name Avenue); and

WHEREAS, the applicant proposed to construct a detached two-story, two-family dwelling on each tax lot (collectively, the “Proposed Development”); and

WHEREAS, on August 12, 2004 (the “Enactment Date”) the City Council adopted the Lower Density Growth Management Text Amendments (“LDGMA”); and

WHEREAS, New Building Permit Nos. 500706364, 500706373, and 500706382 were issued to the owner permitting the construction of the subject homes by the

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Department of Buildings (“DOB”) on June 29, 2004 (collectively, the “Permits”), prior to the Enactment Date; and

WHEREAS, the Proposed Development does not comply with the LDGMA regulations concerning open space, minimum distance between buildings, minimum distance between lot lines and building walls, maximum driveway grade, and parking; and

WHEREAS, the applicant represents that the Proposed Development complies with the relevant provisions of the Zoning Resolution prior to the adoption of the LDGMA text amendments; and

WHEREAS, the Board notes that the Proposed Development meets the definition of a “major development” pursuant to ZR § 11-31(c), and that construction was vested by DOB under ZR § 11-331 because the foundations for one of the homes on the site was complete as of the Enactment Date; and

WHEREAS, however, because construction on the site was not completed within two years of the Enactment Date, the Permits lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on March 13, 2008, halting construction of the Proposed Development; and

WHEREAS, because the Proposed Development was vested by DOB pursuant to ZR § 11-331, the developer would have been eligible to apply for an extension of time to complete construction under ZR § 11-332 within 30 days from the date the Permits lapsed; however, such an application was not filed; and

WHEREAS, because DOB did not find that work was completed within two years of the Enactment Date, and the applicant did not file an application for an extension of time to complete construction under ZR § 11-332, the applicant filed a request to continue construction pursuant to the common law doctrine of vested rights; and

WHEREAS, on January 13, 2009, the Board determined that, as of the Enactment Date, the owner had undertaken substantial construction and made substantial expenditures on the project, and that serious loss would result if the owner was denied the right to proceed under the prior zoning, such that the right to continue construction was vested under the common law doctrine of vested rights; and

WHEREAS, the Board granted the applicant two years to complete construction and obtain a certificate of occupancy, which expired on January 13, 2011; and

WHEREAS, accordingly, the applicant is now seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant states that the Building was not completed by the stipulated date due to financing delays and a 16-month delay related to the need to replace the engineering firm that was hired to update the paving plan and internal water main in order to install utilities at the site; and

WHEREAS, however, the applicant states that, since January 13, 2009, drywells have been installed at the site and the interior of the home at 345A Van Name Avenue has been finished, and the owner has expended an additional \$171,204 in construction related costs; and

WHEREAS, the Board has reviewed the evidence and has determined that an extension of time is warranted; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction and obtain certificates of occupancy; and

Therefore it is Resolved that this application to renew New Building Permit Nos. 500706364, 500706373, and 500706382, 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 building and obtain a certificate of occupancy for two years from the date of this resolution, to expire on March 8, 2013.

Adopted by the Board of Standards and Appeals, March 8, 2011.

215-10-A

APPLICANT – James Chin et al, for Saint Mary’s Hospital for Children, owner.

SUBJECT – Application November 20, 2010 – An appeal challenging the issuance of permits and approvals for the expansion of a community facility (*St. Mary’s Hospital*) related to use (§22-14), floor area (§24-111) and setbacks (§24-34). R2A Zoning District.

PREMISES AFFECTED – 29-01 216th Street, west of Cross Island Expressway, east of intersection of 29th Avenue and 216th Street, Block 6059, Lot 1, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Albert K. Butzel

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Final Determination dated October 12, 2010 by the Queens Borough Commissioner of the Department of Buildings (“DOB”) (the “Final Determination”) addressed to the Appellant’s counsel, with respect to Alteration Application No. 420042689; and

WHEREAS, the appeal is brought on behalf of four property owners whose properties abut the subject site, and the Weeks Woodlands Association (the “Appellant” or “Appellants”), and who oppose the construction of the proposed enlargement to St. Mary’s Hospital for Children in Bayside (“St. Mary’s”); and

WHEREAS, the Final Determination states, in pertinent part:

Your letters claim the permit is improper for the following reasons: 1) it authorizes floor area that exceeds the maximum floor area ratio established by New York City Zoning Resolution (“ZR”) Section 24-111(a); 2) the proposed use should be

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characterized as a Use Group 4 ambulatory health care facility which is a prohibited use in the zoning district pursuant to ZR § 22-14; and 3) the eastern wall of the St. Mary's building does not comply with front yard requirements under ZR § 24-34 and maximum front wall height and setbacks under § 24-521 that are triggered by the adjoining Cross Island Parkway, which is a "street" as defined by the ZR. Your letters do not present a basis for revoking the permit.

Contrary to your claim that ZR § 24-111(a) requires the maximum floor area ratio¹ ("FAR") for the St. Mary's building to be .5, this provision is not applicable. ZR 24-11 establishes the maximum FAR of 1 for the St. Mary's building, a community facility building in the R2 district. The permit properly allows an enlargement of the St. Mary's building that brings the FAR to .77 in accordance with ZR § 24-11. Although ZR § 24-11 also states that the FAR specified under that section would not apply. The last sentence of ZR § 24-111(a) provides that buildings are not subject to this section if plans were filed with the Department prior to November 15, 1972, including any subsequent amendments thereof. According to Certificate of Occupancy No. 79089 dated January 23, 1952, plans for the St. Mary's building were filed in 1948. A copy of the CO is attached. Therefore, ZR § 24-11 establishes the 1 FAR for the St. Mary's building and the permit properly allows the building to enlarge up to .77 FAR.

Your claim that the use is improperly characterized as a Use Group 4 non-profit hospital, and should be characterized as a prohibited Use Group 4 ambulatory health care facility because the enlargement does not add sleeping accommodations for admitted patients, is incorrect. The current certificate of occupancy for the premises, Certificate of Occupancy No. 4P0004012, authorizes Use Group 4 hospital and accessory uses in the cellar through 4th floors of the St. Mary's building. The permit application proposes an enlargement of the Use Group 4 hospital, which is a permitted use in the R2 district.

According to the plans for the enlarged portion, the basement contains laboratories and treatment rooms, and sleeping/recovery rooms on the 1st, 2nd, 3rd and 4th floor. Therefore, the permit correctly authorizes a Use Group 4 hospital since the proposed uses serve admitted patients.

Finally, your claim that the Cross Island Parkway

adjoining the eastern boundary of the St. Mary's property is a "street" as defined by ZR §12-10 that triggers front yard requirements under ZR § 24-34 and maximum front wall height and setbacks under § 24-521 along the eastern side of the St. Mary's building, is incorrect. The roadway portion of the Cross Island Parkway meets the ZR § 12-10 definition of both a "public park" and a "street," however, the portion of the Cross Island Parkway that adjoins St. Mary's property is a landscaped area and is not a "street." ZR § 12-10 defines "public park," in part, as "any publicly owned park...within the jurisdiction and control of the Commissioner of Parks..." A letter is attached dated May 5, 2010 from the Department of Parks and Recreation ("DPR") that identifies the Cross Island Parkway between the Whitestone Bridge Approach and the Southern Parkway as a public park under DPR's jurisdiction. The ZR defines a "street" in part, as a way shown on the City Map. The landscaped area abutting the St. Mary's property is not a way or means of approach, but rather functions as a buffer between the roadway of the Cross Island Parkway and neighboring properties. Therefore, the eastern boundary of the St. Mary's property abuts park land and the permit is proper in that it does not subject the eastern portion of St. Mary's building to height and setback requirements that would apply if this portion of the building fronted on a street.

WHEREAS, a public hearing was held on this appeal on February 1, 2011, after due notice by publication in *The City Record*, and then to decision on March 8, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the individual property owners prosecuting the appeal provided oral and written testimony in support of the appeal; and

WHEREAS, New York State Senator Tony Avella provided written testimony in support of the appeal; and

WHEREAS, City Council Member Daniel J. Halloran, III provided written testimony in opposition to the appeal; and

WHEREAS, Queens Borough President Helen Marshall provided written testimony in opposition to the appeal; and

WHEREAS, St. Mary's, the owner of the subject site, provided written and oral testimony in opposition to the appeal; and

WHEREAS, DOB, Appellant, and St. Mary's have been represented by counsel throughout the appeal; and

PROCEDURAL HISTORY

WHEREAS, the appeal concerns the construction of a four-story horizontal addition with 90,000 sq. ft. of floor area to abut the east side of the existing building at St. Mary's Hospital for Children, within an R2A zoning district; and

WHEREAS, by letter dated October 6, 2008, St. Mary's

¹ (note copied from the original) ZR § 12-10 defines "floor area ratio" as "the total *floor area* on a *zoning lot*, divided by the *lot area* of that *zoning lot*." Words in italics are terms defined in the ZR.

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sought confirmation from DOB that the proposal could be built to an FAR of 0.77, rather than be limited to 0.5, based on an exception set forth at ZR § 24-111(a); and

WHEREAS, on October 6, 2008, DOB denied the request and stated that 0.5 FAR was the maximum permitted for the proposal; and

WHEREAS, after a supplemental inquiry from St. Mary's, by determination dated October 20, 2008, DOB stated that 1.0 FAR would be permitted since the existing building was built prior to November 15, 1972; and

WHEREAS, on May 10, 2010, St. Mary's filed a Zoning Resolution Determination Form (ZRD1) requesting a determination from DOB that the Cross Island Parkway be considered a public park and therefore that height and setback regulations associated with street frontage not apply to the proposal; and

WHEREAS, on May 13, 2010, DOB issued its determination that the Cross Island Parkway¹ adjacent to the eastern lot line is parkland (the "Green Area") and St. Mary's land running immediately parallel to the parkway is a side yard, rather than a front yard, for zoning purposes; and

WHEREAS, on July 12, 2010, DOB issued an alteration permit in connection with Alteration Application No. 420042689 for the proposed four-story horizontal enlargement; and

WHEREAS, by letters dated August 10, August 19, and September 21, 2010, the Appellants requested that DOB revoke the permits and reject the plans, which they found to be in violation of bulk and use regulations; and

WHEREAS, on August 18, 2010, by Order to Show Cause in Supreme Court, New York County, the Appellants moved for a temporary restraining order (TRO) and a preliminary injunction to stop construction at the site²; and

WHEREAS, on August 20, 2010, the court denied the Appellant's request for a TRO; and

WHEREAS, DOB moved to dismiss the case on the basis that Appellant failed to exhaust its administrative remedies by failing to appeal DOB's determination to the Board; and

WHEREAS, the Appellant initially conceded that all three zoning questions were within the scope of the administrative exhaustion requirement; and

WHEREAS, on October 12, 2010, DOB issued its Final Determination in response to the Appellant, which states its refusal to revoke the permits or reject the plans and sets forth its conclusions on the three zoning questions; and

WHEREAS, on October 29, 2010, the Appellant made a request to the court to withdraw its concession concerning administrative exhaustion, arguing that where an issue of law is involved, as in the interpretation of ZR § 24-111(a),

administrative exhaustion is not required; and

WHEREAS, DOB objected to the Appellant's change in position and maintained its own position that the Appellant be required to exhaust administrative remedies for all of the questions against DOB; and

WHEREAS, on January 5, 2011, the court denied the Appellant's request for a preliminary injunction and granted DOB's request to dismiss the case for failure to exhaust administrative remedies for two of the three questions; as to the third question – the applicability of ZR § 24-111(a) – the court agreed with the Appellant and determined that it was a question purely of law and "the applicability of the grandfathering provision is to be decided by the court"; and

DISCUSSION

WHEREAS, the Appellant seeks the revocation of the permit on the three following grounds: (1) it authorizes floor area that exceeds the maximum floor area ratio established by ZR § 24-111(a); (2) the eastern wall of St. Mary's proposal does not comply with front yard requirements under ZR § 24-34 and maximum front wall height and setbacks under ZR § 24-521 that are triggered by the adjacent Cross Island Parkway, which is a "street" as defined by the ZR; and (3) the proposed use should be characterized as a Use Group 4 ambulatory health care facility which is a prohibited use in the zoning district pursuant to ZR § 22-14; and

A. Community Facility Floor Area Regulations Pursuant to ZR § 24-111(a)

WHEREAS, the Appellant contends that pursuant to ZR § 24-111(a), the maximum permitted FAR for a community facility in an R2A zoning district is the same as that permitted for residential use - 0.5 FAR - and that since the alteration was proposed in 2008, and not prior to November 15, 1972, the grandfathering exception is not applicable; and

WHEREAS, the relevant provision is as follows:

ZR § 24-111 - Maximum floor area ratio for certain community facility uses

R1 R2

(a) In the districts indicated, for any #zoning lot# containing #community facility uses# . . . the maximum #floor area ratio# shall not exceed the #floor area# permitted for #residential uses# by the applicable district regulations. The provisions of this paragraph shall not apply to #buildings# for which plans were filed with the Department of Buildings prior to November 15, 1972, including any subsequent amendments thereof; and

WHEREAS, the Appellant asserts that the exception clause should be construed narrowly and, thus, would only apply to applications that had already been filed by November 15, 1972; and

WHEREAS, as reflected in the Final Determination, DOB disagrees with the Appellant's conclusion and finds that an amendment to the hospital plans is within the exception to the FAR limit and thus, the new building could reach a maximum FAR of 1.0; and

WHEREAS, however, DOB takes the position that, in light of the court's January 2011 decision, the question is properly before the court and urges the Board not to consider it;

¹ DOB's determination erroneously referenced the Grand Central Parkway, rather than the Cross Island Parkway. Subsequent communication from DOB clarifies that the intent was to identify the Cross Island Parkway.

² See Matter of Weeks Woodlands et al. v. Dormitory Authority of the State of New York et al., Sup Ct. New York County, Index No. 110502/10.

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accordingly, DOB has not submitted any analysis of the ZR § 24-111 question within the context of the subject appeal; and

WHEREAS, St. Mary's concurs with DOB that the question of ZR § 24-111 is now properly before the court and the Board must defer to the court; however, in the alternate, St. Mary's provided its analysis of the ZR § 24-111 question and its conclusion that the exception provision applies to its plans since the original building plans were filed with DOB prior to November 15, 1972 and the proposal reflects an amendment of those plans; and

WHEREAS, as noted above, in the course of the parallel litigation, the City argued that all three of the Appellant's zoning issues were subject to the rule that the Appellant exhaust its administrative remedies and first file an appeal before the Board before seeking a remedy in court; and

WHEREAS, the Appellant originally agreed that all matters were properly before the Board, but ultimately (it explained to the Board, to try to obtain a decision on the merits and avoid the need to post a bond) presented the argument that the ZR § 24-111 question was purely a matter of law and an exception to the administrative exhaustion requirement; and

WHEREAS, the Board has determined that it will not analyze the ZR § 24-111(a) question for reasons including the following: (1) the matter was first raised and argued, preliminarily, in the context of an ongoing court proceeding in which the Appellant asserted that the question was properly before the court, (2) the court granted the Appellant's request and took jurisdiction of the matter before the case was even before the Board for consideration, (3) DOB and St. Mary's, who are defendants in the litigation and initially requested to have the Appellant first appeal the matter before the Board, now defer to the court and find that the court is the appropriate forum for the analysis of ZR § 24-111(a), given the January 2011 decision, which states that the court will decide the question; and (4) the interest of judicial economy disfavors two bodies hearing and determining the same question at the same time; and

WHEREAS, however, the Board does not adopt the court's determination that the interpretation of ZR § 24-111 is purely a question of law; and

WHEREAS, similarly, the Board does not adopt St. Mary's position that the Board is prohibited from acting on the ZR § 24-111 question since it is now before the court; and

WHEREAS, the Board notes that within the review of a request for a preliminary injunction, the court determined that the Appellant was not required to exhaust its administrative remedies on one of the three questions; and

WHEREAS, the Board notes that there is a distinction between an exception to the administrative exhaustion requirement and the court determining that the Board lacks jurisdiction; and

WHEREAS, the Board concludes that it has concurrent jurisdiction over the ZR § 24-111 question and notes that the court's decision was limited to whether a preliminary injunction to stop construction was appropriate (denied) and whether the Appellant was required to appeal all three questions to the Board prior to pursuing the matters in court (denied in part, granted in part); and

WHEREAS, the Board finds that the court did not state that the Board did not have jurisdiction over the question, nor did it say that it had exclusive jurisdiction over the question, rather, the court simply stated that it would decide the matter; and

WHEREAS, the Appellant submitted supplemental arguments to support its position that the Board should hear the ZR § 24-111(a) question, primarily that (1) the Appellant should not be penalized for first filing an action in court to try to stop construction, (2) judicial economy is supported by the Board hearing all three matters at once, and (3) the Board is the appropriate body to evaluate the zoning question; and

WHEREAS, the Board is not persuaded by the Appellant's supplemental arguments and maintains its position that the court, which took jurisdiction over the ZR § 24-111(a) question, but not the other two zoning questions, before the Board's public hearing process began, should continue sole review of the question, rather than have an administrative body and the court review it contemporaneously; and

WHEREAS, the Board notes that its position is not based on an interest in being punitive or in a concern that the Board might not agree with the court, as the Appellant contends; and

WHEREAS, the Board notes that the court is the body that reviews the Board's decisions and, thus, having the court review the question in the first instance and potentially also review the Board's determination is inconsistent with the principles of judicial economy; and

WHEREAS, the Board adds that the Appellant will have the opportunity to set forth its position in court and to appeal any decision not in its favor in that venue, thus, an opportunity for a thorough prosecution of the ZR § 24-111 question is not threatened; and

WHEREAS, lastly, the Board's evaluation of whether or not to hear a matter is not guided by a party's explanation of its strategy in parallel litigation; and

WHEREAS, accordingly, the Board will not act on the question of whether DOB has appropriately interpreted ZR § 24-111(a); and

B. The Required Setback at St. Mary's Eastern Lot Line

WHEREAS, the Appellant asserts that the proposal does not comply with the setback requirements at the eastern boundary of the site nearest to the Cross Island Parkway; and

WHEREAS, specifically, the Appellant states that the site's eastern boundary is a front lot line, because the Cross Island Parkway is a "street," as defined by the ZR and, thus the front yard and front setback regulations, set forth at ZR §§ 24-34 (Minimum Required Front Yards) and 24-521 (Front Setbacks in Districts Where Front Yards Are Required) must be followed; and

WHEREAS, ZR § 24-34 requires that a front yard with a minimum depth of 15 feet be provided for lots within R1 zoning districts and ZR § 24-521 requires that above a building height of 25 feet, the building must be set back at a ratio of 1 to 1 (vertical distance to horizontal distance); and

WHEREAS, the relevant definitions set forth at ZR § 12-10 are, in relevant part:

Public park

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A "public park" is any publicly-owned park, playground, beach, parkway, or roadway within the jurisdiction and control of the Commissioner of Parks, except for park strips or malls in a #street# the roadways of which are not within the Commissioner's jurisdiction and control.

* * *

Street

A "street" is:

(a) a way shown on the City Map; or
(b) a way designed or intended for general public use, connecting two ways shown on the City Map, that:

(1) performs the functions usually associated with a way shown on the City Map;
(2) is at least 50 feet in width throughout its entire length; and
(3) is covenanted by its owner to remain open and unobstructed throughout the life of any #building# or #use# that depends thereon to satisfy any requirement of this Resolution; or
(c) any other open area intended for general public use and providing a principal means of approach for vehicles or pedestrians from a way shown on the City Map to a #building or other structure#, that:

(1) performs the functions usually associated with a way shown on the City Map;
(2) is at least 50 feet in width throughout its entire length;
(3) is approved by the City Planning Commission as a "street" to satisfy any requirement of this Resolution; and
(4) is covenanted by its owner to remain open and unobstructed throughout the life of any #building# or #use# that depends thereon to satisfy any requirement of this Resolution; or
(d) any other public way that on December 15, 1961, was performing the functions usually associated with a way shown on the City Map; or
(e) a #covered pedestrian space# that directly links two parallel or substantially parallel ways shown on the City Map . . . ; and

WHEREAS, the Appellant objects to DOB's determination that the eastern boundary is a side lot line and that the proposal with a yard width of 35 feet and a height of 71 feet without any setback is permitted because the setbacks from the eastern lot line must be determined by treating the eastern boundary as a front lot line; and

WHEREAS, the Appellant notes that DOB initially identified the eastern boundary line as a front lot line and found the proposal to be non-complying with the setback requirements; and

WHEREAS, the Appellant notes that after St. Mary's provided additional information to DOB, which asserted that the area between the roadway and St. Mary's lot line is a public park as defined by ZR § 12-10, DOB accepted St. Mary's arguments and reversed its position on the setback

requirements; and

WHEREAS, the Appellant asserts that DOB's current interpretation is erroneous because (1) the Cross Island Parkway is a "street," as defined at ZR § 12-10, comprising a roadway and the adjacent Green Area; (2) the Green Area is not a "public park," as defined at ZR § 12-10; (3) even if the Green Area were a "public park," it is also part of the "street" which consists of all land within the property lines defining the parkway; and (4) the principle set forth at ZR § 11-22 that whenever there are conflicting regulations in the ZR, the more restrictive controls, leads to the application of the front lot line regulations since they are more restrictive than side lot line regulations; and

1. The Definition of Street

WHEREAS, the Appellant asserts that the entire Cross Island Parkway, from property line to property line, is a street, as defined by the ZR; and

WHEREAS, the Appellant relies on the following subsections of the ZR § 12-10 definition of street: (a) "a way shown on the City Map" (in conjunction with a dictionary definition of "way" as a "passage, path, road, or street") and concludes that a parkway is a "way" and it is on the City Map, so therefore it is a street; and

WHEREAS, the Appellant also looks to subsection (c) which states that a street may consist of "open area intended for general public use" including vehicular and pedestrian use; and finally, the Appellant refers to subsection (e) which includes "a covered pedestrian space" for the proposition that space for purposes other than vehicular use are contemplated in the definition of street; and

WHEREAS, the Appellant also asserts that the law is clear that a parkway – a roadway and landscaped open space – is a unified whole, all of which is a street; and

WHEREAS, the Appellant refers to multiple sources outside of the ZR to support its argument that the Green Area should be classified as a street; these sources include: (1) New York City's Administrative Code (AC) §§ 1-112 and 19-101; (2) New York State's Vehicle and Traffic Law (VTL); (3) New York State case law (Lyman v. Village of Potsdam, 228 N.Y. (1920); Kupelian v. Andrews, 233 N.Y. 278 (1922); and People v. Westchester County, 282 N.Y.224 (1940); and (4) the City Map; and

WHEREAS, the Appellant notes that (1) the definition of street at AC § 1-112 subsection (13) includes "public street, avenue, road, alley, lane, highway, boulevard, concourse, parkway, driveway, culvert, sidewalk, crosswalk, boardwalk, viaduct, square or place, except marginal streets;" (2) the Department of Transportation's definition of street at AC § 19-101 references AC § 1-112; (3) the VTL identifies the Cross Island Parkway as an arterial highway; and (4) the City Map's heavy black lines at the outer eastern and western boundaries of the parkway define the street, in contrast to lighter lines, which identify the roadway; and

WHEREAS, as to the case law, the Appellant cites to (1) Lyman for the principle that a street consists of a roadway, grass alongside it, and the sidewalk, (2) Kupelian for the principle that a parkway includes the land at its borders, and (3) Westchester County for the principle that

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landscaping cannot transform a highway into a park; and

WHEREAS, the Appellant asserts that in other instances, DOB takes the position that the street includes all land lying between adjacent property lines, including sidewalks, landscaped center malls, or landscaped strips at the edge of the street; and

WHEREAS, accordingly, the Appellant concludes that the Cross Island Parkway is a street, which includes the surrounding landscape, from property line to property line; and

2. The Definition of Park

WHEREAS, the Appellant asserts that the Green Area is not a public park because it is not within the Parks Department's jurisdiction and control as specified at ZR § 12-10; and

WHEREAS, the Appellant rejects the letter from the Parks Department, submitted by St. Mary's, on the question of jurisdiction because it does not indicate that it has *control* over the parkway, as required by the ZR definition, but only *jurisdiction* and *management*; and

3. The Result if the Green Area is a Street and a Park

WHEREAS, in the alternate, the Appellant asserts that if the Green Area is found to be a public park, then DOB should apply ZR § 11-22 (Applications of Overlapping Regulations) which states that

Whenever any provision of this Resolution and any other provisions of law, whether set forth in this Resolution or in any other law, ordinance or resolution of any kind, impose overlapping or contradictory regulations over . . . the #use# or #bulk# of #buildings or other structures# . . . that provision which is more restrictive or imposes higher standards or requirements shall govern; and

WHEREAS, the Appellant asserts that if the Green Area can be defined as a street and a park, ZR § 11-22 requires that the more restrictive regulation apply, which it finds to be the street regulations; and

WHEREAS, the Appellant contrasts (1) the applicable provisions if the Green Area is a park: ZR § 24-35 (Minimum Required Side Yards) requirement for two side yards of eight feet each and the ability to reach the maximum allowable height without a setback to (2) the applicable provisions if the Green Area is a street: ZR § 24-34 (Minimum Required Front Yards) which requires an initial setback of 15 feet and then ZR § 24-521, which imposes a setback by the sky exposure plane beginning at a height of 25 feet; and

4. DOB's and St. Mary's Interpretations

WHEREAS, DOB asserts that (1) the roadway portion of the Cross Island Parkway meets the ZR § 12-10 definitions of "public park" and "street" and (2) the Green Area is only a "public park" and not a "street;" and

WHEREAS, DOB relies on a letter from the Parks Department which identifies the Cross Island Parkway between the Whitestone Bridge Approach and the Southern Parkway as a public park under its jurisdiction; and

WHEREAS, DOB does not find that the definition of

"street," in part, as a way shown on the City Map and an open area that provides a means of approach for vehicles and pedestrians as encompassing the Green Area that is neither (1) within the street bed (like a park strip or mall) nor (2) a means of approach for vehicles or pedestrians; and

WHEREAS, DOB notes that the Green Area is not part of the way since it is not a path for vehicles or pedestrians, so it is only a public park; and

WHEREAS, DOB also states that it has consulted with the Borough President's office on how to interpret the City Map since the map's legend does not identify how street lines on the Cross Island Parkway are represented and the Borough President's Office interprets the subject portion of the City Map as indicating a street within solid black boundary lines and a separate landscaped park area that is not a street, marked by cross-hatched boundary lines; St. Mary's submitted a letter into the record from the Borough President's Office which states that "the cross-hatching line that is shown on the Queens Borough President's Map No. 3250 directly to the east of Block 6059, Lot 1 indicates the symbol for a park line;" and

WHEREAS, DOB relies on the Parks Department's letter to conclude that the Green Area is identified as and operates as a park and asserts that, because the ZR definitions of street and public park are clear, it is not appropriate to consult outside sources such as the AC or case law, which are irrelevant; and

WHEREAS, St. Mary's relies on the definitions of street and public park set forth in ZR § 12-10 and concludes that the Cross Island Parkway meets the definition of park, but not street; and

WHEREAS, St. Mary's also concurs with DOB in its acceptance of (1) the Parks Department's statement that the Green Area is within its jurisdiction and (2) the Borough President's Office's, who oversees the City Map, in its interpretation of the cross-hatching as reflecting park area, rather than a component of the street; and

WHEREAS, St. Mary's submitted the 1939 acquisition record of the Cross Island Parkway, which reflects its purpose as for parkland, in further support that the Parks Department has jurisdiction over the Green Area and recognizes it as a park; and

WHEREAS, St. Mary's asserts that because the Green Area is a park and not a street, there is no reason to discuss the overlapping regulations principle set forth at ZR § 11-22; but, in the event ZR § 11-22 were to apply, St. Mary's contends that the zoning regulations associated with parks are exceedingly restrictive; and

C. The Use Classification for St. Mary's Hospital for Children

WHEREAS, the Appellant asserts that the proposed use should be classified as an ambulatory diagnostic or treatment health care use, which is not permitted in the subject zoning district, pursuant to ZR § 22-14 (Use Regulations); and

WHEREAS, specifically, the Appellant asserts that a significant portion of the existing use is ambulatory diagnostic or treatment, which is not permitted in the R2A zoning district and any expansion of the non-conforming use

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is in violation of ZR § 52-40 (Enlargement of Non-Conforming Uses), which addresses expansion of existing non-conforming uses; and

WHEREAS, the Appellant asserts that St. Mary's increased ambulatory programs have brought increased traffic and are not compatible with the neighborhood; and

WHEREAS, DOB states that St. Mary's existing facility has been identified as and used as a hospital since 1952, as reflected on its certificate of occupancy, which includes Use Group 4 hospital and accessory uses in the cellar through fourth floors; and

WHEREAS, DOB accepts that the proposed enlargement of the Use Group 4 hospital is consistent with the approved conforming use, as reflected on the proposed plans for a laboratory, treatment rooms, work rooms, and patient rooms; and

WHEREAS, St. Mary's states that hospital is not defined in the ZR, but that ambulatory care facility is and that it excludes facilities with admitted patients and beds; and

WHEREAS, St. Mary's states that it intends to maintain the existing number of beds in the hospital, but to move the majority of patients from existing four-bed rooms to single or double rooms; to create a rehabilitation wing; to create a permanent space for the public school that operates for St. Mary's in-patients; and to modernize the building infrastructure; and

WHEREAS, St. Mary's states that it will function as and provide the services of a modern hospital; and

CONCLUSION

WHEREAS, as to the Green Area question, the Board is not persuaded by the Appellant's assertions that it is a component of the street and finds that DOB was correct to identify it as a park based primarily on (1) the City Map, (2) the definition of street, and (3) recognition of the Green Area as a park; and

WHEREAS, specifically, the Board agrees with DOB, as informed by the Borough President's Office, in giving meaning to the map's cross-hatching along the Green Area's edge and accepts that it distinguishes the Green Area from the adjacent properties and the street; and

WHEREAS, the Board finds that the Green Area does not fit within the ZR definition of street in that it (1) can be distinguished from the roadway on the City Map; (2) is not part of the actual "way" or path for travel; and (3) does not provide an approach for vehicles and pedestrians; and

WHEREAS, the Board finds that the Green Area, which neither serves as a way for vehicle or pedestrian travellers nor provides access to the Cross Island Parkway roadway or any other, is therefore not part of the "way" such as a sidewalk along a roadway might be; and

WHEREAS, the Board accepts the Parks Department's letter stating that the Green Area is "mapped parkland/landscaped areas situated along the Cross Island Parkway" and under its jurisdiction and management over the Green Area and does not identify any conflict between the Parks Department's letter and the ZR definition of public park; the Board also notes that public Parks Department information identifies the Cross Island Parkway as part of

the park system; and

WHEREAS, in response to the Appellant's references to statutory definitions and case law, the Board notes that it is not appropriate to import definitions from other sources, which may serve different purposes unrelated to zoning, onto ZR definitions; and

WHEREAS, that said, the Board distinguishes the Appellant's three cited cases on the subject of the street/park issue; first, the Board notes that none of the cases is a New York City case and none has a relevant context; even if the cases were from New York City, they date from 1920, 1922, and 1940, prior to the 1961 adoption of the current ZR and the definitions at issue (the 1916 ZR did not define street or park); and

WHEREAS, additionally, of the three cases, the Board notes that only Kupelian, which relies on the dictionary definition of parkway, really addresses the question before the Board in any meaningful way; in that case, the court decided that there was a distinction between a park and the green strips along a parkway, but that was in another jurisdiction, which is not subject to the City Map, the New York City Parks Department system, or the ZR and the court did not examine city maps or consult the body that oversaw the green strips in Syracuse, where the case is set; and

WHEREAS, the Board agrees with DOB and St. Mary's that the Green Area is a public park and not a street, so it is not necessary to turn to ZR § 11-22 and the discussion of overlapping provisions; and

WHEREAS, additionally, the Board finds that the Appellant's reliance on ZR § 11-22 for the conclusion that the front lot line regulations, rather than the side lot line regulations, should be applied is misplaced since the Board does not agree that ZR § 11-22 is intended to clarify the subject question, which is one of ZR definitions, not a conflict of rules and regulations, as contemplated by ZR § 11-22; and

WHEREAS, the Board does not find the question of whether the Green Area is a street or a public park to be an overlapping regulation, but rather a statutory interpretation question; and

WHEREAS, as to whether DOB was correct in accepting the proposal as the enlargement of a Use Group 4 hospital rather than the expansion of a pre-existing non-conforming ambulatory diagnostic facility, the Board agrees with DOB and St. Mary's and finds that the proposed hospital with a combination of in-patient and out-patient programs is consistent with a modern hospital use; and

WHEREAS, finally, the Board does not find that the Appellant's evidence about the percentages of in-patient and out-patient activities and the amount of income associated with each program supports its position that the hospital use was an improper designation; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Queens Borough Commissioner, dated October 12, 2010, stating that the St. Mary's proposal complies with all relevant zoning regulations, is hereby denied.

Adopted by the Board of Standards and Appeals, March

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8, 2011.

**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 8, 2011
1:30 P.M.**

837-85-A

APPLICANT – Angelo F. Liarkos, R.A., for Cesar A. Linares, D.D.S., owner.

SUBJECT – Application December 23, 2010 – Extension of term to allow the continued operation of a medical office (UG4) in an existing frame structure which expired on December 17, 2010. R2 Zoning District.

PREMISES AFFECTED – 166-18 73rd Avenue, southwest corner of 73rd Avenue and 167th Street, Block 6974, Lot 19, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Angelo F. Liarkos.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 5, 2011, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

35-10-BZ

APPLICATION – Sheldon Lobel, PC for Yuriy Pirov, owner.

SUBJECT – Application March 22, 2010 – Variance (§72-21) to permit the legalization of an existing synagogue (*Congregation Torah Haim Ohel Sara*), contrary to front yard (§24-34), side yard (§24-35) and rear yard (§24-36). R4 zoning district.

PREMISES AFFECTED – 144-11 77th Avenue, approximately 65 feet east of the northeast corner of Main Street and 77th Avenue. Block 6667, Lot 45, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Nora Martins.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated November 9, 2010, acting on Department of Buildings Application No. 420113308 reads, in pertinent part:

- “1. Building does not provide the minimum side yard requirements pursuant to ZR Sec. 24-35.
2. Building does not provide the minimum rear yard requirements as per ZR Sec. 24-36.
3. Building does not provide the minimum front yard requirements as per ZR Sec. 24-34.
4. Building requests a waiver of minimum parking requirements as per ZR Sec. 25-31;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R4 zoning district, the legalization of a three-story synagogue (Use Group 4), which does not comply with the zoning requirements for side yards, rear yard, front yard, and parking for community facilities, contrary to ZR §§ 24-35, 24-36, 24-34 and 25-31; and

WHEREAS, a public hearing was held on this application on August 24, 2010, after due notice by publication in *The City Record*, with continued hearings on October 5, 2010, November 9, 2010, and February 1, 2011.,

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and then to decision on March 8, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Queens, recommends disapproval of this application; and

WHEREAS, this application is being brought on behalf of Congregation Torath Haim Ohel Sara, a non-profit religious entity (the "Congregation"); and

WHEREAS, the subject site is located on the north side of 77th Avenue between Main Street and 147th Street, within an R4 zoning district; and

WHEREAS, the site has 40 feet of frontage on 77th Avenue, a depth of 100 feet, and a lot area of 4,000 sq. ft.; and

WHEREAS, the subject site is currently occupied by a three-story synagogue, which the applicant proposes to legalize; and

WHEREAS, the new building provides for a three-story synagogue with the following parameters: a floor area of 7,265 sq. ft. (1.84 FAR); a side yard with a width of 8'-0" along the western lot line and a side yard with a width of 5'-0" along the eastern lot line (two side yards with a width of 8'-0" each are required); a rear yard with a depth of 7'-0" (a rear yard with a minimum depth of 30'-0" is required); a front yard with a depth of 13'-0" (a front yard with a minimum depth of 15'-0" is required); and two parking spaces (a minimum of 12 parking spaces are required); and

WHEREAS, the applicant states that the site was formerly occupied by a one and one-half -story single-family home which had an existing front yard depth of 13'-0" and an existing side yard width along the eastern lot line of 5'-0"; the existing front and side yard dimensions comply with the underlying R4 zoning district regulations for residential buildings, but do not comply with the regulations for community facility buildings; and

WHEREAS, the applicant states that the building was enlarged pursuant to plans filed with the Department of Buildings ("DOB") in May 2008 to convert and enlarge the former single-family home on the site into a three-story synagogue; the Congregation subsequently enlarged the building beyond what was permitted in the plans submitted to DOB such that the enlarged building encroaches upon the required rear yard on the second and third floors and does not provide the required number of parking spaces; and

WHEREAS, the proposal provides for the following uses: (1) a religious sanctuary on the first floor; (2) a women's balcony on the second floor; and (3) a classroom/study area on the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Congregation which necessitate the requested variances: (1) to accommodate its growing congregation; (2) to provide a separate space for men and women during religious services; and (3) to provide adequate space for classrooms; and

WHEREAS, the applicant represents that the size, layout and design of a complying synagogue building would be inadequate to serve its congregation of more than 250

members; and

WHEREAS, the applicant states that the Congregation operates seven days per week, and includes classes attended by up to 30 students and prayer services attended by more than 100 congregants on weekends and approximately 250 congregants during holidays; and

WHEREAS, the applicant states that a complying building would result in a floor plate of 1,350 sq. ft. that could only provide 1,050 sq. ft. of floor area for the main sanctuary and 820 sq. ft. of floor area for the women's balcony, which would be inadequate to accommodate more than 105 congregants in the main sanctuary and 82 congregants in the women's balcony; and

WHEREAS, the applicant further states that the subject building provides 1,700 sq. ft. of floor area for the main sanctuary and 1,250 sq. ft. of floor area for the women's balcony, which is sufficient to accommodate 168 congregants and one rabbi in the main sanctuary and 120 congregants in the women's balcony; and

WHEREAS, accordingly, the applicant represents that the requested waivers enable the Congregation to provide adequate space for worship services in the first floor sanctuary and the women's balcony, while allowing for the future growth of the Congregation; and

WHEREAS, the applicant states that the subject building also provides a separate worship space for men and women; and

WHEREAS, the applicant represents that worship space which separates men and women is critical to its religious practice; and

WHEREAS, the applicant states that the Congregation has an additional programmatic need of providing space for classes and other programs; and

WHEREAS, specifically, the applicant states that classes are held in groups on the third floor throughout the week, and that separate classroom space is necessary apart from the main sanctuary and women's balcony space; and

WHEREAS, the Board acknowledges that the Congregation, as a religious institution, is entitled to significant deference under the 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, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Congregation 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 Congregation is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

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

WHEREAS, the applicant states that the use is permitted in the subject zoning district; and

WHEREAS, the applicant further states that the front and side yard conditions existed prior to the Congregation's enlargement of the subject building, and that the front yard with a depth of 13 feet and the side yards with depths of eight feet and five feet, respectively, are compliant for residential use; and

WHEREAS, the applicant notes that the non-complying side yard condition for a community facility use along the eastern lot line only applies to the pre-existing portion of the building; the portion of the building which encroaches into the required rear yard provides two complying side yards of eight feet each, and therefore does not increase the degree of the side yard non-compliance; and

WHEREAS, the applicant states that the requested rear yard waiver is only necessary for the second and third floor of the building, as the rear yard encroachment at the first floor would otherwise be a permitted obstruction; and

WHEREAS, however, the applicant notes that providing the required 12 accessory parking spaces at the site would prevent the enlargement of the building's floor plate, even on the first floor; and

WHEREAS, the applicant represents that, while the building does not provide complying yard conditions, the existing front yard with a depth of 13'-0", two side yards with widths of 8'-0" and 5'-0", respectively, and a rear yard with a depth of 7'-0", provide sufficient separation between the synagogue and the adjacent residences; and

WHEREAS, further, the applicant notes that the third floor level of the building is setback at the rear, such that the rear yard increases to 26'-3" at the third floor; and

WHEREAS, the applicant notes that the subject building complies with the zoning requirements related to floor area, FAR, open space, lot coverage and height, and that the only non-compliances are related to yards and parking; and

WHEREAS, as to traffic impacts and parking, the applicant noted that the impacts would be minimal as a majority of congregants live nearby and would walk to services, specifically to worship services on religious holidays or on the Sabbath when they are not permitted to drive; and

WHEREAS, a submission by the applicant indicates that approximately 98 percent of the congregants live within three-quarters of a mile from the subject site; and

WHEREAS, accordingly, 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, 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 Congregation could occur

within a complying building; 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 Congregation the relief needed both to 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 a Type II action pursuant to 6 NYCRR Part 617.12 and 617.5; 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 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, the legalization of a three-story synagogue, which does not comply with the zoning requirements for side yards, rear yard, front yard, and parking requirements for community facilities, contrary to ZR §§ 24-35, 24-36, 24-34 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 February 16, 2011" – (10) sheets; and *on further condition*:

THAT the building parameters shall be: a floor area of 7,265 sq. ft. (1.84 FAR); a front yard with a minimum depth of 13'-0"; a side yard with a minimum width of 8'-0" along the western lot line; a side yard with a minimum width of 5'-0" along the eastern lot line; a rear yard with a minimum depth of 7'-0" at the first and second floor, and 26'-3" at the third floor; and two accessory parking spaces, as indicated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4);

THAT no commercial catering shall take place onsite;

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

THAT a new certificate of occupancy shall be obtained by March 8, 2012;

THAT 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

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8, 2011.

68-10-BZ

CEQR #10-BSA-070Q

APPLICANT – Eric Palatnik, P.C., for CDI Lefferts Boulevard, LLC, owner.

SUBJECT – Application May 4, 2010 – Variance (§72-21) to allow a commercial building, contrary to use regulations (§22-00). R5 zoning district.

PREMISES AFFECTED – 80-15 Lefferts Boulevard, between Kew Gardens Road and Talbot Street, Block 3354, Lot 38, Borough of Queens.

COMMUNITY BOARD #9Q

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 26, 2010, acting on Department of Buildings Application No. 401846179, reads in pertinent part:

“As per ZR 22-00 and ZR 23-00 proposed bulk and footprint as well as proposed use group 6 are not permitted in residential district R5;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R5 zoning district, the construction of a two-story commercial office building (Use Group 6) which does not conform to district use regulations, contrary to ZR §§ 22-00 and 23-00; and

WHEREAS, a public hearing was held on this application on October 26, 2010 after due notice by publication in *The City Record*, with continued hearings on December 7, 2010 and February 1, 2010, and then to decision on March 8, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 9, Queens, recommends approval of this application; and

WHEREAS, New York City Council Member Karen E. Koslowitz recommends approval of this application; and

WHEREAS, the Kew Gardens Civic Association, Inc., and the Kew Gardens Improvement Association provided written testimony in support of this application; and

WHEREAS, the subject site is located on a through lot with frontage on Lefferts Boulevard and 83rd Drive, between Talbot Street and Kew Gardens Road, within an R5 zoning district; and

WHEREAS, the site is irregularly-shaped with approximately 42 feet of frontage on Lefferts Boulevard and 17 feet of frontage on 83rd Drive, a depth of 200 feet, and a lot

area of approximately 6,244 sq. ft.; and

WHEREAS, the site is currently vacant aside from an existing foundation system which was constructed as part of the applicant’s efforts to develop the site in conjunction with the adjacent school building located immediately to the north of the site; and

WHEREAS, the applicant states that its efforts to utilize the site in conjunction with the adjacent school building have been abandoned and that it is not seeking to rely upon the work undertaken on the foundation system as part of its hardship argument; and

WHEREAS, the applicant proposes to construct a two-story and cellar professional office building with a total floor area of 7,792 sq. ft. (1.24 FAR), and no parking; and

WHEREAS, commercial use is not permitted in the subject R5 zoning district, thus the applicant seeks a use variance to permit the proposed Use Group 6 use; 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 complying development: the site’s irregular shape; and

WHEREAS, as to the site’s irregular shape, the applicant notes that the width of the site tapers from a maximum width of approximately 42 feet along Lefferts Boulevard to a minimum width of approximately 17 feet along 83rd Drive; and

WHEREAS, the applicant states that the irregular shape of the site makes as-of-right residential or community facility development infeasible; and

WHEREAS, specifically, the applicant states that the yard requirements for residential and community facility uses in the underlying R5 zoning district require two side yards with a width of eight feet each, which would result in a building with a maximum width of 26 feet, which would quickly taper to an infeasible width of nine feet; and

WHEREAS, the applicant further states that its previous efforts to construct an as-of-right community facility building were predicated on the building being connected to, and used in conjunction with, the adjacent school building, and that an as-of-right community facility building is not a viable use as a stand-alone building; and

WHEREAS, the applicant represents that the irregular shape of the lot also makes lesser variance alternatives involving residential or community facility use of the site with side yard relief infeasible; and

WHEREAS, the applicant submitted a letter from a realty management company in support of its claim that community facility use at the site is not viable even with side yard relief, stating that the site’s inability to provide parking, in conjunction with the inefficient floor plates and poor operational layout, make the site deficient for Use Group 4 medical use; and

WHEREAS, the applicant states that a lesser variance alternative involving residential use of the site with side yard relief is similarly compromised by the irregular shape of the site, due to the inefficient floor plates that would result; and

WHEREAS, the applicant notes that the non-complying residential scenario would also eliminate all of the northern windows and force ventilation of the entire building from the

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east and western walls; and

WHEREAS, at hearing, the Board directed the applicant to provide evidence that the subject lot existed in its current configuration and has been owned separately and individually from all other adjoining tracts of land since December 15, 1961; and

WHEREAS, in response, the applicant submitted deeds and a title report reflecting that the subject lot has been owned separately and individually since December 15, 1961; and

WHEREAS, based upon the above, the Board finds that the irregular shape of the site creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) an as-of-right community facility development; (2) an as-of-right residential development; (3) a community facility development with non-complying side yards; (4) a residential development with non-complying side yards; and (5) the proposed Use Group 6 office development; and

WHEREAS, the study concluded that the as-of-right scenarios and the lesser variance alternatives would not result in a reasonable return, but that the proposed building would realize 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 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 represents that the surrounding area is occupied by a mix of residential, commercial, and community facility uses; and

WHEREAS, the applicant submitted a land use map reflecting that there are multiple community facility and commercial uses located within a 400-ft. radius of the site, including a school located immediately adjacent to the north of the site, and commercial uses located east of the site at the corner of Kew Gardens Road and 83rd Drive, and at the corner of Lefferts Boulevard and Austin Street; and

WHEREAS, the applicant states that the site is also located one block southwest of Queens Boulevard, which includes an array of commercial uses, several courthouses, and government offices; and

WHEREAS, in response to concerns raised by the Board, the applicant states that the use of the subject site will be limited to professional offices with limited hours of operation of Monday through Friday, from 8:00 a.m. to 6:00 p.m., which will be compatible with the residential uses located immediately adjacent to the south of the site and across from the site on Lefferts Boulevard; and

WHEREAS, as to bulk, the applicant notes that the site will be compatible with the underlying R5 zoning district, except as to yard requirements; and

WHEREAS, as to traffic and parking impacts, the applicant states that the site will have no impact on traffic and parking in the immediate area, due to its use being limited to professional offices and its proximity to mass transit, including the Long Island Railroad, the Kew Gardens – Union Turnpike subway entrance, and numerous bus lines, along with the availability of on-street parking and a municipal parking lot on Queens Boulevard; 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 site's unique physical conditions; and

WHEREAS, as noted above, the applicant analyzed lesser variance alternatives consisting of as-of-right community facility and residential uses with side yard relief, but determined that the lesser variance alternatives were not feasible due to the site's unique physical conditions; and

WHEREAS, accordingly, 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; 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. 10BSA070Q, dated September 22, 2010; 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 site within an R5 zoning district, the proposed construction of a two-story commercial office building (Use Group 6), which does not conform with

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applicable zoning use regulations, contrary to ZR §§ 22-00 and 23-00; *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 16, 2010”- five (5) sheets and “Received February 22, 2011 – three (3) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 7,792 sq. ft. (1.24 FAR); and a total height of 30’-0”, as indicated on the BSA-approved plans;

THAT the use of the site shall be limited to Use Group 6 professional offices;

THAT the hours of operation shall be limited to Monday through Friday, from 8:00 a.m. to 6:00 p.m.;

THAT signage shall be as shown on the BSA-approved plans;

THAT landscaping shall be provided and maintained as per the BSA-approved plans;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT 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 8, 2011.

213-10-BZ

CEQR #11-BSA-039R

APPLICANT – EPDSO, Inc., for 2071 Clove LLC, owner; Grasmere Bodybuilding Inc. (d/b/a Dolphin Fitness), lessee. SUBJECT – Application November 9, 2010 – Special Permit (§73-36) to legalize the operation of a Physical Culture Establishment (*Dolphin Fitness Center*). C8-1 zoning district.

PREMISES AFFECTED – 2071 Clove Road, Clove Road (Grasmere Commons Shopping Center) between Mosel Avenue and Hillcrest Terrace, Block 2921, Lot 6, Borough of Staten Island.

COMMUNITY BOARD #6SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough

Commissioner, dated October 29, 2010, acting on Department of Buildings Application No. 500470395, reads in pertinent part:

“The proposed physical culture establishment...is not permitted in a (C8-1) zoning district as per Sec. (32-00) (ZR). Therefore obtain (BS&A) approval as per Sec. 73-36 (ZR);” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C8-1 zoning district, the legalization of a physical culture establishment (PCE) within a three-story commercial building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this application on February 1, 2011 after due notice by publication in *The City Record*, and then to decision on March 8, 2011; and

WHEREAS, Community Board 6, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Clove Road, between Mosel Avenue and Hillcrest Terrace, within a C8-1 zoning district; and

WHEREAS, the subject site consists of a one- and two-story commercial shopping center occupied by several tenants, and an attached three-story commercial building occupied by the subject PCE; and

WHEREAS, the PCE has a total floor area of 10,472 sq. ft. on the second and a portion of the third floor of the subject building; and

WHEREAS, the PCE is operated as Dolphin Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 5:00 a.m. to 11:00 p.m.; Saturday, from 8:00 a.m. to 8:00 p.m., and Sunday, from 8:00 a.m. to 6:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, on December 18, 2002, under BSA Cal. No. 388-01-BZ, the Board granted a special permit to allow a PCE, operated by Dolphin Fitness, on the first floor of a portion of the one- and two-story commercial shopping center located at the site; and

WHEREAS, the applicant notes that the PCE continued to operate pursuant to the prior grant until it relocated into the subject three-story building in the spring of 2010; 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

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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 Board notes that the PCE has been in operation at the current location since April 1, 2010 without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between April 1, 2010 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; 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. 11BSA039R, dated November 9, 2010; and

WHEREAS, the EAS documents 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, 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 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, on a site within a C8-1 zoning district, the legalization of a physical culture establishment within an existing three-story commercial building, contrary to ZR § 32-00; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 20, 2011"- Eight (8) sheets and *on further condition*:

THAT the term of this grant shall expire on April 1, 2020;

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 all massages shall be performed by New York State licensed massage therapists;

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);

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 8, 2011.

217-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Elizabeth Kopolovich & Harry Kopolovich, owner.

SUBJECT – Application November 15, 2010 – Special Permit (§73-622) for the enlargement of an existing single home, contrary to floor area and lot coverage (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 4009 Bedford Avenue, Bedford Avenue between Avenue S and Avenue T. Block 7304, Lot 82, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 15, 2010, acting on Department of Buildings Application No. 320228035, reads in pertinent part:

“The proposed enlargement of 2-story and conversion to one family residence 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 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

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requirements of Section 23-461 of the Zoning Resolution.

4. Creates non-compliance with respect to the rear yard and is contrary to Section 23-47 of the Zoning Resolution.
5. Creates non-compliance with respect to the open space 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 an existing two-family residence, to be converted into a single-family home which does not comply with the zoning requirements for floor area ratio, lot coverage, side yards, rear yard, and open space, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on January 25, 2011, after due notice by publication in *The City Record*, with a continued hearing on February 15, 2011, and then to decision on March 8, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

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

WHEREAS, the subject site is located on the east side of Bedford Avenue, between Avenue S and Avenue T, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a two-family home with a floor area of 1,983 sq. ft. (0.50 FAR); 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 1,983 sq. ft. (0.50 FAR) to 4,066 sq. ft. (1.02 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will provide a lot coverage of 44 percent (35 percent is the maximum permitted lot coverage); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard along the northern lot line with a width of 3'-9½" (5'-0" is the minimum width required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the proposed enlargement will provide an open space of 2,237 sq. ft. (2,600 sq. ft. is the minimum required open space); and

WHEREAS, based upon its review of the record, 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 R3-2 zoning district, the proposed enlargement of an existing two-family residence, to be converted into a single-family home which does not comply with the zoning requirements for floor area ratio, lot coverage, side yards, rear yard, and open space, 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 February 16, 2011"-(14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 4,066 sq. ft. (1.02 FAR); a lot coverage of 44 percent; an open space of 2,237 sq. ft.; a side yard with a minimum width of 3'-9½" along the northern lot line; a side yard with a minimum width of 9'-3" along the southern lot line; a rear yard with a minimum depth of 20'-0"; and a perimeter wall height of 21'-0", 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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 8, 2011.

234-10-BZ

APPLICANT – Moshe M. Friedman, for Labe Twerski, owner.

SUBJECT – Application December 28, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-

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141(a)) and rear yard (§23-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 2115 Avenue K, north side, 100' east of intersection of Avenue K and East 21st Street, Block 7603, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Yosf Gekfdiener.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 15, 2010, acting on Department of Buildings Application No. 320224146, reads:

“Proposed extension of an existing one family dwelling is contrary to:

ZR Sec 23-141(a) Floor Area Ratio

ZR Sec 23-141(a) Open Space Ratio

ZR Sec 23-47 Rear Yards

And requires a special permit from the Board of Standards and Appeals as per Sec 73-622;” 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 home, which does not comply with the zoning requirements for 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 February 15, 2011 after due notice by publication in *The City Record*, and then to decision on March 8, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Avenue K, between East 21st Street and East 22nd Street, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 5,000 sq. ft., and is occupied by a single-family home with a floor area of 2,881 sq. ft. (0.58 FAR); 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 2,881 sq. ft. (0.58 FAR) to 4,659 sq. ft. (0.93 FAR); the maximum permitted floor area is 2,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 64 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-0” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, at hearing, the Board raised concerns about the maneuverability of the proposed driveway; and

WHEREAS, in response, the applicant submitted a parking maneuverability study reflecting that the dimensions of the proposed driveway are sufficient for vehicle maneuverability; and

WHEREAS, based upon its review of the record, 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, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for 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 “Received February 1, 2011”-(10) sheets and “February 18, 2011”-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,659 sq. ft. (0.93 FAR); an open space ratio of 64 percent; and a rear yard with a minimum depth of 20’-0”, 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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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

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plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 8, 2011.

201-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for For Our Children, Inc., owner.

SUBJECT – Application August 1, 2008 – Variance (§72-21) to allow a one story commercial building (UG 6); contrary to use regulations (§22-00). R3X zoning district.

PREMISES AFFECTED – 40-38 216th Street, between 215th Place and 216th Street, 200' south of 40th Avenue, Block 6290, Lot 70, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

For Opposition: Henry Euler, Tommy Meara, Xavier San Miguel, Gerda Soria, Catherine M. Les, Kathleen Cronin, Adosfo Broegg, James R. Grayshan and Nancy Adams.

ACTION OF THE BOARD – Laid over to May 3, 2011, at 1:30 P.M., for continued hearing.

61-10-BZ

APPLICANT – James Chin & Associates, LLC, for Norman Wong, owner.

SUBJECT – Application April 26, 2010 – Variance (§72-21) to legalize an existing building contrary to height (§23-692), lot coverage (§23-245), rear yard (§23-532) and floor area (§23-145) regulations. R7-2/C1-5 zoning district.

PREMISES AFFECTED – 183 East Broadway, 43.5' frontage on Henry Street and 26.1 frontage on East Broadway, Block 284, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Patrick Jones and Matt D. Viggiano.

For Opposition: Adam Spiegel, Charles Pehlivanina and Susan Tayldrson.

ACTION OF THE BOARD – Laid over to May 3, 2011, at 1:30 P.M. for continued hearing.

127-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Aleksandr Goldshmidt and Inna Goldshmidt, owners.

SUBJECT – Application July 12, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space, lot coverage (§23-141), exceeds the maximum perimeter wall height (§23-631) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 45 Coleridge Street, east side of Coleridge Street, between Shore Boulevard and Hampton Avenue, Block 8729, Lot 65, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to March 29, 2011, at 1:30 P.M., for continued hearing.

192-10-BZ

APPLICANT – Vincent L. Petraro, PLLC, for The Leavitt Street LLC, owner.

SUBJECT – Application October 20, 2010 – Special Permit (§73-66) to allow for a waiver of height restrictions around airports. C4-2 zoning district.

PREMISES AFFECTED – 39-16 College Point Boulevard, west side of College Point Boulevard, at the cross section of Roosevelt Avenue and College Point Boulevard, Block 462, Lot 4, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Steven Simicich.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 5, 2011, at 1:30 P.M., for decision, hearing closed.

193-10-BZ

APPLICANT – Vincent L. Petraro, PLLC, for Jia Ye Realty, LLC, owner.

SUBJECT – Application October 20, 2010 – Special Permit (§73-66) to allow for a waiver of height restrictions around airports. C4-3 zoning district.

PREMISES AFFECTED – 35-27 Prince Street, at the congruence of 36th Road and Prince Street, Block 4971, Lot 8, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Steven Simicich.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 5, 2011, at 1:30 P.M., for decision, hearing closed.

226-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Montbatten Equities, LLP, owner; Equinox Fitness, lessee.

SUBJECT – Application December 10, 2010 – Special Permit (§73-36) to allow a Physical Culture Establishment (*Equinox Fitness*) on the first, ninth and tenth floors of an existing 10-story mixed-use building; Amendment to a prior variance (§72-21) to reflect the proposed establishment. M1-5 zoning district.

PREMISES AFFECTED – 405/42 Hudson Street, southwest corner of Hudson and Leroy Streets, Block 601, Lot 58,

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Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 5, 2011, at 1:30 P.M., for decision, hearing closed.

606-75-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Montbatten Equites, LP, owner; Equinox Fitness, lessee.

SUBJECT – Application December 10, 2010 – Special Permit (§73-36) to allow a Physical Culture Establishment (*Equinox Fitness*) on the first, ninth and tenth floors of an existing 10-story mixed-use building; Amendment to a prior variance (§72-21) to reflect the proposed establishment. M1-5 zoning district.

PREMISES AFFECTED – 405/42 Hudson Street, southwest corner of Hudson and Leroy Streets, Block 601, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 5, 2011, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

*CORRECTION

This resolution adopted on May 11, 2010, under Calendar No. 389-37-BZ and printed in Volume 95, Bulletin Nos. 19-20, is hereby corrected to read as follows:

389-37-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Rosemarie Fiore, Georgette Fiore and George Fiore, owner. SUBJECT – Application June 10, 2009 – Extension of Term (§11-411) of a previously granted Variance for the operation of a UG8 parking lot which expired on June 13, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on December 12, 2004 and Waiver of the Rules. R5/C1-2 zoning district.

PREMISES AFFECTED – 44-16 and 44-14 31st Avenue and 44-09 Newton Road and 31-08/12 45th Street, southwest corner of 45th Street and 31st Avenue, Block 710, Lot 5, 6, 17, 18, 19, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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 for a previously granted variance for the operation of a Use Group 8 parking lot, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on November 24, 2009, after due notice by publication in *The City Record*, with continued hearings on January 12, 2010, February 23, 2010 and April 13, 2010, and then to decision on May 11, 2010; and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the southwest corner of 45th Street and 31st Avenue, within a C1-2 (R5) zoning district; and

WHEREAS, the site is occupied by an open parking lot; and

WHEREAS, the Board has exercised jurisdiction over the site since April 5, 1938 when, under the subject calendar number, the Board granted a variance to permit the parking and storage of more than five motor vehicles on the site, for a term of two years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

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WHEREAS, most recently, on December 16, 2003, the Board granted a five-year extension of term, which expired on June 13, 2008; a condition of the grant was that a certificate of occupancy be obtained by December 16, 2004; and

WHEREAS, the applicant now seeks a ten-year extension of the term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that it was unable to obtain a certificate of occupancy within the stipulated time in part due to procedural issues at the Department of Buildings; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, the applicant also seeks to remove the condition of the previous grant requiring the applicant to submit a financial study examining the feasibility of residential use at the site; and

WHEREAS, the applicant states that the condition requiring a financial analysis for residential development was not due to any problem with the operation or appearance of the site, but was included to encourage as-of-right development of the site; and

WHEREAS, the applicant further states that the subject parking lot has operated continuously on the site for over 70 years and is a benefit to the community, as parking is scarce in the surrounding area; and

WHEREAS, the applicant represents that the as-of-right residential development of the site is not feasible; and

WHEREAS, the applicant also seeks to amend the approved plans to reflect that the fencing does not provide 50 percent opaque screening; and

WHEREAS, the applicant states that the installation of screening would create a safety hazard for the users of the lot because it would block visual access into the lot; and

WHEREAS, the Board has determined that the removal of the condition requiring a financial analysis for residential development, and the amendment of the approved plans to remove the note requiring 50 percent opaque screening is appropriate; and

WHEREAS, at hearing, the Board questioned whether the applicant had a Department of Consumer Affairs (“DCA”) license that allows the parking of vehicles at the site; and

WHEREAS, in response, the applicant submitted a DCA license which is valid through March 2011; and

WHEREAS, based upon the above, the Board finds that the requested extension of term, extension of time to obtain a certificate of occupancy, and the 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 April 5, 1938, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 13, 2008, to expire on June 13, 2018, to extend the time to obtain a certificate of occupancy to May 11, 2011, and to eliminate two specified conditions from prior approvals; *on condition* that all use and

operations shall substantially conform to plans filed with this application marked “Received April 15, 2010”-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on June 13, 2018;

THAT the site shall be maintained free of debris and graffiti;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by May 11, 2011;

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

THAT the Department of Buildings must ensure compliance 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. 410230245)

Adopted by the Board of Standards and Appeals May 11, 2010.

***The resolution has been corrected to add the additional address to Premises Affected. Corrected in Bulletin No. 11, Vol. 96, dated March 16, 2011.**

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*CORRECTION

This resolution adopted on December 14, 2010, under Calendar No. 103-10-BZ and printed in Volume 95, Bulletin No. 51, is hereby corrected to read as follows:

103-10-BZ

APPLICANT – Law Office of Frederick A. Becker, for Zehava Kraitenberg and Larry Kraitenberg, owners.

SUBJECT – Application June 7, 2010 – Special Permit (§73-622) for the enlargement and in-part legalization of an existing single family home contrary to floor area, open space (§23-141), side yard requirement (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1036 East 24th Street, west side of East 24th Street, between Avenue J and Avenue K, Block 7605, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 6, 2010, acting on Department of Buildings Application No. 300352838, reads in pertinent part:

“Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio

Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required open space ratio

Proposed plans are contrary to ZR 23-461 in that the proposed straight line extension of the side yard provides less than the minimum required side yard

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than that of the minimum required rear yard;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements for 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 19, 2010, after due notice by publication in *The City Record*, with a continued hearing on November 16, 2010, and then to decision on December 14, 2010; and

WHEREAS, the premises and surrounding area had

site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 24th Street, between Avenue J and Avenue K, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,390 sq. ft., and is occupied by a single-family home with a floor area of 3,500 sq. ft. (0.80 FAR); and

WHEREAS, the applicant states that the subject home was enlarged pursuant to plans approved by the Department of Buildings in 1994, which permitted a second floor extension at the front, a two-story extension at the side, a new interior layout, air conditioning, plumbing, windows, stucco and porches; and

WHEREAS, the applicant further states that the owner subsequently performed additional alterations, including the enlargement of the dining room through the enclosure of an approved porch, the addition of a small den at the rear of the home, and the enlargement of the kitchen; these additional alterations resulted in non-compliances associated with FAR, open space ratio and rear yard depth, which the owner now proposes to legalize; 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 3,500 sq. ft. (0.80 FAR) to 3,967 sq. ft. (0.90 FAR); the maximum permitted floor area is 2,195 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 61 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes a side yard with a width of 4’-8½” for the enlarged portion at the rear of the home along the northern lot line (a minimum width of 5’-0” is required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-0” (a minimum rear yard of 30’-0” is required); and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement and partial legalization 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

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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, within an R2 zoning district, the proposed enlargement and partial legalization of a single-family home, which does not comply with the zoning requirements for 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 June 7, 2010”-(10) sheets and “Received October 14, 2010”-(3) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,967 sq. ft. (0.90 FAR); a minimum open space ratio of 61 percent; a side yard with a minimum width of 4’-8½” for the enlarged portion at the rear of the home along the northern lot line; and a rear yard with a minimum depth of 20’-0”, as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 14, 2010.

***The resolution has been revised. Corrected in Bulletin No. 11, Vol. 96, dated March 16, 2011.**

BULLETIN

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March 23, 2011

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DOCKET

New Case Filed Up to March 15, 2010

25-11-BZ

760 Parkside Avenue, South side of Parkside Avenue, mid-block between New York Avenue and Nostrand Avenue., Block 4828, Lot(s) 22, Borough of **Brooklyn, Community Board: 9**. Variance (72-21) to permit the enlargement of an existing medical research facility (Downstate Advanced Biotechnology Incubator), contrary to floor area (ZR 43-10), height and setback (ZR 43-20), required parking (ZR 43-21), parking space dimensions (ZR 4 M1-1 district).

26-11-BZ

12 East 18th Street, Southside between Fifth Avenue & Broadway., Block 846, Lot(s) 67, Borough of **Manhattan, Community Board: 5**. Special Permit (73-36) to legalize the operation of a physical culture establishment. M1-5M 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

APRIL 5, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 5, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

435-74-BZ

APPLICANT – Eric Palatnik, P.C., for J. B. Automotive Center of New York, Inc., owner.

SUBJECT – Application January 26, 2011 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of an automotive repair center which expired on January 14, 2011; waiver of the rules. R3-1 zoning district.

PREMISES AFFECTED – 552 Midland Avenue, southwest corner of Midland and Freeborn Street, Block 3804, Lot 18, Borough of Staten Island.

COMMUNITY BOARD #2SI

273-00-BZ

APPLICANT – Mitchell Ross, Esq., for 10 West Thirty Third Joint Venture, owner; Spa Sol, Incorporated, lessee.

SUBJECT – Application July 22, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Spa Sol*) which expires on February 13, 2011; an Amendment to legalize the interior layout which resulted in the increase in the number of treatment rooms. C6-4 zoning district.

PREMISES AFFECTED – 3 West 33rd Street, 1.07' southwest of West 33rd Street and Fifth Avenue, Block 834, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #5M

427-05-BZ

APPLICANT – Eric Palatnik, P.C., for Linwood Holdings, LLC, owner.

SUBJECT – Application February 28, 2011 – Extension of Time to complete construction for a previously granted Special Permit (§73-44) to permit a retail, community facility and office development with less than the required parking which expired on March 20, 2011. C4-2 zoning district.

PREMISES AFFECTED – 133-47 39th Avenue, between Price Street and College Point Boulevard, Block 4972, Lot 59, Borough of Queens.

COMMUNITY BOARD #7Q

APPEALS CALENDAR

200-10-A, 203-10-A thru 205-10-A

APPLICANT – Sheldon Lobel, P.C., for Williams Davies, LLC, owner.

SUBJECT – Application October 29, 2010 – Appeal seeking a common law vested right to continue construction commenced under the prior R5 zoning district. R4-1 zoning district.

PREMISES AFFECTED – 1359, 1361, 1365 & 1367 Davies Road, southeast corner of Davies Road and Caffrey Avenue, Block 15622, Lots 15, 14, 13, 12, Borough of Queens.

COMMUNITY BOARD #14Q

221-10-A

APPLICANT – Robert W. Cunningham, R.A., for Robert W. Cunningham, owner.

SUBJECT – Application December 1, 2010 – An appeal challenging a determination by Department of Buildings that owner authorization is needed from the adjacent property owner in order to perform construction at the site in accordance with Section 28-104.8.2 of the Administrative Code.

PREMISES AFFECTED – 123 87th Street, north side of 87th Street and Ridge Boulevard, Block 6042, Lot 67, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APRIL 5, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 5, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

227-09-BZ

APPLICANT – Gerald J. Caliendo, R.A., for David Rosero/Chris Realty Holding Corporation, lessee.

SUBJECT – Application July 10, 2009 – Variance (§72-21) to allow a two story commercial building, contrary to use regulations ZR §22-10. R6B zoning district.

PREMISES AFFECTED – 100-14 Roosevelt Avenue, south side of Roosevelt Avenue, 109.75' west of the corner of 102nd Street and Roosevelt Avenue, Block 1609, Lot 8, Borough of Queens.

COMMUNITY BOARD #4Q

CALENDAR

236-09-BZ

APPLICANT – Marvin Mitzner, Esq, for Crosstown West 28 LLC, owner.

SUBJECT – Application July 31, 2009 – Variance (§72-21) to allow for a 29 story mixed use commercial and residential building contrary to use regulations (ZR (§42-00), rear yard equivalent (ZR §43-28), height (ZR (§43-43), tower regulations (ZR §43-45) and parking (ZR §13-10). M1-6 zoning district.

PREMISES AFFECTED – 140-148 West 28th Street, south side of West 28th Street, between 6th Avenue and 7th Avenue, block 803, Lots 62 and 65, Borough of Manhattan.

COMMUNITY BOARD #5M

9-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Riverdale Equities, LTD, owner; White Plains Road Fitness Group, LLC, lessee.

SUBJECT – Application January 31, 2011 – Special Permit (§73-36) to permit the operation of the proposed physical culture establishment (*Planet Fitness*) in a C4-4 zoning district.

PREMISES AFFECTED – 2129A-39A White Plains Road, a/k/a 2129-39 White Plains Road, a/k/a 626-636 Lydig Avenue, southeast corner of the intersection of White Plains Road and Lydig Avenue, Block 4286, Lot 35, Borough of Bronx.

COMMUNITY BOARD #11BX

Jeff Mulligan, Executive Director

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REGULAR MEETING TUESDAY MORNING, MARCH 15, 2011 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

899-65-BZ

APPLICANT – Sheldon Lobel, P.C., for Rengency Towers,
LLC, owner.

SUBJECT – Application December 3, 2010 – Extension of
Term permitting 75 surplus tenant parking spaces, within an
accessory garage, for transient parking pursuant to §60 (3)
of the Multiple Dwelling Law (MDL), which expired on
November 16, 2010. C2-8/R8B zoning district.

PREMISES AFFECTED – 231-245 East 63rd Street, aka
1201-1222 2nd Avenue. Located along the entire west block
front of Second Avenue between 63rd and 64th Streets.
Block 1418, Lot 21. Borough of Manhattan.

COMMUNITY BOARD #8M

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, Commissioner Hinkson and
Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and
an extension of the term for a previously granted variance
for a transient parking garage, which expired on November
16, 2010; and

WHEREAS, a public hearing was held on this
application on February 8, 2011, after due notice by
publication in *The City Record*, and then to decision on
March 15, 2011; and

WHEREAS, Community Board 8, Manhattan,
recommends approval of this application; and

WHEREAS, the premises and surrounding area had
site and neighborhood examinations by Commissioner
Montanez and Commissioner Ottley-Brown; and

WHEREAS, the subject premises is located on a through
lot bounded by East 63rd Street to the south, Second Avenue to
the east, and East 64th Street to the north, partially within an
R8B zoning district and partially within a C2-8 zoning district;
and

WHEREAS, the site is occupied by a 34-story mixed-use
commercial/residential building; and

WHEREAS, the cellar and sub-cellar are occupied by a
224-space accessory garage, with 97 spaces in the cellar and
127 spaces in the sub-cellar; and

WHEREAS, on November 16, 1965, under the subject
calendar number, the Board granted a variance pursuant to
Section 60(3) of the Multiple Dwelling Law (“MDL”) to
permit a maximum of 75 surplus parking spaces to be used for
transient parking, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and
the term extended at various times; and

WHEREAS, most recently, on February 27, 2001, the
Board granted a ten-year extension of term, which expired on
November 16, 2010; and

WHEREAS, the applicant submitted a photograph of the
sign posted onsite, which states building residents’ right to
recapture the surplus parking spaces; and

WHEREAS, based upon its review of the record, the
Board finds that the requested extension of term is appropriate
with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and
Appeals *reopens* and *amends* the resolution having been
adopted on November 16, 1965, 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 November
16, 2010, to expire on November 16, 2020; *on condition* that
all work shall substantially conform to drawings filed with this
application and marked ‘Received December 3, 2010’-(4)
sheets; and *on further condition*:

THAT this term shall expire on November 16, 2020;

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 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. No. 368/1976)

Adopted by the Board of Standards and Appeals, March
15, 2011.

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172-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Samson Associates LLC, owner; TSI West 14 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application November 10, 2010 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*New York Sports Club*) which expired on August 13, 2009; Waiver of the Rules. C6-2M/C6-2 zoning district.

PREMISES AFFECTED – 34-42 West 14th Street, south side of West 14th Street, between Fifth Avenue and Sixth Avenue, Block 577, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #2M

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, Commissioner Hinkson and Commissioner Montanez.....5
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 previously granted special permit for a physical culture establishment (“PCE”), which expired on August 3, 2009; and

WHEREAS, a public hearing was held on this application on February 15, 2011, after due notice by publication in *The City Record*, and then to decision on March 15, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

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

WHEREAS, the PCE is located on the south side of West 14th Street, between Fifth Avenue and Sixth Avenue, partially within a C6-2 zoning district and partially within a C6-2M zoning district; and

WHEREAS, the subject site is occupied by a five-story commercial building; and

WHEREAS, the PCE occupies a total of 26,240 sq. ft. of floor area on the first and second floor of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 1, 2000 when, under the subject calendar number, the Board granted a special permit to legalize the use of a PCE in the subject building for a term of ten years, to expire on August 3, 2009; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, based upon its review of the record, the Board finds 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, as adopted on February 1, 2000, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from August 3, 2009, to expire on August 3, 2019, *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT the term of this grant shall expire on August 3, 2019;

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;

THAT the Department of Buildings must ensure compliance 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. 102101011)

Adopted by the Board of Standards and Appeals, March 15, 2011.

299-99-BZ

APPLICANT – Carl A. Sulfaro, Esq., for M & V, LLC, owner.

SUBJECT – Application August 4, 2010 – Extension of Term for the continued operation of a gasoline service station (*Getty*) which expired on July 25, 2010. C2-3/R6 zoning district.

PREMISES AFFECTED – 8-16 Malcom X Boulevard, northwest corner of DeKalb Avenue, Block 599, Lot 40, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of term of a previously granted variance to permit the operation of a gasoline service station, and an amendment to legalize the existing curb cut conditions; and

WHEREAS, a public hearing was held on this application on December 7, 2010 after due notice by publication in *The City Record*, with continued hearings on January 25, 2011 and February 15, 2011, and then to decision on March 15, 2011; and

WHEREAS, Community Board 3, Brooklyn, states that it has no objection to this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson

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and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the northwest corner of Malcolm X Boulevard and Dekalb Avenue, within a C2-3 (R6) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 29, 1955 when, under BSA Cal. No. 178-41-BZ vol. II, the Board granted a variance to permit the use of the subject premises as a gasoline service station; and

WHEREAS, subsequently, the grant was extended and amended by the Board at various times; and

WHEREAS, most recently, on July 25, 2000, under the subject calendar number, the Board granted the reestablishment of the expired variance for a gasoline service station, and permitted the legalization of the conversion of a service bay to a convenience store/sales and storage area, and the installation of a canopy for a term of ten years, which expired July 25, 2010; and

WHEREAS, the applicant now seeks an additional extension of term; and

WHEREAS, the applicant also requests an amendment to legalize an increase in the width of the two curb cuts located on Dekalb Avenue from their approved width of 25 feet to their current width of 28 feet; and

WHEREAS, at hearing, the Board raised concerns about the amount of signage located on the site; and

WHEREAS, in response, the applicant states that the signage on the site was modified since the Board's prior grant due to a change in operator of the site, and submitted photographs reflecting the removal of excess signage and sign posts at the site, and a revised signage analysis reflecting that the signage on the site complies with C2 district regulations; and

WHEREAS, at hearing, the Board also requested that the applicant clarify the site's hours of operation and directed the applicant to provide landscaping on the site; and

WHEREAS, in response, the applicant states that the gasoline sales at the site operates 24 hours per day, seven days per week, and the hours of operation of the repair facility are Monday through Saturday, from 7:00 a.m. to 6:30 p.m., and closed on Sunday; and

WHEREAS, the applicant also submitted revised plans reflecting that the planting strip along the northerly lot line will be restored, and states that new shrubs will be planted and replaced whenever necessary; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment to the previously-approved variance 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 25, 2000, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from July 25, 2010, to expire July 25, 2020, and to permit the noted amendment to the site plan; *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 February 4, 2011'-(5) sheets; and *on further*

condition:

THAT the term of this grant shall expire on July 25, 2020;

THAT all signage shall comply with C2 zoning regulations;

THAT landscaping shall be provided and maintained in accordance with 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 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 App. No. 320103721)

Adopted by the Board of Standards and Appeals, March 15, 2011.

259-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 26 Court Associates, LLC, owner; TSI Court Street, LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application January 25, 2011 – Extension of Term of a Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*New York Sports Club*) which expires on February 6, 2011. C5-2A (DB) zoning district.

PREMISES AFFECTED – 26 Court Street, northwest corner of Court Street and Remsen Street, Block 250, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of term of a previously granted special permit for a physical culture establishment ("PCE"), which expired on July 25, 2010, and an amendment to the hours of operation of the PCE; and

WHEREAS, a public hearing was held on this application on January 25, 2011, after due notice by publication in *The City Record*, with a continued hearing on February 15, 2011, and then to decision on March 15, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner

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Hinkson; and

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

WHEREAS, the PCE is located on the northwest corner of Court Street and Remsen Street, in a C5-2A zoning district within the Special Downtown Brooklyn District; and

WHEREAS, the subject site is occupied by a 28-story commercial building; and

WHEREAS, the PCE occupies a total of 8,893 sq. ft. of floor area in portions of the first floor, mezzanine and second floor, with an additional 7,991 sq. ft. of floor space located in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 6, 2001 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on February 6, 2011; and

WHEREAS, most recently, on June 17, 2003, the Board granted an amendment to permit the expansion of the second floor of the existing PCE; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, the applicant also requests an amendment to the hours of operation of the PCE; and

WHEREAS, the previously-approved hours of operation for the PCE are: Monday through Thursday, from 6:00 a.m. to 11:00 p.m.; Friday, from 6:00 a.m. to 9:00 p.m.; and Saturday and Sunday, from 9:00 a.m. to 7:00 p.m.; and

WHEREAS, the proposed hours of operation for the PCE are: Monday through Thursday, from 5:30 a.m. to 10:00 p.m.; Friday, from 5:30 a.m. to 9:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 8:00 p.m.; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment 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 February 6, 2001, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from February 6, 2011, to expire on February 6, 2021, *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT the term of this grant shall expire on February 6, 2021;

THAT the hours of operation of the PCE shall be: Monday through Thursday, from 5:30 a.m. to 10:00 p.m.; Friday, from 5:30 a.m. to 9:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 8:00 p.m.; and

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;

THAT the Department of Buildings must ensure compliance 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. 301079696)

Adopted by the Board of Standards and Appeals, March 15, 2011.

259-08-BZ

APPLICANT – Jeffrey A. Chester/Einbinder & Dunn, for AAC Douglaston Plaza, LLC, owner; Fairway Douglaston LLC, lessee.

SUBJECT – Application October 18, 2010 – Amendment of a variance (§72-21) permitting the expansion of a non-conforming supermarket (UG 6). The amendment would remove a condition limiting the signage to C1 regulations. R4 zoning district.

PREMISES AFFECTED – 242-02 61st Avenue, Douglaston Parkway and 61st Avenue, Block 8286, Lot 185, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an amendment to a previously approved variance for the enlargement of a pre-existing non-conforming one-story commercial building (Use Group 6); and

WHEREAS, a public hearing was held on this application on February 8, 2011, after due notice by publication in *The City Record*, and then to decision on March 15, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Queens, recommends approval of this application; and

WHEREAS, the subject site is located within an R4 zoning district on a lot bordered on the west by Douglaston Parkway and on the north by 61st Avenue; and

WHEREAS, the site is an irregularly shaped lot with a lot area of approximately 540,023 sq. ft.; and

WHEREAS, the site is occupied by the Douglaston Plaza Shopping Mall, a three-level shopping mall with 297,516 sq. ft. of floor area; and

WHEREAS, the site slopes steeply down along Douglaston Parkway from its northern border along 61st Avenue; accordingly, the shopping center is built on three levels (first floor, cellar, and sub-cellar) and is occupied by four free-standing buildings with eight retail tenants); and

WHEREAS, the applicant states that the shopping center was built in approximately 1961 and was approved pursuant to

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the 1916 Zoning Resolution and is thus a pre-existing non-conforming use within the subject R4 zoning district; and

WHEREAS, however, due to a prior change in use from the pre-existing non-conforming use to another non-conforming use, a portion of the site is the subject of a Board grant; and

WHEREAS, on January 4, 1983, under BSA Cal. No. 370-82-BZ, the Board granted a variance to permit the conversion of retail space to a seven-theater multiplex cinema (Use Group 8) to occupy the largest building at the site; and

WHEREAS, on July 14, 2009, under the subject calendar number, the Board granted a variance to permit the enlargement of the pre-existing non-conforming sub-cellar building occupied by a supermarket (the "Supermarket Building") (Use Group 6); and

WHEREAS, the applicant now seeks an amendment to permit an increase in signage for the Supermarket Building from what was approved under the Board's prior grant; and

WHEREAS, specifically, a condition of the Board's grant stipulated that all signage on the site must comply with C1 district signage regulations; and

WHEREAS, the applicant states that restricting the signage to C1 district regulations would limit the Supermarket Building to 150 sq. ft. of signage for each frontage, or a total of 300 sq. ft.; and

WHEREAS, the applicant represents that this amount of signage is inadequate for a supermarket with more than 57,000 sq. ft. of floor area; and

WHEREAS, the applicant represents that supermarkets similar in size to the subject building typically have significantly more signage than that approved for the subject building, and states that the two nearest regional shopping centers (the Bay Terrace shopping center and the Glen Oaks shopping center) both have C4-1 zoning designations; and

WHEREAS, the applicant further states that the unique topography of the site results in limited site lines and street visibility because the decked parking level above the lowest level creates very limited retail visibility, necessitating additional signage beyond what is permitted in C1 zoning districts; and

WHEREAS, the applicant submitted revised plans to the Board reflecting a total of 916 sq. ft. of signage on the site, which includes: (1) 295 sq. ft. of signage on the front façade of the supermarket; (2) 81-95 sq. ft. of signage on all four sides of the proposed elevator at the cellar level, which will identify access to the store from anywhere on the cellar level and draw more vehicles to the less utilized cellar level parking; and (3) four free standing signs along the Douglaston Parkway entrances to the site; and

WHEREAS, accordingly, the applicant requests that the Board waive the condition from the previous resolution that limited signage for the Supermarket Building to C1 district regulations, and approve the signage as illustrated in the revised plans submitted to the Board; and

WHEREAS, based upon the above, the Board finds that the requested amendment 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, as adopted on July 14, 2009, so that as amended this portion of the resolution shall read: "to modify the amount of signage permitted on the site, in accordance with the BSA-approved plans; *on condition* that the use shall substantially conform to drawings as filed with this application, marked "Received January 10, 2011"--(8) sheets; and *on further condition*:

THAT signage shall be as shown 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. 410156361)

Adopted by the Board of Standards and Appeals, March 15, 2011.

881-59-BZ

APPLICANT – Dorothy Ames, owner.

SUBJECT – Application November 19, 2010 – Extension of Term (§11-411) for the continued use of a theatre (*Soho Playhouse*) which expires on April 11, 2011. R6 zoning district.

PREMISES AFFECTED – 15 Vandam Street, between Avenue of the Americas and Varick Street, Block 506, Lot 47, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: John Johnson.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 5, 2011, at 10 A.M., for decision, hearing closed.

516-75-BZ

APPLICANT – Tarter Krinsky & Drogin, LLP, for Vertical Projects LLC, owner; MP Sports Club Upper Eastside LLC, lessee.

SUBJECT – Application December 17, 2010 – Amendment of a bulk variance (§72-21) for a building occupied by a Physical Culture Establishment (*The Sports Club/LA*). The amendment proposes an increase in PCE floor area and a change operator; Extension of Term which expired on October 17, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on October 17, 2002; and Waiver of the Rules. C8-4 zoning district.

PREMISES AFFECTED – 330 East 61st Street aka 328 East

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61st Street, between First Avenue and ramp of Queensboro Bridge (NYS Route 25), Block 1435, Lots 16 & 37, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Jonathan Grippo.

ACTION OF THE BOARD – Laid over to April 5, 2011, at 10 A.M., for continued hearing.

866-85-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Anne Marie Cicciu Incorporated, owner.

SUBJECT – Application October 19, 2010 – Extension of Term of a Variance (§72-21) for a UG8 open parking lot and storage of motor vehicles which expired on May 12, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on November 23, 2000; Waiver of the Rules. R7-1 zoning district.

PREMISES AFFECTED – 2338 Cambreleng Avenue, east side of 2338 Cambreleng Avenue, 199.25’ south of intersection of Cambreleng Avenue and Crescent Avenue, Block 3089, Lot 22, Borough of Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to April 5, 2011, at 10 A.M., for continued hearing.

964-87-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum Incorporated, owner.

SUBJECT – Application October 18, 2010 – Extension of Term for the continued operation of (UG16) Gasoline Service Station (*Getty*) which expired on February 6, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on January 15, 2003; Amendment to the hours of operation and Waiver of the Rules. C1-3/R6 zoning district.

PREMISES AFFECTED – 780-798 Burke Avenue, southwest corner of Burke and Barnes Avenue, Block 4571, Lot 28, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to April 12, 2011, at 10 A.M., for continued hearing.

216-97-BZ

APPLICANT – Moshe M. Friedman, for King Carroll LLC, owner; Dr. Rosen M.D., lessee.

SUBJECT – Application December 28, 2010 – Amendment to a special permit (§73-125) to enlarge UG4 medical offices within the cellar of an existing four-story residential building. R-2 zoning district.

PREMISES AFFECTED – 1384 Carroll Street aka 352 Kingston Avenue, south side of Carroll Street and Kingston Avenue, Block 1292, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #9BK

For Applicant: Tzvi Friedman

ACTION OF THE BOARD – Laid over to April 5, 2011, at 10 A.M., for continued hearing.

11-00-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for 601 Associates LLC, owner; Harbor Fitness Park Slope Incorporated, lessee.

SUBJECT – Application November 3, 2010 – Extension of Term of a Special Permit (§73-36) for a Physical Culture Establishment (*Harbor Fitness*) in the cellar and first floor of an existing mixed use building which expired on October 3, 2010; Amendment for increase in hours of operation. C4-3A/R6B zoning district.

PREMISES AFFECTED – 550 5th Avenue, northwest corner of 5th Avenue and 15th Street, Block 1041, Lot 43(1001), Borough of Bronx.

COMMUNITY BOARD #7BX

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to May 3, 2011, at 10 A.M., for postponed hearing.

289-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 160 Water Street Associates, owner; TSI Water Street LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 29, 2010 – Extension of Term of a previously approved Special Permit (§73-36) for the continued operation of a Physical Cultural Establishment (*New York Sports Club*) which expires on March 6, 2011. C5-5 (LM) zoning district.

PREMISES AFFECTED – 160 Water Street, northwest corner of Water Street and Fletcher Street, Block 70, Lot 43, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 29, 2011, at 10 A.M., for decision, hearing closed.

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197-02-BZ

APPLICANT – Gary Silver Architects, for Nostrand Kings Management, owner; No Limit LLC, lessee.

SUBJECT – Application November 9, 2010 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Culture Establishment which expired on November 26, 2007; Extension of Time to obtain a Certificate of Occupancy; Waiver of the Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 2825 Nostrand Avenue, East side of Nostrand Avenue 129.14 feet south of the corner of Kings Highway. Block 7692, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Gary Silver.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 29, 2011, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

201-10-BZY

APPLICANT – Law Offices of Marvin B. Mitzner, for LES Realty Group LLC, owner.

SUBJECT – Application October 29, 2010 – Extension of Time (§11-332) to complete construction of a minor development commenced under the prior C6-1 zoning district. C4-4A zoning district.

PREMISES AFFECTED – 180 Orchard Street, through lot extending from Orchard Street to Ludlow Street. Block 412, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
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 minor development; and

WHEREAS, a public hearing was held on this application on February 1, 2011, after due notice by publication in *The City Record*, with a continued hearing on March 1, 2011, and then to decision on March 15, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and

Commissioner Ottley-Brown; and

WHEREAS, the subject site is an L-shaped through lot with frontage on Orchard Street and Ludlow Street, between Houston Street and Stanton Street, within a C4-4A zoning district; and

WHEREAS, the subject site has 128'-3" of frontage along Orchard Street, 50'-1" of frontage along Ludlow Street, a depth ranging from 87'-10" to 175'-8", and a total lot area of 41,501 sq. ft.; and

WHEREAS, the site is proposed to be developed with a 24-story hotel building (the "Building"); and

WHEREAS, the Building is proposed to have a total floor area of 154,519.6 sq. ft.; and

WHEREAS, the applicant notes that the Building will contain an accessory underground parking garage, retail stores on the lower levels, and approximately 246 hotel rooms; and

WHEREAS, the applicant states that the owner has also filed an application with the City Planning Commission ("CPC") requesting a special permit pursuant to ZR § 74-52, to allow the underground parking garage at the site to be made available for public use; and

WHEREAS, the applicant represents that the proposed CPC special permit for the garage has no effect on the subject proposal and that the plans for the garage, as approved by the Department of Buildings ("DOB"), have not changed; and

WHEREAS, the development complies with the former C6-1 zoning district parameters; and

WHEREAS, however, on November 19, 2008 (hereinafter, the "Enactment Date"), the City Council voted to adopt the East Village/Lower East Side Rezoning, which rezoned the site from C6-1 to C4-4A; and

WHEREAS, on November 23, 2005, New Building Permit No. 104297850-01-NB (hereinafter, the "Permit") was issued by the Department of Buildings ("DOB") permitting construction of the Building; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows 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 a certificate 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 a single building which is non-complying under an amendment to the Zoning Resolution, as a "minor development"; and

WHEREAS, for a "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

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WHEREAS, ZR § 11-332 reads, in pertinent part: “[I]n 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: “[F]or 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, by letter dated February 1, 2011, DOB stated that the Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; 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, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, the Board further notes that any work

performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of November 19, 2010 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes: 100 percent of the excavation, footings and foundation; 100 percent of the underground parking garage and cellar levels; and 100 percent of the first and second floor retail space; and

WHEREAS, in support of this statement, the applicant has submitted the following: a construction schedule detailing the work completed since the issuance of the Permit; an affidavit from the owner enumerating the completed work; copies of cancelled checks evidencing payments made by the applicant; and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permit and before November 19, 2010; and

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are \$12,859,975, or approximately 18 percent of the \$70,000,000 cost to complete; and

WHEREAS, as noted, the applicant has submitted accounting tables and copies of 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 New Building Permit, 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 two-year extension of time to complete construction, pursuant to ZR § 11-332; and

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Building Permit No. 104297850-01-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 development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on March 15, 2013.

Adopted by the Board of Standards and Appeals, March 15, 2011.

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214-10-A

APPLICANT – Carol E. Rosenthal, Esq./Fried Frank, for Boulevard Leasing Limited Partnership, owner.

SUBJECT – Application November 10, 2010 – Appeal challenging the Department of Buildings determination regarding maximum number of dwelling units (§23-22) allowed in a residential conversion of an existing building. C4-2 zoning district.

PREMISES AFFECTED – 97-45 Queens Boulevard, bounded by Queens Boulevard, 64th Road and 64th Avenue, Block 2091, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Final Determination dated October 12, 2010 by the Queens Borough Commissioner of the Department of Buildings (“DOB”) (the “Final Determination”), with respect to DOB Application Nos. 40222139 and 420038890; and

WHEREAS, the Final Determination states, in pertinent part:

Request to accept the proposed number of dwelling units of an existing non-residential building converted to residential use is denied.

Existing building was built upon BSA approval #871-46-BZ to erect a twelve story building that exceeded the permitted area coverage, encroached on the required side yards and exceeds the permitted height.

The proposed number of dwelling units is based on total floor area being converted to residential use but, it shall be limited to the maximum residential floor area permitted on the zoning lot divided by the applicable factor per ZR § 23-22 and 23-141; and

WHEREAS, a public hearing was held on this appeal on February 8, 2011, after due notice by publication in *The City Record*, and then to decision on March 15, 2011; and

WHEREAS, the appeal is filed on behalf of the property owner who contends that DOB’s denial was erroneous (the “Appellant”); and

WHEREAS, DOB and Appellant have been represented by counsel throughout this appeal; and

WHEREAS, the site has an irregular shape, with 19,421 sq. ft. of lot area, frontage on Queens Boulevard, 64th Road, and 64th Avenue, and is within a C4-2 zoning district; and

WHEREAS, the site is occupied by a 13-story commercial building with a connected garage and loading dock, with a total floor area of 131,930 sq. ft. (the “Building”); and

PROCEDURAL HISTORY

WHEREAS, the subject appeal concerns the proposal to

convert the upper 12 floors of the Building from commercial use to 108 dwelling units and maintain the first floor commercial use; and

WHEREAS, the building was constructed in 1960, under the provisions of the 1916 ZR and pursuant to a 1959 Board approval (BSA Cal. No. 871-46-BZ Vol. II1) which allowed for waivers to height, side yards, lot coverage, and use, as a portion of the site was then within a residential zoning district; and

WHEREAS, the current zoning regulations do not restrict the total height (there are setback regulations), side yards, lot coverage, and use as the site is now completely within a C4-2 zoning district; and

WHEREAS, in 1992, the Board granted an amendment to the variance to permit the construction of a 900 sq. ft. extension of the ground-floor restaurant; and

WHEREAS, in June 2007, the Appellant informed the Board of its proposal to convert the Building to residential use and requested confirmation that the proposed conversion was in compliance with the 1959 variance; and

WHEREAS, by letter dated August 15, 2007, the Board stated that it did not have any objection to the proposed conversion, based on the Appellant’s representations that the conversion would not increase any existing non-compliance of the building; and

WHEREAS, in 2010, the Appellant applied for an alteration permit under Application No. 40222139, for renovations in connection with the proposed project, described as the conversion of 122,745 sq. ft. of previously utilized commercial floor area to residential use and the creation of 108 dwelling units; and

WHEREAS, DOB approved the conversion of the upper 12 floors of floor area (122,745 sq. ft.) to residential use, pursuant to ZR § 34-222 (Change in Use) and ZR § 35-31 (Maximum Floor Area Ratio for Mixed Buildings) but denied the Appellant’s proposed number of dwelling units pursuant to ZR § 23-22 (Maximum Number of Dwelling Units or Rooming Units); and

WHEREAS, in response, the Appellant applied to DOB for a determination from the Queens Borough Commissioner that its proposed number of dwelling units is permitted; and

WHEREAS, on October 12, 2010, DOB issued the Final Determination, denying the Appellant’s request; and

WHEREAS, accordingly, the question on appeal is limited to the determination of the maximum number of permitted dwelling units for the proposed conversion; and

WHEREAS, the Appellant asserts that the Final Determination is contrary to the plain language of the ZR as ZR §§ 34-222 and 35-31 permit all non-residential floor area in existence prior to December 15, 1961 in buildings within certain commercial districts to be converted to residential use and that ZR § 35-40 provides that the “maximum residential floor area permitted on the zoning lot,” in accordance with ZR § 35-31, is used as the basis for calculating the maximum

1 The site was subject to an earlier variance, in 1946 – BSA Cal. No. 871-46-BZ Vol. I – for a proposed movie theater and stores, which was never constructed.

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number of permitted dwelling units on such a zoning lot; and
PROVISIONS OF THE ZONING RESOLUTION

WHEREAS, the primary ZR provisions the Appellant and DOB cite are as follows, in pertinent part:

ZR § 34-222 (Exceptions to Applicability of Residential District Controls/Change of Use)

A non-residential use# occupying a #building#, or portion thereof, that was in existence on December 15, 1961, may be changed to a residential use# and the regulations on minimum required #open space ratio# and maximum #floor area ratio# shall not apply to such change of #use#.

* * *

ZR § 35-31 (Applicability of Floor Area and Open Space Regulations to Mixed Buildings/Maximum Floor Area Ratio)

. . . A non-residential use# occupying a portion of a #building# that was in existence on December 15, 1961, may be changed to a residential use# and the regulations on maximum #floor area ratio# shall not apply to such change of #use#.

* * *

ZR § 35-40 (Applicability of Density Regulations to Mixed Buildings)

In the districts indicated, the maximum number of #dwelling units# or #rooming units# on a #zoning lot# shall equal the maximum #residential floor area# permitted for the #zoning lot# determined in accordance with the provisions set forth in Section 35-30 (APPLICABILITY OF FLOOR AREA AND OPEN SPACE REGULATIONS) divided by the applicable factor in Section 23-20 (DENSITY REGULATIONS).

* * *

ZR § 23-22 (Density Regulations/Maximum Number of Dwelling Units or Rooming Units)

In all districts, as indicated, the maximum number of #dwelling units# or #rooming units# shall equal the maximum #residential floor area# permitted on the #zoning lot# divided by the applicable factor in the following table . . .

FACTOR FOR DETERMINING MAXIMUM NUMBER OF DWELLING UNITS OR ROOMING UNITS

District	Factor for #Dwelling Units#	Factor for #Rooming Units#
...
R6 R7 R8B	680	500
...

ZR § 23-24 (Density Regulations/Special Provisions for Building Used Partly for Non-Residential Uses)

In all districts, as indicated, if a #building# is used partly for #residences# and partly for non-residential uses# (other than #community facility uses#, the provisions for which are set forth in Article II, Chapter 4), the maximum number of #dwelling

units# or #rooming units# permitted on the #zoning lot# shall equal the total #residential floor area# permitted on the #zoning lot# after deducting any non-residential floor area#, divided by the applicable factor in Section 23-22 (Maximum Number of Dwelling Units or Rooming Units); and

DISCUSSION

A. The Basis of the Appeal – The Plain Meaning of the Zoning Resolution

WHEREAS, the Appellant asserts that the provisions of the ZR at issue are clear and unambiguous and that, accordingly, one must “look to the plain meaning of the applicable sections” (Gruson v. Dep’t of City Planning, 2008 N.Y. Slip Op 32791U at 6, and Raritan Dev. Corp. v. Silva, 91 N.Y.2d 98 106-107 (1997)); and

WHEREAS, the Appellant bases its determination of the maximum number of dwelling units permitted for the conversion of a pre-1961 building in a C4-2 zoning district to residential use on the following provisions: (1) ZR § 35-30 (Applicability of Floor Area and Open Space Regulations to Mixed Buildings), which allows for the conversion of pre-1961 non-residential uses and leads to ZR § 35-31 (Maximum Floor Area Ratio) to establish the “maximum residential floor area permitted for the zoning lot;” (2) ZR § 35-40 (Applicability of Density Regulations to Mixed Buildings), which sets forth the formula for determining the number of dwelling units permitted in a mixed-use building in a commercial zoning district, references ZR § 35-30 for the floor area calculation and ZR § 23-20 (Density Regulations) for the dwelling unit factor; and (3) ZR § 23-22 (Maximum Number of Dwelling Units or Rooming Units) identifies the dwelling unit factor for a C4-2 (R6 equivalent) zoning district; and

WHEREAS, the Appellant states that the last paragraph of ZR § 35-31 allows for the conversion of non-residential use, which existed on December 15, 1961, to residential use in excess of what would be permitted by the applicable underlying zoning district floor area regulations; and

WHEREAS, thus, the Appellant asserts, in accordance with ZR § 35-31, the “maximum residential floor area permitted on the zoning lot” is based on the amount of existing non-residential floor area rather than the maximum residential floor area ratio of the C4-2 (R6 equivalent) zoning district; and

WHEREAS, the Appellant asserts that, by applying the plain meaning of ZR § 35-31, the entire existing non-residential floor area of 131,930 sq. ft. at the site may be converted to residential use; and

WHEREAS, the Appellant then consults ZR § 35-40 (which cross references ZR § 35-31) for instruction on determining the density regulations to apply to its total floor area; ZR § 35-40 cross references ZR § 23-20 for the density factor to apply to the floor area identified at ZR § 35-31; ZR § 23-22 (Density Regulations/Maximum Number of Dwelling Units or Rooming Units) sets forth the dwelling unit factor required for calculating the maximum number of dwelling units; and

WHEREAS, the Appellant also cites to ZR § 23-24 (Special Provisions for Building Used Partly for Non-Residential Uses) for the provision that if a building is used

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partially for non-residential uses, then the maximum residential floor area permitted on the zoning lot shall be reduced by any non-residential floor area used within the building; and

WHEREAS, the Appellant asserts that the cited provisions should be applied to the proposal as follows: (1) since the total building floor area of 131,930 sq. ft. existed on December 15, 1961, it can be converted to residential floor area, pursuant to ZR §§ 35-40 and 35-31, and 9,185 sq. ft. of floor area are being maintained as commercial uses, so the maximum residential floor area for the purposes of density calculations is 122,745 sq. ft. (after following ZR § 23-24's instruction to subtract any commercial floor area being maintained); (2) pursuant to ZR § 23-22, the applicable dwelling unit factor in a C4-2 (R6 equivalent) zoning district to divide into the floor area is 680; (3) the maximum residential floor area divided by the applicable factor (122,745/680) equals 180.51; and (4) therefore, the proposed 108 dwelling units, 73 fewer units than the maximum, is allowed; and

WHEREAS, the Appellant asserts that, in plain language, ZR § 35-40 specifies that the calculation for density should be based on the actual maximum residential floor area permitted pursuant to ZR § 35-31; and

WHEREAS, the Appellant distinguishes other provisions of the ZR where it specifies that the underlying district regulations are to apply and the text specifically notes that the regulation shall be applied "in accordance with the applicable district regulations;" and

WHEREAS, the Appellant asserts that the sections applicable to the conversion of a pre-1961 building (ZR §§ 35-40 and 35-31) direct the opposite and state that the district regulations with respect to floor area ratio are not applicable to such residential conversion; and

WHEREAS, the Appellant cites to ZR § 15-111, which states "the maximum number of dwelling units permitted shall be determined in accordance with the applicable district regulations" as an example of where the ZR directs readers to apply the applicable district restrictions as opposed to ZR § 35-31 which state that the district regulations with respect to floor area are not applicable to the residential conversion of a pre-1961 non-residential building; and

WHEREAS, the Appellant maintains that the ZR is not ambiguous and that DOB has misapplied the regulations by applying floor area regulations of the underlying district to the dwelling count calculations; and

WHEREAS, the Appellant states further that even if the meaning of "maximum residential floor area on the zoning lot" is ambiguous, the Court of Appeals instructs that the ambiguity should be resolved in favor of the property owner, citing Toys "R" Us v. Silva, 89 N.Y.2d 411 (1996); and

WHEREAS, lastly, the Appellant asserts that DOB's interpretation of ZR § 23-22 as applied to the subject site would create an absurd result; and

WHEREAS, specifically, the Appellant states that if the maximum floor area permitted in the zoning district (rather than the maximum permitted on the site as built prior to December 15, 1961) were the basis for the dwelling unit calculations, 122,745 sq. ft. of residential floor area would yield only 56 dwelling units at an average of 2,192 sq. ft. each

while ZR § 23-22 contemplates a dwelling unit factor of only 680 (sq. ft.); and

WHEREAS, the Appellant asserts that DOB ignores ZR § 35-31 which established the amount of residential floor area permitted on the zoning lot and instead calculates the maximum permitted residential floor area on a hypothetical zoning lot without a pre-existing legal non-complying building; and

WHEREAS, the Appellant set forth several scenarios using DOB's methodology that it found to lead to unintended results, including (1) if only 47,193 sq. ft. of floor area is used as the basis for calculating the dwelling unit count (based on 2.43 residential FAR in an R6 zoning district), the result would be 69 units at an average of 1,879 sq. ft. per unit; and (2) if the Appellant retained six floors of commercial use and converted only seven floors to residential use, 59,000 sq. ft. would need to be subtracted from 47,193 sq. ft., resulting in a negative amount of floor area and dwelling units, even though DOB would allow seven floors of the building to be converted to residential use, pursuant to ZR § 35-31; and

WHEREAS, the Appellant concludes that the meaning of "maximum residential floor area permitted on the zoning lot" in ZR § 35-40, in the context of residential conversions pursuant to ZR §§ 34-222 and 35-31, is the maximum residential floor area allowed on the zoning lot rather than the maximum residential floor area allowed pursuant to underlying zoning district regulations, based on the plain language of the ZR; and

B. The Department of Buildings Interpretation

WHEREAS, DOB asserts that it is erroneous to use all of the proposed residential floor area as the basis for calculating the permitted density of the converted building for the following primary reasons: (1) the ZR requirements are clear and unambiguous; (2) there is an exception to the standard density calculation, but it does not apply to the subject proposal; (3) its interpretation is consistent with ZR § 11-22 (Applications of Overlapping Regulations) and does not create an absurd result; and (4) requiring compliance with density for residential conversions under Article III is sound public policy; and

WHEREAS, DOB cites to ZR §§ 34-222 and 35-31 in its analysis as the appropriate sections to apply to mixed buildings with regard to exemption from floor area and lot coverage limitations, but not for dwelling unit calculations; and

WHEREAS, DOB cites to ZR § 35-40 for the regulation of dwelling unit count and notes ZR § 35-40's reference to ZR § 23-20 for the applicable density factor; and

WHEREAS, DOB agrees with the Appellant that the language of ZR § 35-40 is unambiguous, but to a different result; DOB finds that the maximum residential floor area "permitted" on the subject zoning lot for the dwelling unit count calculation is determined by identifying the maximum residential floor area ratio in the district, which is 2.43, per ZR § 23-142, multiplied by the lot area; and

WHEREAS, DOB finds that the maximum amount of floor area permitted to be converted to residential use is the

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appropriate basis for the floor area calculation at ZR § 35-31, but not for the dwelling unit count computation; and

WHEREAS, DOB concludes that since the maximum permitted floor area for a lot with 19,421 sq. ft. of lot area in an R6 equivalent zoning district is 47,193 sq. ft., that is the appropriate basis for the dwelling unit computation; and

WHEREAS, thus, DOB's methodology of dividing 47,193 sq. ft. of floor area by a factor of 680 results in a possible conversion to 69 dwelling units or 56 dwelling units if 9,185 sq. ft. of commercial floor area remains; and

WHEREAS, as to whether an exception to the standard density calculation applies, DOB cites to ZR § 15-111 which states that "where the total *floor area* on the *zoning lot* exceeds the maximum *floor area* permitted by the applicable district regulations, such excess *floor area* may be converted in its entirety to *residences*. Such excess *floor area* shall be included in the amount of *floor area* divided by the applicable factor of 23-20;" and

WHEREAS, DOB notes that ZR § 15-111 does not apply in C4-2 zoning districts, so the exception to the dwelling unit restriction is not available to the Appellant; and

WHEREAS, instead, DOB finds that Article III applies to C4-2 zoning districts and it does not include a section on how to calculate density for a building being converted under ZR § 34-222 or § 35-31; and

WHEREAS, as to the reasonableness of the result, DOB states that its interpretation is consistent with ZR § 11-22 and does not lead to absurdity; and

WHEREAS, DOB states that the Appellant's examples which do not allow for any dwelling units arise from a scenario with too much residential and non-residential floor area to be in compliance with ZR § 23-24 (Special Provisions for Buildings Used Partly for Non-Residential Uses); and

WHEREAS, DOB finds that the Appellant's examples include contradictory regulations and, per ZR § 11-22, when there are contradictory regulations over the bulk of buildings, the more restrictive shall govern such that even if ZR § 34-222 or § 35-31 would permit a conversion, if the conversion cannot be accomplished without violating ZR § 23-24, then it is prohibited by ZR § 11-22; and

WHEREAS, DOB also cites to public policy interests as a reason for limiting the dwelling unit count as it suggests; and

WHEREAS, specifically, DOB states that the building, which is built to a floor area ratio of approximately 6.32 far exceeds the 2.43 FAR residential maximum permitted by the underlying C4-2 (R6 equivalent) zoning district regulations; and

WHEREAS, DOB asserts that a building of the Building's size is not permitted even if ZR §§ 34-222 and 35-31 would otherwise allow it and the requirements of the number of dwelling units associated with the total pre-existing FAR (rather than the underlying zoning district regulation's maximum FAR) is not anticipated by the area's provision of government services; and

WHEREAS, DOB identifies its density calculations as

a check on ZR §§ 34-222 and 35-31 potentially creating strains on city services; and

WHEREAS, finally, DOB made a supplemental argument that ZR § 35-31 does not apply to the Building since it only applies to buildings that were mixed-use as of December 15, 1961; and

WHEREAS, DOB contrasts the language of ZR § 35-31 to ZR § 34-222 in that ZR § 35-31 identifies its applicability to "a non-*residential use* occupying a portion of a building that was in existence on December 15, 1961" (emphasis added) while ZR § 34-222 identifies "[a] non-*residential use* occupying a building, or portion thereof" (emphasis added) to mean that ZR § 35-31 does not apply to buildings, like the Building, that were non-residential in their entirety because only ZR § 34-222 identifies a "building," rather than just a "portion of a building;" and

WHEREAS, DOB cites to the second paragraph of ZR § 35-31, rather than the final paragraph regarding non-residential use in existence on December 15, 1961 which the Appellant cites and DOB finds to be inapplicable; the second paragraph states that "[t]he maximum *floor area ratio* permitted for a *residential use* shall be set forth in Article II, Chapter 3;" and

WHEREAS, DOB notes that Article II, Chapter 3 sets forth the maximum floor area of 47,193 sq. ft. for the site based on the underlying district regulations; and

C. The Appellant's Response to the Department of Buildings

WHEREAS, the Appellant disagrees with DOB's reading of ZR § 35-31 and finds that it is erroneous to conclude that the text distinguishes between buildings which were non-residential in part or non-residential in their entirety; it finds "a portion" to mean "any portion" and there is no basis to find that a building that was entirely non-residential on December 15, 1961 could not be covered by the section; and

WHEREAS, the Appellant finds that DOB's interpretation could lead to discordant results if (1) the building had been occupied by 12 floors of commercial use and one floor of residential use as of December 15, 1961 as opposed to (2) the building being occupied by 13 floors of commercial use; in the former, the Appellant would now be able to convert to 108 residential units, but in the latter, it would only be able to convert to 56 residential units; and

WHEREAS, the Appellant finds DOB's supplemental argument about the inapplicability of ZR § 35-31 to be contrary to earlier assertions and the Appellant is unconvinced that the disparate results of the two scenarios cited above were intended by the ZR; and

CONCLUSION

WHEREAS, the Board agrees with the Appellant's analysis for determining the maximum permitted dwelling units for the Building; and

WHEREAS, the Board agrees with the Appellant that the appropriate methodology is to follow the interrelated texts and cross references as follows: (1) begin at ZR § 35-31 (Maximum Floor Area Ratio) which states that the maximum floor area regulations do not apply for

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conversions of pre-1961 buildings; (2) ZR § 35-31 leads to ZR § 35-40 (Applicability of Density Regulations), which states that “the maximum number of *dwelling units* or *rooming units* on a *zoning lot* shall equal the maximum *residential floor area* permitted for the *zoning lot* determined in accordance with the provisions set forth in Section 35-30” and references the dwelling unit factor in ZR § 23-22 (Maximum Number of Dwelling Units or Rooming Units); (3) ZR § 23-22 provides a dwelling unit factor of 680 for C4-2 (R6 equivalent) zoning districts; and

WHEREAS, the Board agrees with the Appellant that ZR § 35-40 and the relevant phrase “the maximum *residential floor area* permitted for the *zoning lot*,” as informed by ZR § 35-31, which states that “the regulations on maximum *floor area ratio* shall not apply to such change of use” is unambiguous in the context of determining the maximum permitted floor area and, ultimately, the dwelling unit count for the Building; and

WHEREAS, the Board acknowledges that there are other places in the ZR where the text distinguishes between the maximum floor area permitted and the maximum floor area permitted *pursuant to the underlying district regulations* and that there may be other situations where those provisions have different meanings, but it finds that in the context of determining the ability to convert the floor area of the subject pre-1961 building to residential use and individual dwelling units, ZR §§ 35-40 and 35-31, read together or read separately, convey that the underlying district regulations do not apply to the density regulations for the subject pre-1961 building; and

WHEREAS, in addition to the language being unambiguous, the Board finds that it would be incongruous to allow for the full conversion of the floor area of a pre-existing building, pursuant to ZR §§ 35-40 and 35-31, and accept an FAR in excess of the underlying district regulations, but then apply a different standard – the underlying district regulations – when it comes to computing the dwelling unit count, pursuant to the factor set forth at ZR § 23-22; and

WHEREAS, further, the Board notes that ZR § 35-40 refers to ZR § 35-30 (and, thus, § 35-31) for determining the floor area permitted and only refers to ZR § 23-20 (and, thus, § 23-22) for obtaining the dwelling unit factor with which to divide the floor area; and

WHEREAS, the Board does not find that ZR § 11-22 applies since one does not encounter contradictory provisions when following the Appellant’s methodology; and

WHEREAS, the Board agrees with the Appellant that the appropriate context for the analysis of the dwelling unit count is the conversion of a legal pre-1961 building and not a hypothetical zoning lot in the C4-2 zoning district; and

WHEREAS, accordingly, the Board determines that in the context of converting a pre-1961 mixed-use building, like the Building, maximum residential floor area permitted on the zoning lot derives from the actual floor area and not hypothetical floor area if the pre-1961 building did not exist; and

WHEREAS, the Board finds that the absence of an exception for C4-2 zoning districts in ZR § 15-111 (Number of Permitted Dwelling Units) is not instructive to the facts of the subject case since the context and the purpose for the conversions at issue in ZR § 15-111 are not analogous to the subject case; and

WHEREAS, the Board concludes that, under the subject facts, the allowable floor area and the allowable density should be analyzed by following the interrelated provisions of ZR §§ 35-31, 35-40, and 23-22, which apply to the legal pre-1961 building on the site, rather than by basing one part of the equation on the existing permitted floor area, without conditions, and basing another part of the equation on the hypothetical maximum floor area permitted pursuant to the underlying zoning district regulations, without consideration of the existence of a legal pre-1961 building on the site; and

Therefore it is Resolved that the subject appeal, seeking a reversal of the Final Determination of the Queens Borough Commissioner, dated October 12, 2010, denying the proposed dwelling unit count, is hereby granted.

Adopted by the Board of Standards and Appeals, March 15, 2011.

220-10-BZY

APPLICANT – D.A.B. Group, LLC, for D.A.B. Group, LLC, owner.

SUBJECT – Application November 18, 2010 – Extension of Time (§11-332) to complete construction of a minor development commenced under the prior C6-1 Zoning District. C4-4A Zoning District.

PREMISES AFFECTED – 77, 79, 81 Rivington Street, aka 139, 141 Orchard Street, northern portion of block bound by Orchard Street, to the east Rivington to the north, Allen Street to the west and Delancy street to the south, Block 415, Lot 61, 62, 63, 66, 67, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Nick Zagami.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

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 minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on February 15, 2011, after due notice by publication in *The City Record*, and then to decision on March 15, 2011; and

WHEREAS, the site was inspected by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown;

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and

WHEREAS, the subject site is a through-block site with frontages on the west side of Orchard Street, the south side of Rivington Street, and the east side of Allen Street; and

WHEREAS, the site has a width of 87'-9" and a depth of 127'-3", and a total lot area of approximately 9,828 sq. ft.; and

WHEREAS, the subject site is a single zoning lot comprising five separate tax lots (Lots 61, 62, 63, 66 and 67); and

WHEREAS, the applicant proposes to construct a 16-story transient hotel (Use Group 5) building (the "Building") on Lots 61, 66 and 67, utilizing development rights transferred from Lots 62 and 63; the existing building located on Lot 62 will remain; and

WHEREAS, the Building is proposed to have a total floor area of approximately 39,064 sq. ft., which contributes to a total FAR of 6.0 for the entire zoning lot, and a building height of 191'-0"; and

WHEREAS, the site was formerly located within a C6-1 zoning district; and

WHEREAS, on September 29, 2008, Alteration Type 2 Permit No. 110251361-EW-OT (the "Foundation Permit") was issued by the Department of Buildings ("DOB") permitting excavation of the premises and the construction of the foundation of the Building, and work commenced on October 14, 2008; on November 19, 2008, New Building Permit No. 104870392-01-NB (the "New Building Permit") was issued by DOB permitting the construction of the Building (collectively, the "Permits"); and

WHEREAS, on November 19, 2008 (hereinafter, the "Enactment Date"), the City Council voted to enact the East Village/Lower East Side Rezoning, which changed the zoning district to C4-4A; and

WHEREAS, as of that date, the applicant had obtained permits for the development, completed excavation of the property but had not completed the foundations for the property;

WHEREAS, on June 16, 2009 the Board granted a renewal of all permits necessary to complete construction under BSA Cal. No. 311-08-BZY, pursuant to ZR § 11-331, and

WHEREAS, the foundation was completed within six months and construction has continued since; and

WHEREAS, pursuant to ZR §11-331, however, subsequent to the rezoning of a property, only two years are allowed for completion of construction and to obtain a certificate 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 a single building which is non-complying under an amendment to the ZR, 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, 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, by letter dated December 22, 2010, DOB stated that the Foundation Permit and the New Building Permit were lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date and were timely renewed until the expiration of the original two-year term for construction; 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

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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, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of November 19, 2010 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the permits, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes 100 percent of the foundation, and completion of seven floors of the superstructure, with partial construction of the eighth floor; and

WHEREAS, in support of this statement, the applicant has submitted the following: an affidavit from the owner enumerating the completed work; construction contracts, copies of cancelled checks, copies of lien waivers evidencing payments made by the applicant; and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$4,826,511, or 32 percent, out of the approximately \$15,249,467 cost to complete; and

WHEREAS, the applicant has submitted financial records, construction contracts, copies of cancelled checks, and copies of lien waivers evidencing payments made by the applicant; 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 initial 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 two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 104870392-01-NB and Alteration Type 2 Permit No.

110251361-EW-OT, 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 two years from the date of this resolution, to expire on March 15, 2013.

Adopted by the Board of Standards and Appeals, March 15, 2011.

17-05-A

APPLICANT – Sheldon Lobel, P.C., for GRA V LLC, owner.

SUBJECT – Application February 15, 2011 – Application to reopen pursuant to a court remand for a determination of whether the property owner has established a common law vested right to continue construction under the prior R6 zoning district. R4A zoning district.

PREMISES AFFECTED – 3329 Giles Place, west side of Giles Place between Canon Place and Fort Independence Street, Block 3258, Lots 5 & 7, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Jordan Most.

For Opposition: Charles Moerdler, Samin Sewell, Judy Baier, Brian Aucoin, Teresa Grant Steth, Sarah Aucoin, Margaret Groarke, Daniel Padunacht, Russ Agdern, Dart Weststerd.

ACTION OF THE BOARD – Laid over to May 3, 2011, at 10 A.M., for continued hearing.

222-10-A

APPLICANT – Laleh Hawa, for Yaelle Yorán –Wastin, owner.

SUBJECT – Application December 6, 2010 – Appeal challenging the Department of Buildings’ revocation of a permit for a parking space and curb cut. R6B zoning district.

PREMISES AFFECTED – 97 Saint Marks Avenue, 392’ west of Saint Marks Avenue and Carlton Avenue, Block 1143, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Laleh Hawa.

For Opposition: Frampton Tolbert, Susan Sullnarz, Lee Warshavsky, Robert Biegen, Margaret M. Elwert, J. Alkson Gockett and Patti Hagan.

ACTION OF THE BOARD – Laid over to April 12, 2011, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 15, 2011
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

186-10-BZ

CEQR #11-BSA-029M

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for NYU Hospital Center, owner; New York University, lessee. SUBJECT – Application September 28, 2010 – Variance (§72-21) to allow for the construction of two community facility buildings (*NYU Langone Medical Center*), contrary to rear yard (§24-36), rear yard equivalent (§24-382), height and setback (§24-522), rear yard setback (§24-552), tower coverage (§24-54), maximum permitted parking (§13-132), minimum square footage per parking space (§25-62), and curb cut requirements (§13-142). R8 zoning district.

PREMISES AFFECTED – 400-424 East 34th Street, aka 522-566 & 596-600 First Avenue, East 34th Street, Franklin D. Roosevelt Drive, East 30th Street, and First Avenue, Block 962, Lot 80, 108 & 1001-1107, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Elise Wagner.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated September 24, 2010, acting on Department of Buildings Application Nos. 120448284, 120448293, and 120448998, reads in pertinent part:

1. No required rear yard and rear yard equivalent are provided contrary to ZR 24-36 and ZR 24-382.
2. Portion of the building within the initial setback distance exceeds maximum permitted height of 85 feet above curb level and penetrates sky exposure plane contrary to ZR 24-522.
3. No required 20-foot rear yard setback is provided above the height of 125 feet as required by ZR 24-552.
4. Proposed tower coverage for aggregate areas exceeds 40% of zoning lot contrary to ZR 24-54.
5. Proposed accessory parking exceeds the maximum permitted 100 accessory parking

spaces pursuant to 13-132 and does not provide the minimum 200 SF per accessory parking space pursuant to 25-62.

6. Proposed curb cuts along wide streets (First Avenue and East 34th Street) are contrary to 13-142; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R8 zoning district, the construction of two new community facility buildings on the campus of the New York University Langone Medical Center (the “Medical Center”) that do not comply with zoning regulations for rear yard, rear yard equivalents, height and setback, rear yard setback, tower coverage, maximum permitted parking, minimum square footage per parking space, or curb cut requirements, contrary to ZR §§ 24-36, 24-382, 24-522, 24-552, 24-54, 13-132, 25-62, and 13-142; and

WHEREAS, a public hearing was held on this application on January 25, 2011, after due notice by publication in the *City Record*, and then to decision on March 15, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application, subject to the condition that the applicant consider alternative designs for vehicle ingress and egress which would allow for an increase in the planted area and a decrease in the number of proposed curb cuts; and

WHEREAS, the application is brought on behalf of the Medical Center, a non-profit educational institution and hospital; and

WHEREAS, the subject zoning lot is located on the superblock bounded by East 34th Street to the north, the Franklin D. Roosevelt Drive (the “FDR Drive”) to the east, East 30th Street to the south, and First Avenue to the west, within an R8 zoning district; and

WHEREAS, the zoning lot has a lot area of 408,511 sq. ft.; and

WHEREAS, on November 20, 2001, the Board granted a special permit pursuant to ZR § 73-64 to allow the construction of a new medical research and laboratory building (Use Group 3A) on the site, contrary to zoning regulations for height and setback, rear yard, and minimum distance between buildings; and

WHEREAS, most recently, on July 13, 2010, under BSA Cal. No. 41-10-BZ, the Board granted a variance to permit the renovation and enlargement of the existing Emergency Department and the addition of 354 sq. ft. of signage at the entrances and on the façade of the Emergency Department, contrary to zoning regulations for rear yard and signage; and

WHEREAS, the applicant notes that the zoning lot is subject to a 1949 indenture between the City and New York University (“NYU”), pursuant to which portions of East 31st Street, East 32nd Street and East 33rd Street were demapped and

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their beds conveyed to NYU; the indenture also created a sewer easement and requires that no building on the zoning lot have a height greater than 25 stories, that lot coverage on the zoning lot not exceed 65 percent, and that at least 235 parking spaces be provided on the zoning lot; and

WHEREAS, the proposed construction would be located on the northeast portion of the zoning lot, bounded by East 34th Street to the north, First Avenue and two Amtrak ventilation towers to the west, the FDR Drive Service Road to the east, and the Medical Center's 21-story Tisch Hospital building ("Tisch Hospital") and four-story Coles Student Labs to the south (the "Development Site"); and

WHEREAS, the Development Site is an irregular parcel which occupies the entire East 34th Street frontage of the superblock, two frontages on First Avenue of approximately 127 feet and 35 feet, and approximately 552 feet of frontage on the FDR Drive Service Road; and

WHEREAS, the Development Site is currently occupied by the ten-story Perelman Building, the nine-story Rusk Institute for Rehabilitative Medicine (including the one-story Auxiliary Pavilion), and the one-story northern service wing; these existing buildings would be demolished to make way for the proposed construction; and

WHEREAS, the applicant proposes to construct: (1) a 22-story major clinical building with a floor area of 687,731 sq. ft., which will be physically linked to, and function with, the existing Tisch Hospital (the "Kimmel Pavilion"); and (2) a six-story building with a floor area of 40,438 sq. ft., which will house both a modern cogeneration facility to serve the entire campus and a radiation oncology facility (the "Energy Building") (collectively, the Kimmel Pavilion and the Energy Building make up the "New Buildings"); and

WHEREAS, the applicant also proposes to relocate the Medical Center's bulk oxygen tank facility to a site at the south end of the zoning lot; and

WHEREAS, the applicant states that the construction of the New Buildings will result in a total floor area for the zoning lot of 2,601,636 sq. ft. (6.37 FAR); the maximum permitted FAR for a community facility in the subject zoning district is 6.5; and

WHEREAS, the proposed construction will create the following non-compliances on the site: a portion of the Kimmel Pavilion is located within a required rear yard and the bulk oxygen tank facility, at the southern end of the zoning lot, is located wholly within a required rear yard (rear yards with minimum depths of 30'-0" are required); the Energy Building fully occupies a required rear yard equivalent (a rear yard equivalent with a minimum depth of 60'-0" is required); the portion of the Kimmel Pavilion located more than 125 feet above the required rear yard provides a rear yard setback of only 5'-0" (a rear yard setback of 20'-0" is required above the height of 125'-0"); a total tower coverage for the zoning lot of 171,578 sq. ft. (a maximum tower coverage of 163,404 sq. ft. is permitted); the addition of 140 accessory parking spaces (100 accessory parking spaces is the maximum permitted for hospital developments or enlargements in Manhattan

Community District 6); a parking garage with 150 sq. ft. per accessory parking space (200 sq. ft. is the minimum required per accessory parking space); and the relocation and enlargement of two existing curb cuts on East 34th Street, a wide street, and the addition of a second curb cut on First Avenue, a wide street (entrances and exits to permitted accessory off-street parking spaces may not be located on a wide street in Manhattan Community District 6); and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Medical Center: (1) a sufficient number of up-to-date operating and procedure rooms, private inpatient rooms, observation units for post-procedure patients, radiation oncology facilities, and attendant spaces to satisfy increased patient volumes and current medical standards; (2) hospital floor plates that are highly flexible and repetitive; (3) providing physical and functional connections among the New Buildings and the existing Tisch Hospital, to create a single integrated hospital system with a single standard of care; (4) an efficient and up-to-date energy system with direct utility connections to all campus buildings; and (5) additional parking spaces and improved access through and around the hospital; and

WHEREAS, the applicant states that each year the Medical Center admits approximately 36,000 inpatients and 600,000 ambulatory visits and performs 25,000 surgeries; and

WHEREAS, the applicant represents that these numbers are expected to increase by approximately 47 percent for procedure volumes and 21 percent for inpatient discharges within the next ten years; and

WHEREAS, accordingly, the applicant represents that the Medical Center requires additional operating and procedure rooms and patient rooms to meet the demand created by current and projected patient volumes; and

WHEREAS, the applicant states that existing operating and procedure rooms are insufficient in number for this demand and insufficient in size for the integration of new technologies and procedures; and

WHEREAS, specifically, the applicant states that there is a projected need for 82 operating and procedure rooms while only 69 such rooms exist, and the optimal size for an operating and procedure room is 600 to 650 sq. ft., while the Medical Center's existing rooms range in size from 310 to 550 sq. ft.; and

WHEREAS, the applicant states that there is also a shortage of recovery rooms and that such rooms are too small in size and clearance, causing a backup in the operating rooms, and as a result, operating suites are used inefficiently, with extended wait times for patients; and

WHEREAS, as to the Medical Center's patient rooms, the applicant states that only 12 percent of the Medical Center's inpatient beds are designed for critical care, while national benchmarks for similar facilities require that 40 to 50 percent of inpatient beds be designed for such critical care; and

WHEREAS, the applicant notes that the existing inpatient rooms are designed for multiple beds, and that the

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Medical Center's goal, based on current medical standards, is that all inpatient beds be located in single-patient rooms, which is important for reducing the spread of infection, and providing privacy for patients and family members; and

WHEREAS, the applicant represents that the Medical Center also has a need for observation areas for patients who do not require hospitalization after a procedure but require observation for a period of less than 24 hours, to accommodate for the increasing number of outpatient procedures; and

WHEREAS, the applicant states that the Medical Center's existing inpatient beds, procedure rooms, and patient care areas are located in three buildings (Tisch Hospital, the Rusk Institute building, and the Schwartz Health Care Center) which are physically and operationally separate, creating inefficiencies and redundancies in equipment, support space, and clinical supply inventories; and

WHEREAS, the applicant represents that the Rusk Institute building, constructed in 1952, is unsuitable for renovation due to its age, condition, column grid and configuration (such as low floor-to-floor heights of 11'-4½" and narrow floor plate dimensions of 50'-0" by 296'-6" above the ground floor), and the Schwartz Health Care Center is undersized for inpatient use and is located near the southern end of the Medical Center campus, remote from the other clinical facilities; and

WHEREAS, the applicant states that Tisch Hospital is limited by existing floor-to-floor heights (typically 11'-4 ½") and floor plate dimensions (typically 343 feet by 134 feet on the lower floors and 278 feet by 80 feet on the upper floors) which cannot be adapted to a state-of-the-art facility for the highest acuity level of care because: (1) there is no expansion space available for emerging clinical practices; (2) existing corridors connecting the entrances and various departments are circuitous and difficult for patients and hospital staff to navigate; and (3) the building lacks adequate swing space to accommodate relocations during the renovation of other hospital buildings, and other buildings on the Medical Center campus lack adequate swing space to accommodate patient beds during the renovation of Tisch Hospital; and

WHEREAS, the applicant represents that the new facility must be integrated with the existing Tisch Hospital, especially on critical procedure floors, so that patients and staff can move freely between buildings as needed to satisfy patient care and support needs; and

WHEREAS, the applicant further represents that the floor plates must be repetitive so as to create an environment that doctors and nurses can easily learn and efficiently navigate, and must be highly flexible and free of major permanent obstructions so that the building may be adapted for changes in patient care and technology that are likely to occur over the buildings' expected 100-year lifespan; and

WHEREAS, the applicant states that the Kimmel Pavilion will satisfy these programmatic needs because the

lower levels of the Kimmel Pavilion will provide large contiguous floor plates, with a concentrated elevator and utility core surrounded by large amounts of space unconstrained by vertical penetrations, which will allow for flexibility in accommodating operating and procedure rooms, and will allow for floor plates that are repetitive and easily navigable; and

WHEREAS, the applicant further states that each procedure floor of the Kimmel Pavilion would support eight to 12 operating and procedure rooms as well as associated pre-operative holding, recovery, and support areas, and procedure rooms would be clustered to allow for efficient staffing and management of patient flow and pre- and post-procedure care; and

WHEREAS, the applicant notes that the Kimmel Pavilion would also be physically linked and function with the existing Tisch Hospital, such that: (1) the entrances and elevators of the two buildings would be physically and visually connected by a public concourse running between the lobby and second floor of the Kimmel Pavilion; (2) the second floor of Tisch Hospital and a service corridor would link the buildings at the first and second floors of the Kimmel Pavilion; and (3) two of the Kimmel Pavilion's procedure levels would align with key procedure floors of the Tisch Hospital building, thereby creating large, contiguous, and flexible clinical areas; and

WHEREAS, as to the programmatic need for the Energy Building, the applicant states that electrical requirements for the existing Medical Center facilities have been rapidly increasing due to new clinical and research technologies, greater intensity of computing, and greater reliance on information technologies for medical care; and

WHEREAS, the applicant further states that the Medical Center's existing electrical facilities are incapable of meeting the growing need and are burdened with a 50-year old campus electrical distribution system, overloaded and outdated electrical transformers, and switchgear that expose the campus to the risk of power failure; and

WHEREAS, the applicant states that the proposed Energy Building would supplement and replace the existing facilities with a combined heat and power facility with direct utility connections with all campus buildings, which would provide energy efficiently, reliably, and cost-effectively; and

WHEREAS, the applicant further states that the Energy Building would include a cogeneration facility which would allow the thermal byproducts of electricity generation to be captured to supply heat and hot water on the site, thereby reducing electrical loads, transmission losses that occur when electricity is transmitted over long distances, and operating costs for the Medical Center, and would also reduce regional pollutants and greenhouse gas emissions; and

WHEREAS, the applicant represents that the Medical Center also needs updated radiation oncology treatment facilities, which are currently located in the cellar of Tisch Hospital, a floor primarily used for utility equipment and

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storage; and

WHEREAS, the applicant notes that the existing treatment vaults for the radiation oncology treatment facility, which serve to buffer the treatment equipment, are more than 20 years old and are not large enough to accommodate state-of-the-art equipment or to expand to satisfy growing demand; and

WHEREAS, the applicant states that because of the vaults' low ceilings, renovations would be difficult and would have a limited effect in improving patient experience, and that the required depth of the vaults makes it difficult to accommodate the facilities within the proposed Kimmel Pavilion; and

WHEREAS, the applicant represents that the most efficient location for the radiation oncology facilities is on the second floor of the Energy Building, where they can be provided with vaults of sufficient depth and where they can be physically and programmatically integrated with the proposed Kimmel Pavilion and Tisch Hospital; and

WHEREAS, the applicant notes that the Medical Center's program also requires the relocation of existing bulk oxygen tanks on the Development Site to a site fronting on former East 30th Street; the tanks will be surrounded by concrete masonry unit and screen walls with a height of approximately 48'-6"; and

WHEREAS, as to the need for 140 parking spaces in the accessory parking garage of the Kimmel Pavilion, the applicant states that there are only 110 existing accessory off-street parking spaces on the zoning lot outside of the Development Site and, as noted above, the 1949 indenture agreement with the City requires that the Medical Center provide at least 235 parking spaces on the zoning lot; therefore, the Medical Center has a programmatic need for the Development Site to provide more than the 100 accessory parking spaces permitted pursuant to the underlying zoning district regulations; and

WHEREAS, the applicant notes that the proposed parking garage would provide automated parking facilities which would maximize parking capacity by allowing the vehicles to be stacked closely together with no internal driveways, such that the proposed 150 sq. ft. per parking space would be sufficient to accommodate the facility; and

WHEREAS, the applicant states that the programmatic needs of the Medical Center also require an additional curb cut on First Avenue to allow two vehicular access points to the Kimmel Pavilion, thereby providing optimal configuration for accommodating vehicular traffic through and around the hospital; and

WHEREAS, the applicant submitted an engineer's report which states that the additional access point: (1) allows continued access to the hospital in the event that either entrance becomes inaccessible due to traffic congestion, road construction, or other activity; (2) provides an alternative entry point in the event that the City's proposed Select Bus Service (SBS) has a sustained impact on the East 34th Street entry point; (3) provides access from

First Avenue separate from that to the Emergency Department, allowing ambulances to access the Emergency Department without interference from general hospital traffic; (4) minimizes traffic volume and delays at the intersection of First Avenue and East 34th Street, as well as conflicts with pedestrians at the intersection's crosswalks; and (5) provides additional vehicular queuing space, which would in turn limit possible "spillback" into the adjacent streets; and

WHEREAS, as noted above, the Community Board requested that the applicant consider alternative designs for vehicle ingress and egress at the site; specifically, the Community Board suggested that the applicant consider an alternative in which: (1) the proposed new curb cut on First Avenue is eliminated; and (2) the existing First Avenue curb cut for ambulance access to the Emergency Department is widened to accommodate both ambulance access to the Emergency Department and vehicular access to the Kimmel Pavilion driveway; and

WHEREAS, in response, the applicant submitted a letter from its engineer stating that the Community Board's proposal would compromise the Medical Center's operations and site plan, since a shared curb cut would increase conflicts between hospital-bound vehicles and Emergency Department ambulances, cause driver confusion, and detract from the pedestrian environment; and

WHEREAS, the applicant submitted plans for an alternative scenario consisting of a complying hospital building, with 24 stories and 707,306 sq. ft. of floor area, and an adjacent accessory parking lot; and

WHEREAS, the applicant represents that the aforementioned programmatic needs could not be satisfied through the complying scenario; and

WHEREAS, specifically, the applicant states that the required rear yard and setbacks of the hospital building would significantly compromise the efficiency and flexibility of the building, as they would result in three fewer operating and procedure rooms and less space for associated services on each of the lower floors, a significant reduction in the size of the clinical areas on the fourth, fifth and sixth floors, and a reduction in the width of the corridor connecting the hospital building to Tisch Hospital such that the corridor would not align with the existing corridor in Tisch Hospital, thereby compromising the efficiency of circulation between the buildings; and

WHEREAS, the applicant represents that the rear yard requirements would also preclude the location of the Energy Building south of the hospital building, and the energy facilities and the radiation oncology facilities would therefore have to be located within the hospital building, resulting in a larger mechanical core, a reduced clinical area, less flexible floor plates, and a taller building; and

WHEREAS, the applicant further represents that the inclusion of heat and power facilities within the complying hospital building would also result in poor connectivity to the southern end of the Medical Center campus and would

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prevent the phasing of construction of the energy facilities, which is critical to maintaining operation of the Medical Center; and

WHEREAS, the applicant notes that the complying scenario also would not provide vehicular access from First Avenue, thereby increasing congestion and vehicle-pedestrian conflicts at the intersection of East 34th Street and First Avenue, creating a risk of “spillback” into the adjacent streets by limiting queuing space, and risking impeded access to the hospital in the event that traffic congestion, road construction, or other activity affects the existing East 34th Street entrance; and

WHEREAS, the applicant states that the complying scenario would have an inefficient internal roadway geometry because of the need to use existing curb cuts on East 34th Street, and there would be less parking for patients and visitors; and

WHEREAS, the applicant represents that the complying scenario would also require that the bulk oxygen tanks be relocated to a site on the north side of former East 30th Street, which would necessitate the removal of existing storage space on the site and the extensive relocation of existing rooftop mechanical equipment; and

WHEREAS, the Board acknowledges that the Medical Center, as an educational institution, is entitled to significant deference under the 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, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, in addition to the programmatic needs of the Medical Center, the applicant states that the variance request is also necessitated by unique conditions of the site that create a hardship, specifically: (1) the sub-grade conditions of the Development Site; and (2) the existing built conditions of the zoning lot; and

WHEREAS, as to the sub-grade conditions on the Development Site, the applicant submitted an engineer's report stating that the site suffers from the following sub-grade constraints: four Amtrak tunnels running beneath the zoning lot, a sewer easement held by the New York City Department of Environmental Protection (“DEP”) which spans the zoning lot in an east-west direction, storm sewers, a high water table, and poor soil conditions; and

WHEREAS, the engineer's report submitted by the applicant states that these constraints preclude the construction of cellars, which are commonly used for mechanical space in hospital buildings, and thus require that a greater amount of the buildings' bulk be located above grade, and they limit the location of foundations and elevator and mechanical cores, thereby constraining the configuration and dimensions of the buildings' footprints;

and

WHEREAS, as to the surrounding conditions on the zoning lot, the applicant states that the configuration of the Development Site is dictated by the location of existing buildings on the zoning lot which are integral to the Medical Center's mission and cannot be demolished and/or which must be physically connected with the New Buildings so that the Medical Center may continue to operate efficiently; and

WHEREAS, the applicant states that the location of the Development Site is also constrained by the location of two Amtrak ventilation buildings on the northwest portion of the superblock; one of these buildings has frontage on First Avenue, close to the corner of East 34th Street, and the other has no street frontage and is within the Medical Center's zoning lot, immediately adjacent to the north of Tisch Hospital; and

WHEREAS, the applicant states that Tisch Hospital is currently the Medical Center's primary inpatient facility and must remain in operation throughout the construction of the New Buildings; and

WHEREAS, Tisch Hospital is located in the center of the Medical Center campus in an east-west direction, and therefore acts as a barrier between buildings to the north and south, such that new clinical facilities must be physically connected with Tisch Hospital in order to create an integrated environment with a single standard of care; and

WHEREAS, the applicant represents that the Development Site is the only location on the zoning lot that allows for the efficient consolidation of clinical facilities, and the construction of a large medical facility elsewhere on the zoning lot would either be impeded by the two Amtrak ventilation buildings, or would require more extensive demolition and displacement of existing, functioning Medical Center facilities; and

WHEREAS, the applicant states that the location of the Energy Building is dictated by the need for a central location to minimize the length of utility connections with other buildings and the inability to route utility connections through Tisch Hospital; and

WHEREAS, specifically, the applicant states that Tisch Hospital is already highly congested with utility connections, and its age and low floor-to-floor heights (typically 11'-4½”) make it infeasible to route new utilities through the building; and

WHEREAS, the applicant further states that utilities cannot be routed between the Kimmel Pavilion and Tisch Hospital at the lowest service levels because of the sewer easement on the zoning lot, and they cannot be routed through the building at higher levels because doing so would require the displacement of clinical programs; and

WHEREAS, the applicant further states that, because Tisch Hospital is oriented in an east-west direction in the center of the campus, it precludes the location of the Energy Building further south on the campus; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations and inefficiencies of the site, when considered in conjunction with the programmatic needs

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of the Medical Center, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Medical Center 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, the applicant states that the proposed buildings would be in keeping with the character of the surrounding neighborhood, which is defined by numerous medical and other institutional uses; and

WHEREAS, specifically, the applicant notes that the New Buildings would be located among a multitude of medical institutions comprising the First Avenue “medical corridor,” including other buildings within the Medical Center, the Bellevue Hospital Center, the Veterans Affairs Medical Center, and the Hunter College School of Medical Professions; and

WHEREAS, the applicant further notes that the 197-a Plan for the Eastern Section of Community District 6 recommended that the area including the Medical Center be rezoned from residential to a Special Hospital Use District, indicating that the community recognizes this area as an appropriate location for specialized hospital uses; and

WHEREAS, the applicant states that First Avenue is a wide, heavily-trafficked northbound thoroughfare which divides the major health care facilities on the east side of the avenue from the neighborhood to the west, which has a mix of residential and institutional uses; and

WHEREAS, the applicant further states that the Development Site is located on a superblock largely occupied by the many mid-rise and high-rise buildings of the Medical Center, as well as two unoccupied Amtrak ventilation buildings on the northwest portion of the superblock and the Office of the New York City Medical Examiner on the southwest portion of the superblock; as such, there are no uses adjacent to the Development Site or on the superblock that would be affected by the requested rear yard waiver; and

WHEREAS, the applicant notes that the portion of the Kimmel Pavilion for which waivers are required from rear yard and rear yard setback regulations is located directly to the east of the southernmost Amtrak building on the Development Site, which the applicant represents would not be impacted by the proposed waivers because the Amtrak building contains mechanical equipment, is occupied only as needed by maintenance workers, and does not have windows, and therefore will not be impacted by the proposed variance; and

WHEREAS, the applicant states that the Energy

Building, which is located within a required rear yard equivalent and which exceeds the maximum permitted front wall height, fronts on the FDR Drive, and portions of the Kimmel Pavilion for which height and setback waivers are required are similarly adjacent to the FDR Drive, and that the only buildings adjacent to these portions of the New Buildings are Medical Center facilities, none of which are residential in character; and

WHEREAS, the applicant further states that the small portion of the Kimmel Pavilion which pierces the East 34th Street sky exposure plane is located across East 34th Street from a 35-story residential complex, and the impact of the waiver for this non-compliance would be negligible given the small volume of the encroachment, the scale of the residential complex, and the distance to the residential complex across the wide street; and

WHEREAS, the applicant further states that the proposed bulk oxygen tank facility, located within a required rear yard to the east of the Office of the Medical Examiner on former East 30th Street, would be only slightly larger than the existing building on the site, would be smaller in scale than the other buildings fronting on East 30th Street, and would help create a continuous street wall with the adjacent properties; and

WHEREAS, the applicant represents that the New Buildings would not obstruct any views to any visual resources and would not detract from the visual quality of the Development Site or the surrounding neighborhood; and

WHEREAS, the applicant asserts that the New Buildings would actually improve the visual quality of the Development Site by replacing aging buildings on the Development Site with buildings of a contemporary design that will be designed to visually connect with other buildings on the Medical Center campus; and

WHEREAS, the applicant further asserts that the New Buildings would provide a benefit to the surrounding neighborhood and the City as a whole by providing a state-of-the-art, patient-centered, and integrated facility for inpatient and procedure-based care, and would further provide an upgraded energy infrastructure to ensure that the entire Medical Center campus is operated efficiently and safely; 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 Medical Center could occur on the existing site; 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 relief necessary to accommodate the

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projected programmatic needs; and

WHEREAS, the Board has reviewed the applicant's program needs and assertions as to the insufficiency of a complying scenario and has determined that the requested relief is the minimum necessary to allow the Medical 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 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") 11BSA029M, dated March 14, 2011; 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, DEP's Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, air quality, and noise impacts; and

WHEREAS, DEP accepted the November 2010 Phase II Workplan for the proposed Kimmel Pavilion and requested that a detailed Phase II Investigation Report be submitted to DEP for review and approval; and

WHEREAS, DEP accepted the November 2010 Remedial Action Plan and Construction Health and Safety Plan for the Energy Building and requested that a professional engineer-certified Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, a Restrictive Declaration was executed on February 24, 2011 and filed for recording on March 2, 2011; and

WHEREAS, DEP reviewed the applicant's stationary and mobile sources air quality analyses and determined that significant impacts due to the proposed project are not anticipated; and

WHEREAS, DEP reviewed the results of noise monitoring, which determined that a range of 28 to 44 dBA of window-wall noise attenuation and central air-conditioning as an alternate means of ventilation are required for the two proposed buildings; and

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

WHEREAS, accordingly, 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 the Board of Standards and Appeals makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, within an R8 zoning district, the construction of two new community facility buildings on the campus of the New York University Langone Medical Center that do not comply with zoning regulations for rear yard, rear yard equivalents, height and setback, rear yard setback, tower coverage, maximum permitted parking, minimum square footage per parking space, or curb cut requirements, contrary to ZR §§ 24-36, 24-382, 24-522, 24-552, 24-54, 13-132, 25-62, and 13-142, *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 28, 2010" – twenty (20) sheets, "Received November 22, 2010" – four (4) sheets, and "Received February 4, 2011" – one (1) sheet; and *on further condition*:

THAT the parameters of the proposed buildings shall be in accordance with the approved plans;

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor shall obtain from DEP a Notice to Proceed;

THAT prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain from DEP a Notice of Satisfaction;

THAT the window-wall noise attenuation requirements listed on sheet Z-1.02, stamped "Received February 4, 2011," and central air-conditioning as an alternate means of ventilation shall be provided in the New 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 substantial construction shall be completed pursuant to ZR § 72-23;

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 15, 2011.

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24-09-BZ

APPLICANT – Sheldon Lobel, PC, for Meadows Park Rehabilitation and Health Care Center, LLC, owners.

SUBJECT – Application February 12, 2009 – Variance to allow the enlargement of a community facility (*Meadow Park Rehabilitation and Health Care Center*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), height (§24-521) and rear yard (§24-382) regulations. R3-2 district.

PREMISES AFFECTED – 78-10 164th Street, Located on the western side of 164th Street between 78th Avenue and 78th Road, Block 6851, Lot 9, 11, 12, 23, 24, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Mosst, Robert Pauls, Tony Maddaloni, Lorraine Budzik.

For Opposition: Peter Sell.

ACTION OF THE BOARD – Laid over to March 15, 2011, at 1:30 P.M., for adjourned hearing.

309-09-BZ

APPLICANT – Harold Weinberg, P.E., for Ralph Stroffolino, owner.

SUBJECT – Application November 20, 2009 – Variance (§72-21) to allow a mixed use building, contrary to lot coverage (§23-145), side yard (§35-541) and height (§35-542) regulations. R6A/C2-3 zoning district.

PREMISES AFFECTED – 2173 65th Street, between Bay Parkway and 21st Avenue, Block 5550, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Harold Weinberg, Frank Sellitto, Ralph Seroffolino and Chris Angeanni.

For Opposition: Leo Weinberger and Angela Calcagno.

ACTION OF THE BOARD – Laid over to March 15, 2011, at 1:30 P.M., for adjourned hearing.

31-10-BZ

APPLICANT – Eric Palatnik, P.C., for 85-15 Queens Realty, LLC, owner.

SUBJECT – Application March 16, 2010 – Variance (§72-21) to allow for a commercial building, contrary to use (§22-00), lot coverage (§23-141), front yard (§23-45), side yard (§23-464), rear yard (§33-283), height (§23-631) and location of uses within a building (§32-431) regulations. C1-2/R6, C2-3/R6, C1-2/R7A, R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard aka 51-35 Reeder Street, north side of Queens Boulevard, between Broadway and Reeder Street, Block 1549, Lot 28, 41, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 12, 2011, at 1:30 P.M., for decision, hearing closed.

45-10-BZ

APPLICANT – Sheldon Lobel, PC, for Leemilt's Petroleum, Incorporated, owner.

SUBJECT – Application April 5, 2010 – Special Permit (§11-411 and §11-412) for the reinstatement of a Variance for the continued operation of a gasoline service station (*Getty*) which expired on June 23, 1986; Amendment to increase the size of the auto laundry; Extension of Time to obtain a Certificate of Occupancy. C1-4/R7-1 zoning district.

PREMISES AFFECTED – 1413-1429 Edward L. Grant Highway, southwest corner of Plimpton Avenue and Edward L. Grant Highway, Block 2521, Lot 15, Borough of Bronx.

COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to May 3, 2011, at 1:30 P.M., for continued hearing.

47-10-BZ

APPLICANT – Eric Palatnik, P.C., for 2352 Story Avenue Realty Coprporation, owner; Airgas-East, Incorporated, lessee.

SUBJECT – Application April 8, 2010 – Variance (§72-21) to allow a manufacturing use in a residential district, contrary to ZR 22-00. M1-1/R3-2 zoning district.

PREMISES AFFECTED – 895 Zerega Avenue, aka 2352 Story Avenue, Block 3698, Lot 36, Borough of The Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 12, 2011, at 1:30 P.M., for decision, hearing closed.

118-10-BZ

APPLICANT – Eric Palatnik, P.C., for Arkady Nabatov, owner.

SUBJECT – Application June 28, 2010 – Reinstatement (§11-411 & §11-413) of an approval permitting the operation of an automotive service station (UG 16B), with accessory uses, which expired on December 9, 2003; amendment to legalize a change in use from automotive

MINUTES

service station to automotive repair, auto sales and hand car washing. R4 zoning district.

PREMISES AFFECTED – 2102/24 Avenue Z, aka 2609/15 East 21st Street. Block 7441, Lot 371. Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 5, 2011, at 1:30 P.M., for adjourned hearing.

119-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Samson and Rivka Molinsky, owners.

SUBJECT – Application June 28, 2010 – Variance (§72-21) to allow legalization of an enlargement of a residential building, contrary to front yard (§23-45) and height (§23-631) regulations. R2X zoning district.

PREMISES AFFECTED – 787 Cornaga Avenue, southwest corner of Cornaga Avenue and Mador Court, Block 15571, Lot 133, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Richard Lobel, Josh Rinesmith, Simon Molinsky, Rivka Molinsky, Eliyahu Babad and Nicole Fandrich.

ACTION OF THE BOARD – Laid over to May 3, 2011, at 1:30 P.M., for continued hearing.

130-10-BZ

APPLICANT – Sheldon Lobel, P.C., for John Ingravallo, owner.

SUBJECT – Application July 16, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141) and perimeter wall height (§23-631) regulations. R3X zoning district.

PREMISES AFFECTED – 1153 85th Street, north side of 85th Street, between 11th and 12th Avenue, Block 6320, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 12, 2011, at 1:30 P.M., for decision, hearing closed.

149-10-BZ

APPLICANT – Eric Palatnik, P.C., for Chaya Singer, owner.

SUBJECT – Application August 13, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and lot coverage (§23-141); side yard (§23-461) and less than the minimum rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1415 East 29th Street, between Avenue N and Kings Highway, Block 7683, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 12, 2011, at 1:30 P.M., for decision, hearing closed.

196-10-BZ

APPLICANT – James Chin & Associates, LLC, for Turtle Bay Inn, LLC., owner.

SUBJECT – Application October 25, 2010 – Variance (§72-21) to allow ground floor commercial use in an existing residential building, contrary to use regulations (§22-00). R8B zoning district.

PREMISES AFFECTED – 234 East 53rd Street, mid-block parcel located on the south side of 53rd Street, between 2nd and 3rd Avenue, Block 1326, Lot 34, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Chris Wright and Robert B. Pauls.

ACTION OF THE BOARD – Laid over to May 3, 2011, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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April 7, 2011

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DOCKET

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27-11-BZ

86-88 Franklin Street, 75.17 easterly of intersection of Church Street and Franklin Street., Block 175, Lot(s) 8, Borough of **Manhattan, Community Board: 1**. Special Permit (73-36) to allow the operation of a physical culture establishment. C6-2A zoning district. C6-2A district.

28-11-BZ

291 Broadway, Northwest corner of Broadway and Reade Street, Block 150, Lot(s) 38, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to leagize the operation of a physical culture establishment. C6-4 zoning district. C6-4 district.

29-11-A

318 Lafayette Street, Northwest corner of Houston and Lafayette Streets., Block 522, Lot(s) 24, Borough of **Manhattan, Community Board: 2**. An appeal challenging the Department of Building's determination that the sign permit lapsed on February 27, 2001 . M1-5B Zonign District . M1-5B district.

30-11-A

318 Lafayette Street Street, Northwest corner of Houston and Lafayette Streets., Block 522, Lot(s) 24, Borough of **Manhattan, Community Board: 2**. An Appeal challenging the Department of Building's determination that the sign permit lapsed on Ferburary 27, 2001 . M1-5B Zoning District . M1-5B district.

31-11-BZ

1665 Jerome Avenue, West side of Jerome Avenue between Featherbed Lane and Clifford Place., Block 2861, Lot(s) 35, Borough of **Bronx, Community Board: 5**. Variance (§72-21) to allow a mixed use community facility and commerical building contrary to use (ZR 32-12), floor area (ZR 33-123), rear yard (ZR 33-292), and height and setback (ZR 33-432) regulations. C8-3 zoning district. C8-3 district.

32-11-A

6 Graham Place, South side 230' west of mapped Beach 201st Street., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Proposed construction not fronting on a mapped street, contrary to General City Law Section 36, Article 3 within an R4 zoning district. R4 district.

33-11-BZ

1050 Forest Avenue, Between Manor Road and Raymond Place., Block 315, Lot(s) 39, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) to allow for a two-story animal hospital. R3-2/R-2 district.

34-11-BZ

272 Driggs Avenue, North side of Driggs Avenue 85.29' west of Eckford Street in Brooklyn., Block 2681, Lot(s) 38, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to allow the operation of a physical culture establishment. C2-4 Ovrlay/R6B 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

APRIL 12, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 12, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

1069-27-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 6702 New Utrecht Avenue LLC by Frank Momando, owner.

SUBJECT – Application February 23, 2011–Extension of Term (§11-411) of a previously granted Variance for the continued operation of an automatic automobile laundry, simonizing room and offices which expired on March 6, 2011 and an Extension of Time to obtain a Certificate of Occupancy. C1-2/R5 zoning district.

PREMISES AFFECTED – 6702-6724 New Utrecht Avenue, bounded by New Utrecht Avenue, 15th Avenue and Ovington Avenue/68th Street, Block 5565, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #11BK

982-83-BZ

APPLICANT – H Irving Sigman, for Barone Properties, Inc., owner.

SUBJECT – Application February 22, 2011 – Extension of Term/Time/Amend/C of O/Waiver (11-411, 11-412) to reopen, for a term of 10 years.

PREMISES AFFECTED – 191-20 Northern Boulevard, southwest corner of 192nd Street, Block 5513, Lot 27, Borough of Queens.

COMMUNITY BOARD #11Q

APPEALS CALENDAR

228-10-BZY

APPLICANT – Akerman Senterfitt, for 180 Lidlow Development, LLC, owner.

SUBJECT – Application December 15, 2010 – Extension of time (§11-332) to complete construction under the prior C6-1 zoning district regulations. C4-4A zoning district.

PREMISES AFFECTED – 180 Ludlow Street, east side of Ludlow Street, 125' south of Houston Street, Block 412, Lots 48-50, Borough of Manhattan.

COMMUNITY BOARD #3M

229-10-BZY

APPLICANT – Akerman Senterfitt, for 163 Orchard Street, LLC, owner.

SUBJECT – Application December 17, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior C6-1 zoning district. C4-4A Zoning District.

PREMISES AFFECTED – 163 Orchard Street, Orchard and Houson Streets, between Sytanton and Rivington Street, Block 416, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #3M

APRIL 12, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 12, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

46-10-BZ

APPLICANT – Eric Palatnik, P.C., for 1401 Bay LLC, owner.

SUBJECT – Application April 8, 2010 – Special Permit (§73-44) to permit a reduction in required parking for ambulatory and diagnostic treatment center. C4-2 zoning district.

PREMISES AFFECTED – 1401 Sheepshead Bay Road, Avenue Z and Sheepshead Bay Road, Block 7459, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

54-10-BZ

APPLICANT – Eric Palatnik, P.C., for Richard Valenti as Trustee, owner; Babis Krasanakis, lessee.

SUBJECT – Application April 19, 2010 – Special Permit (§73-44) to permit reduction in required parking spaces for an ambulatory diagnostic or treatment center. C4-2 zoning district.

PREMISES AFFECTED – 150(c) Sheepshead Bay Road, aka 1508 Avenue Z, south side of Avenue Z, between East 15th and East 16th Street, Block 7460, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

CALENDAR

1-11-BZ

APPLICANT – Martyn & Don Weston Architects, for RAC LLC Realty, owner; Sahadi Importing Company, lessee.

SUBJECT – Application January 3, 2011 – Variance (§72-21) to allow for a ground floor enlargement to a pre-existing non complying commercial building, contrary to floor area regulations, ZR 53-31. C2-3/R6 zoning district.

PREMISES AFFECTED – 189-191 Atlantic Avenue, north side of Atlantic Avenue, 240' east of Clinton Street, Block 276, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #2BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 29, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

230-98-BZ

APPLICANT – Mitchell S. Ross, Esq., for JC's Auto Enterprises, Limited, owners.

SUBJECT – Application July 22, 2010 – Extension of Term of a previously granted Variance (§72-21) for an automotive repair shop and car sales which expired on June 22, 2010. R-5 zoning district.

PREMISES AFFECTED – 5820 Bay Parkway, northwest corner of 59th Street, Block 55508, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of term for an automotive repair and sales business, which expired on June 22, 2010, and an amendment to permit a 20-year extension of term; and

WHEREAS, a public hearing was held on this application on December 7, 2010 after due notice by publication in *The City Record*, with continued hearings on January 11, 2011, February 1, 2011 and March 8, 2011, and then to decision on March 29, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the subject premises is located on the northeast corner of Bay Parkway and 59th Street, within an R5 zoning district; and

WHEREAS, the site is occupied by a one-story garage building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1948 when, under BSA Cal. No. 594-24-BZ, the Board granted a variance to permit automotive repair and sales at the site; and

WHEREAS, the grant was subsequently amended and

the term extended at various times; and

WHEREAS, the grant was re-established in 1982, under BSA Cal. No. 736-82-BZ, which permitted additional automotive repair services; and

WHEREAS, on June 22, 1999, under the subject calendar number, the Board granted a variance to again legalize the existing automotive repair and sales business; the term of the variance was for one year, to expire on June 22, 2000; and

WHEREAS, on October 30, 2001, the Board granted a ten-year extension of term, to expire on June 22, 2010, and approved the sub-division of the lot which resulted in an as-of-right use at 5810 Bay Parkway and the subject use at 5824 Bay Parkway; and

WHEREAS, most recently, on January 23, 2007, the Board granted an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant now requests an additional extension of the term of the variance; and

WHEREAS, the applicant also seeks an amendment to permit a 20-year extension of the term; and

WHEREAS, at hearing, the Board directed the applicant to provide notification of the proposed amendment to permit a 20-year term to all property owners within a 200-ft. radius of the site; and

WHEREAS, in response, the applicant submitted proof of notification for property owners within a 200-ft. radius of the site; and

WHEREAS, the Board notes that all of the submissions that have been received from the adjacent property owners have been in support of the proposed 20-year term; and

WHEREAS, at hearing, the Board questioned whether the side overhead door on 59th Street and its accompanying curb cut were still in use; and

WHEREAS, in response, the applicant submitted photographs reflecting that the side overhead door on 59th Street is no longer in use and the accompanying curb cut has been removed to accommodate street parking; and

WHEREAS, at hearing, the Board directed the applicant to remove the temporary banners and signs from the site and to confirm that the signage on the site otherwise complies with C1 district regulations; and

WHEREAS, in response, the applicant submitted photographs which reflect that the temporary banners and signs have been removed from the site and submitted a signage analysis which reflects that the signage on the site complies with C1 district regulations; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and amendment 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 June 22, 1999, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from June 22, 2010, to expire on June 22, 2030, *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

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THAT the term of this grant shall expire on June 22, 2030;

THAT all signage on the site shall comply with C1 district regulations;

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) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 320188747)

Adopted by the Board of Standards and Appeals, March 29, 2011.

197-00-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for SLG Graybar Sublease, LLC, owner; Equinox 44th Street, Inc., lessee.

SUBJECT – Application January 4, 2011 – Extension of Term of a special permit (§73-36) for the operation of a physical culture establishment (*Equinox*) which expired on December 4, 2010. C5-3(Mid) zoning district.

PREMISES AFFECTED – 420 Lexington Avenue, west side of Lexington Avenue, 208’-4” north of East 42nd Street, Block 1290, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on December 5, 2010; and

WHEREAS, a public hearing was held on this application on March 1, 2011 after due notice by publication in the *City Record*, and then to decision on March 29, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, the subject premises is located on the west side of Lexington Avenue between 43rd and 44th Streets, in a C5-3 zoning district within the Special Midtown District; and

WHEREAS, the zoning lot is occupied by a 30-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 5, 2000 when, under the subject calendar number, the Board granted a special permit for the establishment of a PCE occupying 10,950 sq. ft. of floor area on the first floor, 11,750 sq. ft. of floor area on what is known as the “upper first floor;” and 5,870 sq. ft. of floor area on the mezzanine level, for a total of 28,570 sq. ft. of floor area; and

WHEREAS, the grant was for a term of ten years, to expire on December 5, 2010; and

WHEREAS, on August 22, 2006, the Board amended the grant to allow for an increase of 5,781 sq. ft. of total floor area, from 28,570 sq. ft. to 34,351 sq. ft., with the addition of 2,248 sq. ft. of floor area on the first floor, 1,510 sq. ft. of floor area on the upper first floor, and 2,023 sq. ft. of floor area on the mezzanine level; and

WHEREAS, on November 25, 2008, the Board amended the grant to allow for a further enlargement of the PCE, to include the addition of 1,010 sq. ft. of floor area on the first floor, resulting in an increase in total floor area occupied by the PCE from 34,351 sq. ft. to 35,361 sq. ft.; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, based upon its review of the record, the Board finds 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 *reopens* and *amends* the resolution, as adopted on December 5, 2000, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from December 5, 2010, to expire on December 5, 2020, *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT the term of this grant shall expire on December 5, 2020;

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

THAT all conditions from the 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) and/or configuration(s) not related to the relief granted.”

(DOB Application. No. 102690081)

Adopted by the Board of Standards and Appeals, March 29, 2011.

MINUTES

289-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 160 Water Street Associates, owner; TSI Water Street LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 29, 2010 – Extension of Term of a previously approved Special Permit (§73-36) for the continued operation of a Physical Cultural Establishment (*New York Sports Club*) which expires on March 6, 2011. C5-5 (LM) zoning district.

PREMISES AFFECTED – 160 Water Street, northwest corner of Water Street and Fletcher Street, Block 70, Lot 43, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of the term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on March 6, 2011, and an amendment for a change in the hours of operation at the site; and

WHEREAS, a public hearing was held on this application on February 15, 2011, after due notice by publication in *The City Record*, with a continued hearing on March 15, 2011, and then to decision on March 29, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the PCE is located on the northwest corner of Water Street and Fletcher Street, in a C5-5 zoning district within the Special Lower Manhattan District; and

WHEREAS, the subject site is occupied by a 24-story commercial building; and

WHEREAS, the PCE occupies a total of 11,079 sq. ft. of floor area in portions of the first floor and first floor mezzanine of the subject building, with an additional 8,900 sq. ft. of floor space located in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 6, 2001 when, under the subject calendar number, the Board granted a special permit for the establishment of a PCE in the subject building for a term of ten years, to expire on March 6, 2011; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, the applicant also requests an amendment for a change in the hours of operation of the PCE; and

WHEREAS, the prior grant limited the PCE to the following hours of operation: Monday through Thursday, from 6:00 a.m. to 11:00 p.m.; Friday, from 6:00 a.m. to 9:00 p.m.;

and Saturday and Sunday, from 9:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant now proposes the following hours of operation for the PCE: Monday through Thursday, from 5:30 a.m. to 10:00 p.m.; Friday, from 5:30 a.m. to 9:00 p.m.; Saturday, from 9:00 a.m. to 5:00 p.m.; and closed on Sunday; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment to the hours of operation 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 6, 2001, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from March 6, 2011, to expire on March 6, 2021, *on condition* that the use and operation of the site shall comply with the drawings filed with this application and marked ‘Received October 29, 2010’–(6) sheets and ‘March 3, 2011’- (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on March 6, 2021;

THAT the hours of operation for the PCE shall be: Monday through Thursday, from 5:30 a.m. to 10:00 p.m.; Friday, from 5:30 a.m. to 9:00 p.m.; Saturday, from 9:00 a.m. to 5:00 p.m.; and closed on Sunday;

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;

THAT the Department of Buildings must ensure compliance 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. 102784195)

Adopted by the Board of Standards and Appeals, March 29, 2011.

197-02-BZ

APPLICANT – Gary Silver Architects, for Nostrand Kings Management, owner; No Limit LLC, lessee.

SUBJECT – Application November 9, 2010 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Culture Establishment which expired on November 26, 2007; Extension of Time to obtain a Certificate of Occupancy; Waiver of the Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 2825 Nostrand Avenue, East side of Nostrand Avenue 129.14 feet south of the corner of Kings Highway. Block 7692, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Albert Morango.

ACTION OF THE BOARD – Application granted on

MINUTES

condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, reopening, an extension of the term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on November 26, 2007, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on February 8, 2011, after due notice by publication in *The City Record*, with a continued hearing on March 15, 2011, and then to decision on March 29, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application, with the condition that the surrounding property and parking area be maintained and kept clean; and

WHEREAS, the PCE is located on a through lot bounded by East 31st Street to the east and Nostrand Avenue to the west, between Kings Highway and avenue P, within a C2-2 (R3-2) zoning district; and

WHEREAS, the subject site is occupied by a two-story commercial building; and

WHEREAS, the PCE occupies a total of 13,884 sq. ft. of floor area in portions of the first floor and mezzanine of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 26, 2002 when, under the subject calendar number, the Board granted a special permit for the establishment of a PCE in the subject building for a term of five years, to expire on November 26, 2007; a condition of the grant was that a certificate of occupancy be obtained for the site; and

WHEREAS, the applicant now requests an extension of the term of the special permit for an additional ten years, and an extension of the time to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board directed the applicant to clean the graffiti from the site and to remove the dumpster at the rear which blocked egress from the site; and

WHEREAS, in response, the applicant submitted a contract with a cleaning company reflecting that the graffiti will be cleaned from the site by April 1, 2011, and submitted correspondence with an adjacent tenant indicating that they will no longer block the egress from the building; and

WHEREAS, additionally, the applicant notes that the operating control of the PCE has changed and seeks approval of this change; and

WHEREAS, the PCE is now operated as Forum Fitness Club; and

WHEREAS, the Board notes that the Department of

Investigation has approved the change of operation of the PCE; and

WHEREAS, based upon its review of the record, the Board finds the requested extensions of term and time 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 26, 2002, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from November 26, 2007, to expire on November 26, 2017, *on condition* that all work shall substantially conform to drawings filed with this application and marked ‘Received February 23, 2011’ –(4) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 26, 2017;

THAT the site shall be maintained free of debris and graffiti;

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

THAT a certificate of occupancy shall be obtained by March 29, 2012;

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;

THAT the Department of Buildings must ensure compliance 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. 300627908)

Adopted by the Board of Standards and Appeals, March 29, 2011.

215-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owner.

SUBJECT – Application October 20, 2010 – Extension of Term of an existing Gasoline Service Station (*Gulf*) with accessory convenience store which expires on July 24, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on June 17, 2010; Waiver of the Rules. C1-2/R4 zoning district.

PREMISES AFFECTED – 202-06 Hillside Avenue, southeast corner of Hillside Avenue and 202nd Street, Block 10496, Lot 52, Borough of Queens.

COMMUNITY BOARD #12Q

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, Commissioner Hinkson and Commissioner Montanez5

MINUTES

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, and an extension of time to obtain a certificate of occupancy for a gasoline service station (Use Group 16) with accessory uses; and

WHEREAS, a public hearing was held on this application on January 25, 2011, after due notice by publication in *The City Record*, with a continued hearing on March 1, 2011, and then to decision on March 29, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, the site is located on the southeast corner of Hillside Avenue and 202nd Street, within a C1-2 (R4) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 24, 1956 when, under BSA Cal. No. 327-55-BZ, the Board granted a variance to permit the construction of a gasoline service station, lubricatorium, non-automatic car wash, minor auto repair shop (with hand tools only), and the parking of motor vehicles awaiting service, for a term of 15 years; and

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

WHEREAS, on December 10, 1996, under BSA Cal. No. 327-55-BZ, the Board reopened and amended the resolution to permit the replacement of the accessory building with a convenience store and attendants' area and the erection of a canopy over four new pump islands; and

WHEREAS, the original variance, as extended, expired on July 24, 2001; and

WHEREAS, on July 17, 2007, under the subject calendar number, the Board reinstated the prior variance for an automotive service station for a term of ten years, to expire on July 24, 2011; a condition of the grant was that a new certificate of occupancy be obtained by January 24, 2008; and

WHEREAS, most recently, on March 17, 2009, the Board granted an extension of time to obtain a certificate of occupancy, to expire on June 17, 2010; and

WHEREAS, the applicant now seeks an extension of the term and an extension of time to obtain a new certificate of occupancy; and

WHEREAS, at hearing, the Board questioned whether the signage at the site was in compliance with the underlying C1 district regulations; and

WHEREAS, in response, the applicant submitted photographs reflecting that excess signage has been removed from the site, and submitted a revised signage analysis and revised plans reflecting that the signage at the site complies with C1 district regulations; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and

extension of time to obtain a certificate of occupancy 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 July 17, 2007, so that as amended this portion of the resolution shall read: "to grant an extension of the term for a period of ten years from July 24, 2011, to expire on July 24, 2021, and an extension of time to obtain a certificate of occupancy to March 29, 2012; *on condition* that the use and operation of the site shall comply with the drawings filed with this application and marked 'Received February 23, 2011'-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on July 24, 2021;

THAT all signage at the site shall comply with C1 district regulations;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by March 29, 2012;

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

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 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. 400524072)

Adopted by the Board of Standards and Appeals March 29, 2011.

236-07-BZ

APPLICANT – Jay A. Segal, Esq./Greenberg Traurig, LLP, for Hope Lofts LLC c/o Stein, Simpston & Rosen, PA, owner; 53 Hope Street LLC c/o Gershon & Company, lessee.

SUBJECT – Application December 2, 2010 – Amendment to previously approved Special Permit (§73-46) to allow additional dwelling units and waiver of parking spaces. M1-2/R6A (MX-8) zoning district.

PREMISES AFFECTED – 53-65 Hope Street, north side of Hope Street, between Havemeyer Street and Marcy Avenue, Block 2369, Lots 40 & 47, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Randall Miner.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

MINUTES

Commissioner Montanez5
Negative:.....0
THE RESOLUTION –

WHEREAS, this is an application for an amendment to a previously approved special permit that allowed a reduction in the number of accessory parking spaces for a proposed residential conversion; and

WHEREAS, a public hearing was held on this application on March 1, 2011, after due notice by publication in *The City Record*, and then to decision on March 29, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 1, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site is located on the south side of Hope Street, between Havemeyer Street and Marcy Avenue, and has a lot area of 26,228 sq. ft.; and

WHEREAS, the subject site is located within an M1-2/R6A (MX-8) zoning district; and

WHEREAS, the site comprises three lots; Lot 40 is currently occupied by a 102,691 sq. ft. six-story commercial building and Lots 38 and 47 are two vacant lots that adjoin Lot 40; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 12, 2008 when, under the subject calendar number, the Board granted a special permit under ZR § 73-46 to allow a reduction in the required number of accessory parking spaces for a proposed residential conversion of an existing building from 46 spaces to 11 spaces, contrary to ZR § 25-23; and

WHEREAS, the applicant now requests an amendment to permit an increase in the number of proposed dwelling units, and a corresponding increase in the number of required accessory parking spaces being waived by the Board; and

WHEREAS, specifically, the applicant seeks to increase the proposed number of dwelling units in the subject building from 92 to 117, which results in an increase in the required number of accessory parking spaces from 46 to 59; the applicant proposes to provide 11 parking spaces as approved in the Board's prior grant; and

WHEREAS, as discussed in the Board's prior grant, there is no practical possibility of providing more than 11 parking spaces onsite due to an insufficient amount of open space on the site and the prohibitive cost of structural changes necessary to provide the required spaces within the building, and there is no practical possibility of providing the required number of spaces on a site located within 1,200 feet of the nearest boundary of the zoning lot; and

WHEREAS, the applicant asserts that the proposed increase in the number of dwelling units will not generate a significant parking demand; and

WHEREAS, the applicant states that the 11 onsite spaces will be adequate to meet any increase in parking demand that results from the additional dwelling units because: (1) the most recent U.S. Census data show that vehicle ownership among

area renters is approximately 32 percent, significantly less than the 50 percent parking demand presumed by ZR § 25-23; (2) the subject building would contain predominantly studio and one-bedroom apartments, which would most likely be occupied by singles and childless couples without cars; (3) the subject building is relatively well-served by mass transit; (iv) the area is conducive to traveling by bicycle; and (5) there are several alternatives to car ownership within a short walk of the subject building, including car service, a Zipcar location and an automobile rental facility; and

WHEREAS, the applicant also submitted a parking survey which indicates that there is sufficient available curbside and off-street parking in the surrounding neighborhood to accommodate any parking overflow that results from the proposed increase in dwelling units; and

WHEREAS, based upon the above, the Board finds that the requested amendment 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, as adopted on February 12, 2008, so that as amended this portion of the resolution shall read: "to permit an increase in the number of proposed dwelling units, from 92 to 117; *on condition* that any and all work shall substantially conform to drawings filed with this application and marked 'Received March 24, 2011' – fourteen (14) 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. 302307457)

Adopted by the Board of Standards and Appeals, March 29, 2011.

164-60-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Luciani Enrica Melchiorre, owner; Steven Scott, Inc., lessee.

SUBJECT – Application December 7, 2010 – Extension of Term (§11-411) for an automotive service station (UG 16B) (*Sunoco*) with accessory uses which expired on April 10, 2010; Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 100-20 Metropolitan Avenue, southeast corner of Metropolitan Avenue and 70th Road, Block 3895, Lot 32, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Steven Sulfaro.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

MINUTES

Negative:.....0
ACTION OF THE BOARD – Laid over to May 3, 2011, at 10 A.M., for decision, hearing closed.

433-65-BZ

APPLICANT – Andrea Claire/Peter Hirshman, for 15 West 72 Owner Corporation, owner; Mafair Garage Corporation, lessee.

SUBJECT – Application July 22, 2010 – Extension of Term of an approval pursuant to the Multiple Dwelling Law for transient parking, which expired on June 22, 2010. R8B/R10A zoning district.

PREMISES AFFECTED – 15 West 72nd Street, 200’-2½ west of Central Park West 72nd Street, Block 1125, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Peter Hirshman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to April 12, 2011, at 10 A.M., for decision, hearing closed.

703-80-BZ

APPLICANT – Joseph P. Morsellino, for Louis N. Petrosino, owner.

SUBJECT – Application July 1, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of an existing scrap metal storage establishment which expires on December 2, 2010; Amendment to legalize the enclosure of an open storage area. C8-1 zoning district.

PREMISES AFFECTED – 2994/3018 Cropsey Avenue, southwest corner of Bay 54th Street, Block 6947, Lot 260, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 24, 2011, at 10 A.M., for continued hearing.

406-82-BZ

APPLICANT – Eric Palatnik, P.C., for Adolf Clause & Theodore Thomas, owner; Hendel Products, lessee.

SUBJECT – Application February 7, 2011 – Extension of Time to obtain a Certificate of Occupancy for a Special Permit (§73-243) for an eating and drinking establishment (*McDonald's*) with accessory drive-thru, which expired on January 22, 2009; waiver of the rules. C1-3/R5 zoning district.

PREMISES AFFECTED – 2411 86th Street, northeast corner of 24th Avenue and 86th Street, Block 6859, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 3, 2011, at 10 A.M., for decision, hearing closed.

95-97-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 700 West 178th Street Associates, LLC, owner; TSI Forest Hills LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 14, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on May 1, 2007; Waiver of the Rules. C4-5X zoning district.

PREMISES AFFECTED – 69-47 Austin Street, northwest corner of Austin Street and 70th Avenue, Block 3237, Lot 30, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to May 3, 2011, at 10 A.M., for continued hearing.

289-99-BZ

APPLICANT – Vito J. Fossella, LPEC, for Frances Gomez, owner.

SUBJECT – Application January 22, 2010 – Extension of Term of a variance (§72-21) for a parking facility accessory to a permitted use (UG16 automotive repair and accessory sales) which expired on December 12, 2010. C8-1/R3-1 zoning district.

PREMISES AFFECTED – 265 Hull Avenue, northeast side of Hull Avenue, 100’ southeast of corner formed by the intersection of Hull Avenue and Hylan Boulevard, Block 3668, Lots 12, 13, 14, 27, 28 & 29, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

ACTION OF THE BOARD – Laid over to May 3, 2011, at 10 A.M., for continued hearing.

276-02-BZ

APPLICANT – Eric Palatnik, P.C., for Elad Ryba, owner.

SUBJECT – Application September 13, 2010 – Extension of Time to Complete Construction and an Amendment to a previously approved Special Permit (§73-622) to an existing one family dwelling, contrary to lot coverage and floor area (§23-141) and side yard (§23-461). R3-1 zoning district.

MINUTES

PREMISES AFFECTED – 160 Norfolk Street, west side, 300’ north of Oriental Boulevard and south of Shore Boulevard, Block 8756, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Susan Klapper.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 3, 2011, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

154-10-A

APPLICANT – Isaac Rosenberg, for Congregation Yetev Lev D’Satmar, owner.

SUBJECT – Application August 25, 2010 – Appeal challenging a determination by Department of Buildings to revoke permits and approvals based on failure to provide owner authorization in accordance with §28-104.8.2 of the Administrative Code. R7-1 Zoning District.

PREMISES AFFECTED – 540 Bedford Avenue, between Ross and Wilson Streets, Block 2181, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES – None.

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, this appeal comes before the Board in response to a Final Determination letter dated July 26, 2010 by the Brooklyn Borough Commissioner of the Department of Buildings (“DOB”) (the “Final Determination”), with respect to DOB Application No. 300443777; and

WHEREAS, the Final Determination states, in pertinent part:

By letter dated June 9, 2010, the Department of Buildings (“the Department”) revoked the approval and permit for Job Application No. 300443777 at 540 Bedford Avenue, Brooklyn (the “Premises”). Pursuant to Section 28-104.8.2 of the Administrative Code of the City of New York, the job application must include a signed statement by the owner that the applicant is authorized to make the job application. In addition, Section BC 105.2 of the New York City Construction Codes requires an owner or authorized agent to obtain a Department issued permit before construction work

may be lawfully commenced. As described in the June 9, 2010 letter and as further described in the Department’s June 23, 2010 letter, the approval and permit were revoked because the Department was not provided with sufficient information to determine that the applicant and/or purported agent of the owner have authority to act on behalf of the owner of the Premises, Congregation Yetev Lev D’Satmar, a religious corporation; and

WHEREAS, a public hearing was held on this appeal on January 25, 2011, after due notice by publication in *The City Record*, and then to decision on March 29, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, the appeal is brought on behalf of a religious group associated with Isaac (aka Isack) Rosenberg and Berl Friedman (the “Appellant” or the “Friedman Faction”); and

WHEREAS, representatives of a religious group associated with Jenoe Kahan (the “Opposition” or the “Kahan Faction”) provided written and oral testimony in opposition to the appeal; and

WHEREAS, the Appellant and the Opposition are involved in a dispute over the leadership of Congregation Yetev Lev D’Satmar (the “Congregation”), a religious corporation; and

WHEREAS, DOB, the Appellant, and the Opposition have been represented by counsel throughout this appeal; and

WHEREAS, the appeal concerns the authorization requirement in the Administrative Code (AC), at § 28-104.8.2, which DOB invoked when it revoked the permits for construction at the site; and

PROCEDURAL HISTORY

WHEREAS, on September 22, 1995, Sandor Weiss, R.A. filed an application (DOB Application No. 300443777) at DOB for the Appellant, which Mr. Rosenberg signed on behalf of the Congregation; and

WHEREAS, on April 8, 1998, DOB approved the application and issued the permit (the “Permit”) on April 24, 1998 to Mr. Friedman; and

WHEREAS, on December 3, 1998 and March 2, 1999, DOB reissued the Permit to Mr. Friedman; and

WHEREAS, on January 1, 2000, the Permit expired; and

WHEREAS, on December 15, 2006, Avinoam Shalom renewed the Permit, which expired on June 15, 2007; and

WHEREAS, on April 22, 2010, Mordechai Danino renewed the Permit; and

WHEREAS, on May 6, 2010, the April 22, 2010 Permit was superseded and DOB issued the new Permit to Mr. Rosenberg; and

WHEREAS, on May 7, 2010, DOB received a complaint from a representative of the Kahan Faction regarding the issuance of the April 22, 2010 Permit to Mr. Rosenberg; and

WHEREAS, in its complaint, the Kahan Faction stated that since 2001, the Congregation has been involved in a leadership dispute about the control of the Congregation’s Board of Directors; and

MINUTES

WHEREAS, the Kahan Faction claimed that Mr. Kahan was the president of the Congregation and that neither Mr. Rosenberg nor Mr. Friedman were authorized to act on behalf of the Congregation; and

WHEREAS, the Kahan Faction stated that the Permit should be rescinded since, pursuant to court order, Mr. Kahan, as president of the Congregation, is the only person authorized to act on behalf of the Congregation; and

WHEREAS, on May 7, 2010, DOB received a complaint from the representative of the Friedman Faction stating that Mr. Friedman was the president of the Congregation and Mr. Rosenberg was the vice-president of the Congregation and that, in accordance with a court order, Mr. Friedman and Mr. Rosenberg should be the exclusive parties DOB deals with in respect to the job application and Permit and that Mr. Kahan does not have authority to act on behalf of the Congregation; and

WHEREAS, on May 12, 2010, based on the complaints of both factions, DOB issued a Letter of Intent to Revoke Approval and Permits; and

WHEREAS, subsequently, DOB met with both factions, separately, and reviewed the litigation history regarding the dispute; and

WHEREAS, the litigation history includes: Matter of Congregation Yetev Lev D'Satmar v. Kahana, 2007 NY Slip Op 9068 (N.Y. 2007); Frankel v. Congregation Yetev Lev D'Satmar, 2008 NY Slip Op 51779U (N.Y. Sup. Ct. 2008); and Frankel v. Congregation Yetev Lev D'Satmar, 2010 NY Slip Op 467 (N.Y. App. Div. 2d Dep't 2010); and

WHEREAS, on June 9, 2010, based on a review of the information provided by both factions and the relevant court decisions, DOB determined that it had not been provided with sufficient information to determine whether the Permit applicant had authority to act on behalf of the Congregation; and

WHEREAS, on June 23, 2010, in response to a request from the Friedman Faction for further explanation, DOB issued a letter which states that in the absence of a court order resolving the ownership dispute, DOB is unable to determine whether an applicant acting on behalf of Mr. Friedman or on behalf of Mr. Kahan had the proper authority to act on behalf of the Congregation; and

WHEREAS, on July 26, 2010, in response to a request from the Appellant, DOB issued the Final Determination stating that the Permit was revoked based on noncompliance with Administrative Code Section 28-104.8 and Construction Code Section 105.2; and

THE PROVISIONS OF THE BUILDING CODE RELEVANT TO THIS APPEAL

WHEREAS, the relevant sections of the Administrative Code state in pertinent part:

§ 28-104.8 Applications. All applications shall comply with sections 28-104.8.1 through 28-104.8.4.

§ 28-104.8.1 Applicant statements. The application shall contain the following signed and sealed statements by the applicant: 1. A statement certifying that the applicant is authorized by the

owner to make the application and certifying that, to the best of the applicant's knowledge and belief, the construction documents comply with the provisions of this code or the 1968 building code, if applicable, and other applicable laws and rules; if there exist practical difficulties in the way of carrying out the strict letter of the code, laws or rules, the applicant shall set forth the nature of such difficulties in such signed statement . . .

§ 28-104.8.2 Owner statement. The application shall contain a signed statement by the owner, cooperative owners' corporation, or condominium owners' association stating that the applicant is authorized to make the application and, if applicable, acknowledging that construction documents will be accepted with less than full examination by the department based on the professional certification of the applicant. Such statement shall list the owner's full name and address, as well as the names of the principal officers, partners or other principals if a corporation, partnership or other entity. Principal officers of a corporation shall be deemed to include the president, vice presidents, secretary and treasurer; and

WHEREAS, the relevant section of the Construction Code states in pertinent part:

§ 105.2 Required. Any owner or authorized agent who intends to construct, add to, alter, repair, move, demolish, or change the occupancy of a building or structure, or to erect, install, add to, alter, repair, remove, convert or replace any gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be done, shall first make application for construction document approval in accordance with Chapter 1 of Title 28 of the *Administrative Code* and this chapter and obtain the required permit; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant's primary assertions in support of its position that DOB should continue to recognize the Friedman Faction are: (1) DOB issued initial permits were issued to the Friedman Faction before any dispute arose; (2) there is not any court order removing the Friedman Faction's authority; (3) the Kahan Faction's challenge to the Friedman Faction's authority is not proof that the Friedman Faction no longer maintains authority; and (4) DOB's continued issuance of approvals to the Friedman Faction is not in conflict with the Administrative Code or any other regulation; and

WHEREAS, the Appellant states that the Congregation holds the deed for the property located at 540 Bedford Avenue and that Mr. Friedman is the president of the Congregation and Mr. Rosenberg is the vice-president of the Congregation; and

WHEREAS, the Appellant states that construction on a new synagogue building, which is nearly 50 percent complete, began in 1995 and that the plans have remained relatively unchanged since the initial approval; and

WHEREAS, the Appellant asserts that Messrs. Friedman

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and Rosenberg have always been in charge of the construction on behalf of the Congregation and at the time of application, there was not any dispute that Mr. Friedman was the duly authorized president of the Congregation; and

WHEREAS, the Appellant notes that all permits have been issued through Messrs. Friedman and Rosenberg; and

WHEREAS, the Appellant provided a timeline of permits issued to either Mr. Rosenberg or Mr. Friedman from 1994 to 1999; and

WHEREAS, the Appellant asserts that the dispute within the Congregation only arose in 2001, six years after the application was filed and approved and several permits were issued to Messrs. Friedman and Rosenberg on behalf of the Congregation as contractor and owner; and

WHEREAS, accordingly, the Appellant asserts that the recent renewal permit issued in line with the initial application and permits is proper and should not have been revoked based on a dispute that began after the initial permit was issued; and

WHEREAS, the Appellant states that it is not requesting that DOB adjudicate the dispute between the factions, but, rather that DOB continue to recognize the Friedman Faction since it was the original filer of the application and permit holder; and

WHEREAS, the Appellant cites to decisions by third-parties and governmental authorities, which have determined that they must continue to recognize the authority of those who interacted with them, "the status quo," before the dispute began; and

WHEREAS, specifically, the Appellant cites to a Memorandum from the Mayor of the Village of Kiryas Joel in Orange County, New York and the attorney for the Board of Washington Cemetery in New Jersey for the principle that when confronted with a leadership dispute, the status quo of the party with control before the dispute began should be maintained; and

WHEREAS, the Appellant concedes that its examples of other authorities applying a status quo principle are not binding on DOB or the Board and the Appellant states that it agrees with DOB that DOB nor the Board can determine which of the competing factions represents the Congregation; and

WHEREAS, however, the Appellant states that because the Friedman Faction was originally recognized by DOB as having authority, prior to any leadership dispute, DOB should continue to grant it the right to build until a court determines otherwise; and

WHEREAS, as to the courts' involvement, the Appellant states that in 2001, a dispute arose in the Satmar religious community over the leadership of the Congregation when Mr. Kahan claimed to be the Congregation's president; and

WHEREAS, as a result of the dispute, New York state courts and Rabbinical courts issued injunctions against proceeding with construction; and

WHEREAS, the Appellant asserts that the most recent court decision, dated January 19, 2010, from the Appellate Division, Second Department confirmed that the judicial system will not recognize the Kahan Faction as having any legal authority in the Congregation; and

WHEREAS, the Appellant cites to the January 19, 2010

decision for the point that the court rejected the Kahan Faction's claims for control:

Contrary to the [Kahan Faction's] contention, [prior court decisions] did not confer any legal rights upon them. The [Kahan Faction's] present action is merely an attempt to obtain a judicial determination that their faction is authorized to act on behalf of the Congregation, which is precisely the issue the Court of Appeals held to be nonjusticiable. *See Frankel v. Congregation Yetev Lev D'Satmar*; and

WHEREAS, the Appellant asserts that the Kahan Faction has failed to obtain any court determination that Mr. Friedman is no longer the president of the Congregation or that the Kahan Faction has any legal authority in the Congregation; and

WHEREAS, as to the effect of the Kahan Faction's claims, the Appellant urged DOB to rely on (1) common sense and fairness and (2) the fact that the courts have rejected the Kahan Faction's challenge of authority; and

WHEREAS, the Appellant asserts that the burden of proof rests with the challenger, the Kahan Faction, to prove its challenge to the Friedman Faction's authority; and

WHEREAS, the Appellant concludes that since the court has not determined that the Kahan Faction has a legitimate claim, there is no rational basis for DOB to refuse to continue to issue approvals to the Friedman Faction; and

WHEREAS, the Appellant asserts that DOB should not accept or consider a claim about the authority of the Congregation until the Kahan Faction can affirmatively prove in a court of law that it represents the Congregation; and

WHEREAS, the Appellant asserts that a challenge is not proof and the status quo has not changed, thus DOB should continue to issue permits to the Friedman Faction and should follow the courts and not make any assessment as to the leadership question; and

WHEREAS, as to the requirements of the AC, the Appellant asserts that its actions reflect compliance; and

WHEREAS, specifically, the Appellant states that it complies with AC §§ 28-104.2.10 and 28-105.10.1 because (1) no false statement or misrepresentation has occurred and (2) the Kahan Faction's challenge does not imply that the approval had been issued in error; and

WHEREAS, the Appellant disagrees with DOB's assertion that every time an applicant files a PW-2: Work Permit Application form, it must comply with the Administrative Code and Construction Code requirement, including AC § 28-104.8; and

WHEREAS, the Appellant asserts that the PW-2 is a continuation of the PW-1 and does not carry the requirement for compliance with AC § 28-104.8; and

WHEREAS, the Appellant also cites to New York Religious Corporations Law Section 703(c) for the provision that "[e]ach director shall hold office until the expiration of the term of which he is elected or appointed, and until his successor has been elected or appointed and qualified;" and

WHEREAS, the Appellant contends that since Mr. Friedman was the president of the Congregation before the dispute commenced, and the court has not recognized a successor, Mr. Friedman remains in legal capacity as the

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president, authorized to act on behalf of the Congregation; and

WHEREAS, the Appellant concludes that, absent a court directive to the contrary, DOB should continue to recognize the Friedman Faction as the authorizing party for approval and permitting purposes; and

THE DEPARTMENT OF BUILDINGS' POSITION

WHEREAS, DOB states that it revoked the Permit because it did not have adequate information which demonstrated that the Permit application was signed by an applicant authorized by the owner, the Congregation, as required by AC § 28-104.8 and BC § 105.2; and

WHEREAS, DOB states that when it receives a complaint that a job application was filed without the proper owner authorization, it will investigate the complaint and require the applicant to produce documentary evidence that the application complies with the owner authorization requirement of AC § 28-104.8; and

WHEREAS, DOB states that such evidence may include production of a deed, a lease, a certificate of incorporation, and/or a court order indicating the rightful owner of the property and/or a ruling regarding who may act on behalf of the rightful owner of the property; and

WHEREAS, DOB states that, in the absence of such documentary evidence, it is unable to determine whether the application complies with AC § 28-104.8; and

WHEREAS, as noted above, DOB received complaints from the Friedman Faction and the Kahan Faction arguing that each controls the Congregation's Board of Directors and therefore, is the only faction authorized to act on behalf of the Congregation; and

WHEREAS, DOB adds that in communication with the two parties, each claimed that the history of actions at the site and prior court decisions prove that its respective faction is the only one authorized to act on behalf of the Congregation; and

WHEREAS, DOB notes that the court decisions reflect that New York State civil courts have repeatedly declined to decide which faction controls the Congregation's Board of Directors; specifically, Matter of Congregation Yetev Lev D'Satmar, Inc. v. Kahana, 2007 NY Slip Op 9068 (N.Y. 2007), which dealt with the controversy over whether Mr. Friedman or Mr. Kahan was elected to serve as president of the Congregation, the New York State Court of Appeals decided that the civil court could not decide the matter. The Court of Appeals stated:

Contrary to petitioners' position, Berl Friedman's religious standing within the Congregation is essential to resolution of this election dispute. Petitioners ask this Court not only to determine the validity of the respondents' election but also to recognize that petitioners, including Berl Friedman, are elected officers and the authorized governing body of the Congregation. With such membership issues at the center of this election dispute, matters of an ecclesiastical nature are clearly at issue. These particular issues must be resolved by the members of the Congregation, and cannot be determined by this Court. (Id. at 5);

and

WHEREAS, additionally, DOB states that following the Court of Appeals decision, the New York State Supreme Court, Kings County, was again presented with an action regarding the dispute between the two factions - Frankel v. Congregation Yetev Lev D'Satmar, 2008 NY Slip Op 51779U (N.Y. Sup. Ct. 2008) - a case involving three actions before the New York State Supreme Court, including an action brought by the Kahan Faction seeking an injunction to enjoin the Friedman Faction from asserting control over the Congregation; and

WHEREAS, DOB asserts that in the Supreme Court action, the court denied the request for the injunction, but did not rule which faction controlled the Congregation; rather, the court stated that "the Court of Appeals has now made it perfectly clear that the civil courts cannot determine which Faction is in legitimate control of the Board of the Congregation and thus which Faction is 'authorized' to manage its affairs," (Id. at 2) and held that "upon careful review of the parties' submissions and the various claims and counterclaims asserted in their pleadings, this court concludes that the three pending cases cannot be resolved by applying neutral principals of law and accordingly must be dismissed since they are non-justiciable," (Id.); and

WHEREAS, DOB adds, that the court held:

The Injunction action is nothing more than another disingenuous attempt by one of the Factions to obtain relief which is beyond the reach of the court. To grant the Kahan Faction such broad sweeping declaratory and injunctive relief would run afoul of the language and clear import of the decisions by the Appellate Division and the Court of Appeals that the secular courts cannot declare which board is the authorized governing body of the Congregation empowered to act on its behalf. It bears repeating the language by the Appellate Division: "the dispute over the rightful board of the Congregation . . . cannot be decided by application of neutral principal of law" (supra, 31 AD3d at 542). Most importantly, the Court of Appeals has determined that a resolution of the dispute between the two Factions would require "impermissible inquiries" into religious doctrine (supra, 9 NY3d at 286 9 NY3d at 286). (Id. at 5-6); and

WHEREAS, DOB also cites to Frankel v. Congregation Yetev Lev D'Satmar, 2010 NY Slip Op 467 (N.Y. App. Div. 2d Dep't 2010), in which the plaintiff-appellant Kahan Faction appealed the New York State Supreme Court's decision regarding the injunction denial; the New York State Appellate Division, Second Department affirmed the New York State Supreme Court's decision and held:

Here, in Action No. 3, the plaintiffs' Faction seeks a judgment declaring that the defendants' Faction is not authorized to act on behalf of the Congregation, based on the Supreme Court's "directive" in the prior matter that the status quo,

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which, according to the plaintiffs, consists of their de facto control of the Congregation, be left intact. Contrary to the appellants' contention, the statement in the Supreme Court's order did not confer any legal rights upon them. The plaintiffs' present action is merely an attempt to obtain a judicial determination that their Faction is authorized to act on behalf of the Congregation, which is precisely the issue that the Court of Appeals held to be nonjusticiable (see *Matter of Congregation Yetev Lev D'Satmar, Inc. v Kahan*, 9 NY3d at 287-288 of *Congregation Yetev Lev D'Satmar, Inc. v Kahan*, 9 NY3d at 287-288). Accordingly, the Supreme Court properly granted the motion of the defendants in Action No. 3 to dismiss the complaint in that action pursuant to CPLR 3211(a)(2). (Id. at 2); and

WHEREAS, based on DOB's review of the aforementioned court decisions, it determined that the New York State court system has refused to decide whether the Kahan Faction or the Friedman Faction has control of the Congregation's Board of Directors; therefore, in the absence of a court-ordered decision, DOB states that it is unable to determine which faction is authorized to act on behalf of the Congregation and thereby, which faction can authorize an applicant to submit an application on behalf of the Congregation pursuant to AC § 28-104.8; and

WHEREAS, in response to the Appellant's supplemental statement that DOB should continue to issue permits to the Friedman Faction since Mr. Rosenberg signed the original job application dated September 22, 1995 and since Mr. Friedman pulled the original Permit on April 24, 1998 and thus that would maintain the status quo based on the original job applications, DOB asserts that the dispute over the Congregation's election of either Mr. Friedman or Mr. Kahan as president of the Board of Directors did not occur until May 2001, years after the Job Application was originally filed and the first Permit was issued. See Matter of Congregation Yetev Lev D'Satmar, Inc. v. Kahana, 2007 NY Slip Op 9068 (N.Y. 2007) at 2; and

WHEREAS, therefore, DOB states that the status quo regarding who may act on behalf of the Congregation has changed since the original job application and Permit issuance; and

WHEREAS, additionally, DOB states that in order to renew a permit, the permit applicant must submit a new PW-2:Work Permit Application form and every time an applicant files a PW-2:Work Permit Application form, the application must comply with the Administrative Code and Construction Code requirements, including the owner authorization requirement of AC § 28-104.8; and

WHEREAS, accordingly, as stated above, DOB determined that the Permit application does not comply with the owner authorization requirement of AC § 28-104.8 and thus the Permit must be revoked; and

WHEREAS, DOB notes that the Appellant cites decisions allegedly made by the Board of Washington Cemetery in New Jersey and the Village of Kiryas Joel with

respect to owner authorization; and

WHEREAS, DOB states that it enforces the Administrative Code, the Construction Codes, the New York City Zoning Resolution and other applicable rules and regulations and is not bound by decisions of these non-governmental and governmental entities; therefore, any actions taken by these other entities do not have bearing on DOB's requirement to enforce the owner authorization provisions of the Administrative Code and the Construction Code; and

WHEREAS, finally, DOB states that in addition to the aforementioned legal issues regarding required owner authorization in the Administrative Code and the Construction Code, should the Permit be reinstated, DOB would be faced with the practical difficulty of having to accept job applications and issue permits to separate individuals claiming to act on behalf of the owner; and

THE OPPOSITION'S POSITION

WHEREAS, the Opposition makes the following two primary arguments (1) that the Appellant has mischaracterized the relevant history and the definition of the status quo and (2) usage, control, and responsibility of the site has been with the Kahan Faction since the leadership dispute began, thus, the Friedman Faction's assertions about the status quo are meritless; and

WHEREAS, the Opposition asserts that Mr. Kahan and Mr. Friedman were appointed as co-presidents of the Congregation in 1998, so the status quo is different than what the Appellant asserts; and

WHEREAS, the Opposition asserts that the New York State courts, including the Appellate Division, Second Department, has allowed the Kahan Faction to take a wide array of actions for the Congregation including work at the site within the ordinary course of business; and

WHEREAS, the Opposition asserts that other court orders issued in 2001 permitted Mr. Kahan and/or prevented Messrs. Friedman and Rosenberg from acting for the Congregation; and

WHEREAS, the Opposition cites to an October 22, 2004 court decision, which "left intact the status quo in terms of day to day operations of the Congregation and its institutions" and cites that the Friedman Faction stated that the Kahan Faction had been the status quo for a period in that it was responsible for operating expenses and maintenance of the Congregation's buildings; and

WHEREAS, the Opposition asserts that several courts have authorized or acknowledged the authority of the Kahan Faction to take action for the Congregation, including the refinancing of the site, and there is not any order that authorizes the Friedman Faction to take action for the Congregation that has not been stayed, reversed, or vacated; and

WHEREAS, as to the operations at the site, the Opposition states that the Kahan Faction has been using, controlling, and exercising responsibility over the site as reflected, in part, by DOB issuing temporary place of assembly permits to the Kahan Faction on several occasions since the leadership dispute arose; and

WHEREAS, the Opposition states that the Kahan Faction

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has hosted several large events at the site, pays for insurance of the site, and has been issued permits for a fence installation and other work at the site; and

WHEREAS, the Opposition asserts that its examples of exercising control over the site support its claims to authority and, at the very least, re-define the status quo at relevant periods; and

CONCLUSION

WHEREAS, the Board supports DOB's denial of continued approvals to either the Friedman Faction or the Kahan Faction for the following primary reasons: (1) DOB is correct to require compliance with AC § 28-104.8's authorization requirement; (2) there is a substantial basis for questioning the identity of the duly authorized party; and (3) DOB does not have the jurisdiction to settle a dispute between the factions and establish the rightful party; and

WHEREAS, as to the requirement for authorization, all parties acknowledge that owner's authorization is required for initial permits and, as to subsequent approvals, the Board cites to Part 12 of the PW-2: Work Permit Application, which states "[i]n accordance with AC § 28-104.8 of the Administrative Code, I hereby declare I am authorized by the owner of the above-referenced premises to make this application for a permit to perform the work described herein;" and

WHEREAS, further, the Board notes that the PW-2 instructions state that "the applicant is required to certify they received authorization from the owner to obtain a permit to perform work on the premises referenced in the application;" and

WHEREAS, accordingly, the Board finds that it is appropriate for DOB to require compliance with AC § 28-104.8's authorization requirement throughout the approval process; and

WHEREAS, in light of the requirement for a reiteration of ownership authorization throughout the approval process, the Board supports DOB's position that when a reasonable question is raised about the appropriateness of one party's authority over another, it may halt subsequent approvals pending resolution of the dispute; and

WHEREAS, the Board agrees with DOB and supports its decision that, based on the subject facts, the doubt raised by the objecting Kahan Faction was significant enough to rise to the level of DOB being unable to conclude which party possesses the authority to secure approvals for the Congregation; and

WHEREAS, the Board recognizes that the dispute between the factions has lasted for at least a decade, has been the subject of at least six court decisions, and that the courts have determined that the dispute is not centered in neutral principles of law, so they do not have jurisdiction to decide which party has legal authority over the site; and

WHEREAS, the Board is unconvinced by the Appellant's argument about maintaining the status quo and notes that the courts, like DOB, have questioned how to define the status quo given the complicated leadership controversy; and

WHEREAS, further, as the Appellant concedes, it has not provided any binding authority as to the application of a status quo principle; and

WHEREAS, as to DOB's jurisdiction over the dispute, the Board notes that in other instances when more than one party meaningfully asserts authority over a site, the court, not DOB, must decide the dispute; and

WHEREAS, the Board follows the New York State case law, DOB's position, and the Appellant's concession that DOB's purview does not include mediation of ownership disputes and the court is the appropriate forum for resolving such disputes; and

WHEREAS, the Board notes that due to the religious nature of this dispute, New York State courts have determined that they must abstain from resolving the dispute and that it should appropriately be decided in a religious forum; and

WHEREAS, accordingly, the Board has determined that DOB appropriately seeks owner's authorization for continued approvals and that DOB may reject both parties claims given the significant longstanding dispute between them, which the courts have not resolved; and

WHEREAS, the Board agrees with DOB that there are practical difficulties as well as an inappropriate assertion of jurisdiction over the dispute if DOB were to accept authorization from either party in the absence of a court order resolving the dispute and naming the party with authority over the site; and

WHEREAS, the Board recognizes that DOB's policy for requiring the undisputed authorization is rooted in practical public policy concerns about construction practices and safety as well as administrative efficiency; and

WHEREAS, therefore, the Board accepts DOB's policy and reasoning for withholding approvals in the subject case pending the resolution of the dispute of authority; and

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Brooklyn Borough Commissioner, dated July 26, 2010, is hereby denied.

Adopted by the Board of Standards and Appeals, March 29, 2011.

12-11-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner.

SUBJECT – Application February 3, 2011 – Reconstruction and enlargement of an existing single-family dwelling not fronting on a mapped street, contrary to General City Section 36. R4 zoning district.

PREMISES AFFECTED – 44 Beach 221st Street, west side of Beach 221st Street, 100' north of Breezy Point Boulevard, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

For Administration: Anthony Scadulo, FDNY.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated January 20, 2011 acting on Department of Buildings Application No. 420234847, reads in pertinent part:

“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; and
- 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 C27-291 (C26-401.1) of the Administrative Code of the City of New York;” and

WHEREAS, a public hearing was held on this application on March 29, 2011, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated February 16, 2011, the Fire Department states that it waives the requirement for a sprinkler system for the subject home and has no further objections to the proposal; and

WHEREAS, accordingly, the Board has determined 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 January 20, 2011, acting on Department of Buildings Application No. 420234847, 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 3, 2011” - 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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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 29, 2011.

96-10-A & 97-10-A

APPLICANT – Rothkrug Rothkrug & Spector, for Hub Development Corporation, owner.

SUBJECT – Application June 1, 2010 – Proposed construction of a single family home located within the bed of a mapped street (Jay Street), contrary to General City Law Section 35. R3-1 Zoning District.

PREMISES AFFECTED – 673 & 675 Hunter Avenue, north side of Hunter Avenue, bed of Jay Street, Block 3864, Lot 98 & 99, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to May 17, 2011, at 10 A.M., for continued hearing.

137-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Richard & Jane O'Brien, lessees.

SUBJECT – Application August 3, 2010 – Reconstruction and enlargement of an existing single-family home not fronting on a mapped street, contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 103 Beach 217th Street, 40' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

For Opposition: Anthony Scaduto, FDNY.

ACTION OF THE BOARD – Laid over to May 10, 2011, at 10 A.M., for continued hearing.

185-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Raymond & Regina Walsh, lessees.

SUBJECT – Application September 24, 2010 – Proposed construction not fronting on a mapped street, contrary to General City Law Section 36 within an R4 zoning district.

PREMISES AFFECTED – 115 Beach 216th Street, east side Beach 216th south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

For Opposition: Anthony Scaduto, FDNY.

ACTION OF THE BOARD – Laid over to May 10, 2011, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 29, 2011
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

175-10-BZ

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

SUBJECT – Application September 1, 2010 – Special Permit (§11-411) for an Extension of Term of a previously approved Automotive Service Station (UG 16B) which expired on December 18, 2001; Extension of Time to obtain a certificate of occupancy which expired on September 21, 1994; Waiver of the Rules of Practice and Procedures. R4 zoning district.

PREMISES AFFECTED – 3400 Baychester Avenue, Northeast corner of Baychester and Tillotson Avenue, Block 5257, Lot 47, Borough of Bronx.

COMMUNITY BOARD #12BX

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated August 23, 2010, acting on Department of Buildings Application No. 220074693, reads in pertinent part:

“The continued operation of the automotive service station at the premises, which is located in an R4 district, is contrary to ZR § 22-10 and BSA Cal. No. 492-56-BZ and must be referred to the BSA for approval;” and

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reinstatement, an extension of term, and an extension of time to obtain a certificate of occupancy for a prior Board approval of an automobile service station with accessory uses (Use Group 16) in an R4 zoning district, pursuant to ZR § 11-411; and

WHEREAS, a public hearing was held on this application on December 7, 2010, after due notice by publication in the *City Record*, with continued hearings on January 11, 2011 and March 1, 2011, and then to decision on March 29, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-

Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Bronx, recommends approval of this application; and

WHEREAS, the premises is located on the northeast corner of Baychester Avenue and Tillotson Avenue, within an R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 18, 1956 when, under BSA Cal. No. 492-56-BZ, the Board granted a variance to permit the construction and maintenance of a gasoline service station with minor auto repairs, office and sales, car washing and lubrication in a residence and retail use district, for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended at various times; and

WHEREAS, most recently, on September 21, 1993, the Board granted a ten-year extension of term, which expired on December 18, 2001; and

WHEREAS, the term of the variance has not been extended since its expiration on December 18, 2001, and

WHEREAS, the applicant represents, however, that the use of the site as a gasoline service station with accessory uses has been continuous since the initial grant; and

WHEREAS, the applicant now proposes to reinstate the prior grant; and

WHEREAS, the applicant has requested a ten-year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance for a term of not more than ten years; and

WHEREAS, at hearing, the Board questioned whether there were used car sales at the site; and

WHEREAS, in response, the applicant submitted an affidavit from the operator stating that the service station at the site provides general repair services for vehicles sold at two affiliated used car dealerships, but that no cars are sold at the subject site; and

WHEREAS, at hearing, the Board directed the applicant to repair the fence along the northwestern lot line, and to provide evidence that it filed an application with the Department of Buildings (“DOB”) to legalize repairs made to the masonry retaining wall at the site; and

WHEREAS, in response, the applicant submitted photographs reflecting that the fence along the northwestern lot line has been repaired, and provided a copy of the DOB application filed to legalize the repairs to the masonry retaining wall at the site; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR § 11-411.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, 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 to permit the reinstatement, extension of term, and

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extension of time to obtain a certificate of occupancy for a prior Board approval of an automobile service station with accessory uses (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 September 1, 2010"-(4) sheets; and *on further condition*:

THAT this permit shall be for a term of ten years, to expire on March 29, 2021;

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

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

THAT a new certificate of occupancy be obtained by March 29, 2021;

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;

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 29, 2021.

183-10-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Cornerstone Residence LLC, owner.

SUBJECT – Application September 20, 2010 – Variance (§72-21) for the construction of a detached two-story, two family residence, contrary to front yard (§23-45) and side yard requirements (§23-461). R5 zoning district.

PREMISES AFFECTED – 873 Belmont Avenue, aka 240 Milford Street, northwest corner of Belmont Avenue and Milford Street, Block 4024, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #5BK

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, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 20, 2010, acting on Department of Buildings Application No. 320173254, 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.

2. Proposed side yard is contrary to Section 23-461 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 R5 zoning district, the proposed construction of a two-story two-family home that does not comply with the zoning requirements for front yards and side yards, contrary to ZR §§ 23-45 and 23-461; and

WHEREAS, a public hearing was held on this application on December 14, 2010 after due notice by publication in *The City Record*, with continued hearings on February 1, 2011 and March 1, 2011, and then to decision on March 29, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Brooklyn, recommends disapproval of this application; and

WHEREAS, the site is located on the northeast corner of Belmont Avenue and Milford Street, within an R5 zoning district; and

WHEREAS, the site has a width of 20 feet, a depth of 90 feet, and a total lot area of 1,800 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story two-family home; and

WHEREAS, the proposed home will have the following complying parameters: a floor area of 1,979 sq. ft. (1.1 FAR); a lot coverage of approximately 55 percent; a side yard with a width of 21'-9½" along the northern lot line; a front yard with a depth of 10'-0" along the southern lot line; a wall height of 19'9"; a total height of 24'-3"; and parking for two cars; and

WHEREAS, however, the applicant proposes to have a front yard with a depth of 2'-0" along the eastern lot line (a front yard with a minimum depth of 18'-0" is required), and a side yard with a width of 1'-0" along the western lot line (a side yard with a minimum width of 5'-0" is required); and

WHEREAS, the applicant originally proposed to construct a two-story two-family home with a side yard of 3'-0" along the western lot line and no front yard along the eastern lot line; and

WHEREAS, at the direction of the Board, the applicant revised its plans to the current proposal, which provides a front yard with a depth of 2'-0" along the eastern lot line; and

WHEREAS, the Board notes that the subject lot is undersized as defined by ZR § 23-32; and

WHEREAS, the applicant represents that it satisfies the requirements of ZR § 23-33, which permits the construction of a two-family home on an undersized lot provided that the lot was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961, and on the date of

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application for a building permit; and

WHEREAS, in support of this, the applicant submitted deeds reflecting that the site has existed in its current configuration since before December 15, 1961 and its ownership has been independent of the ownership of the two adjoining lots; and

WHEREAS, the applicant states that the front and 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: the subject site is a vacant and narrow corner lot; and

WHEREAS, the applicant represents that the pre-existing lot width of 20'-0" cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that the subject site is a corner lot, which requires two front yards with depths of 18'-0" and 10'-0", respectively, and two side yards with a total width of 13'-0" and a minimum width of 5'-0" each; and

WHEREAS, the applicant states that the building would have a maximum exterior width of 5'-0" and constrained floor plates if the front and side yard regulations were complied with fully; and

WHEREAS, accordingly, the applicant represents that the front and side yard waivers are necessary to create a building with a sufficient width; and

WHEREAS, the applicant notes that the surrounding area is characterized by lots with widths comparable to that of the subject site, but that the majority of them are occupied by homes built prior to December 15, 1961 or are interior lots with different yard requirements; and

WHEREAS, the applicant submitted a corner lot study which analyzed building construction on corner lots within a two-block radius of the site; and

WHEREAS, the study, which covered a 15-block area, reflects that of the 60 corner lots analyzed only eight were vacant in the past decade, and of these eight lots new building construction has only occurred on those lots in common ownership with adjacent lots, or on those lots adjacent to pre-existing buildings that are located on the lot line; and

WHEREAS, specifically, the study shows that four of the eight lots are under common ownership with an adjacent lot, which allowed the corner lots to be developed with residential buildings similar in size to the proposed home because the new residential buildings were not required to provide an interior side yard and could therefore provide both front yards and still have a sufficient width to be feasible; and

WHEREAS, the study also shows that one of the eight corner lots in the vicinity of the site is adjacent to a pre-existing building located on the lot line, which enabled the corner lot to construct a building that shared the party wall with the adjacent building as permitted under ZR § 23-49, and therefore that lot was similarly not required to provide an interior side yard; and

WHEREAS, the applicant states that the other three

corner lots, each with a width of 20 feet, remain vacant; and

WHEREAS, the applicant states that the subject lot is neither under common ownership with an adjacent lot nor located adjacent to a pre-existing building located on the lot line, and therefore the narrow width of the site in conjunction with its corner lot location necessitates the requested front and side yard waivers; and

WHEREAS, as to the uniqueness of such conditions, the applicant notes that there are only three other sites within the study area that are similarly constricted; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create 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 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, or impact adjacent uses; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development; and

WHEREAS, the applicant submitted photographs of the surrounding corner lots which reflects that the majority of existing buildings do not provide complying front yards; and

WHEREAS, specifically, the photographs submitted by the applicant show that of the 32 corner lots closest to the subject site, 24 of the lots are non-complying with R5 yard requirements; and

WHEREAS, the applicant notes that the streetscape along Belmont Avenue would not be interrupted by the proposed home because a complying front yard will be provided at that frontage; and

WHEREAS, the applicant further notes that the proposed waivers will not affect the light and air enjoyed by the adjacent neighbor to the north, as the proposed northern side yard exceeds the requirements of the R5 zoning district; and

WHEREAS, therefore, 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, 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 result of the pre-existing unique physical conditions cited above; and

WHEREAS, as noted above, the applicant originally proposed to construct a two-story two-family home with no front yard along the eastern lot line; and

WHEREAS, at the Board's direction, the applicant revised the proposal to reflect a two-story two-family home with a front yard of 2'-0" along the eastern lot line; and

WHEREAS, 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

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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, a two-story two-family home that does not comply with the zoning requirements for front yards and side yards, contrary to ZR §§ 23-45 and 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 January 21, 2011”– (3) sheets and March 14, 2011”-(1) sheet; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a floor area of 1,979 sq. ft. (1.1 FAR); a lot coverage of approximately 55 percent; a side yard with a minimum width of 1’-0” along the western lot line; a side yard with a width of 21’-9½” along the northern lot line; a front yard with a minimum depth of 2’-0” along the eastern lot line; a front yard with a depth of 10’-0” along the southern lot line; a wall height of 19’9”; a total height of 24’-3”; and parking for two cars, as per 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 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 significant construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance 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 29, 2011.

187-07-BZ

APPLICANT – Dennis D. Dell’Angelo, for Michael Modatsos, owner.

SUBJECT – Application August 1, 2010 – Variance (§72-21) to permit accessory parking for an existing eating and drinking establishment, contrary to use regulations (§22-00). R3X zoning district.

PREMISES AFFECTED – 4677 Hylan Boulevard, North side of Hylan Boulevard 175.03 feet west of Arden Avenue. Block 5408, Lot 43, Borough of Staten Island.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Dennis D. Dell’Angelo.

For Opposition: William O’Neil.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 3, 2011, at 1:30 P.M., for decision, hearing closed.

169-09-BZ

APPLICANT – Sheldon Lobel, for Saint Georges Crescent, LLC, owner.

SUBJECT – Application June 8, 2009 – Variance (§72-21) to allow a multi-family residential building, contrary to floor area (§23-145), rear yard (§23-47), height and setback (§23-633), rear setback (§23-663), minimum distance between windows and lot lines (§23-861), and maximum number of dwelling units (§23-22) regulations. R8 zoning district.

PREMISES AFFECTED – 186 Saint George’s Crescent, east side of St. George’s Crescent, 170’ southeast of the corner formed by the intersection of Van Cortland Avenue, and Grand Concourse, Block 3312, Lot 12, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Josh Rinesmith, John Becker and Barbara Cohen.

ACTION OF THE BOARD – Laid over to May 17, 2011, at 1:30 P.M., for continued hearing.

127-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Aleksandr Goldshmidt and Inna Goldshmidt, owners.

SUBJECT – Application July 12, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space, lot coverage (§23-141), exceeds the maximum perimeter wall height (§23-631) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 45 Coleridge Street, east side of Coleridge Street, between Shore Boulevard and Hampton Avenue, Block 8729, Lot 65, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 3, 2011, at 1:30 P.M., for decision, hearing closed.

128-10-BZ

APPLICANT – Eric Palatnik, P.C., for Merhay Yagaduyev, owner; Jewish Center of Kew Gardens Hill Inc., lessee.

SUBJECT – Application July 13, 2010 – Variance (§72-21) to permit proposed synagogue, religious school and Rabbi’s

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residence (*Jewish Center of Kew Gardens*) contrary to floor area and lot coverage (§24-11), height, setback and sky exposure plane (§24-521), front yard (§24-34), side yards (§24-35), side setback (§24-551), and minimum distance between windows (§24-672 and §23-863). R4 zoning district.

PREMISES AFFECTED – 147-58 77th Road, 150th Street and 77th Road, Block 6688, Lot 31, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik and Sandy Anagnostou.

ACTION OF THE BOARD – Laid over to May 10, 2011, at 1:30 P.M., for continued hearing.

134-10-BZ

APPLICANT – Stuart Beckerman, for Passiv House Xperimental LLC, owner.

SUBJECT – Application July 30, 2010 – Variance (§72-21) to allow a residential building, contrary to floor area (§43-12), height (§43-43), and use (§42-10) regulations. M1-1 zoning district.

PREMISES AFFECTED – 107 Union Street, north side of Union Street, between Van Brunt and Columbia Streets, Block 335, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 3, 2011, at 1:30 P.M., for deferred decision.

156-10-BZ thru 164-10-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for City of New York c/o Housing Preservation Development (HPD), owner.

SUBJECT – Application August 26, 2010 – Variance (§72-21) to allow residential buildings, contrary to rear yard (§23-47) and minimum distance between windows and lot lines (§23-861) regulations. M1-2/R6A zoning district.

PREMISES AFFECTED – 1204, 1208, 1214, 1220, 1226, 1232, 1264, 1270, 1276 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue, Block 5295, Lots 4, 104, 105, 106, 107, 108, 111, 112, 113, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 3, 2011, at 1:30 P.M., for decision, hearing closed.

165-10-BZ thru 172-10-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for City of New York c/o Housing Preservation Development (HPD), owner.

SUBJECT – Application August 26, 2010 – Variance (§72-21) to allow residential buildings, contrary to rear yard (§23-47) and minimum distance between windows and lot lines (§23-861) regulations. M1-2/R6A zoning district.

PREMISES AFFECTED – 1304, 1310, 1316, 1322, 1328, 1334, 1362, 1368 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue, Block 5300, Lots 9, 109, 110, 111, 112, 113, 115, 116, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 3, 2011, at 1:30 P.M., for decision, hearing closed.

218-10-BZ

APPLICANT – Simons & Wright LLC, for Bermuda Realty LLC, owner.

SUBJECT – Application November 19, 2010 – Special Permit (§73-19) for the construction of a four-story school (*Brownsville Ascend Charter School*). C8-2 zoning district.

PREMISES AFFECTED – 123 East 98th Street, aka 1 Blake Avenue, corner of the intersection of East 98th and Blake Avenue between Ralph Avenue and Union Street, Block 3531, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Emily Simons and Jeffrey Smithline.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 12, 2011, at 1:30 P.M., for decision, hearing closed.

177-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLC, for Cee Jay Real Estate Development, owner.

SUBJECT – Application September 9, 2010 – Variance (§72-21) for the construction of a detached three-story single family home, contrary to open space (§23-141); front yard (§23-45) and side yard (§23-461). R3A zoning district.

PREMISES AFFECTED – 8 Orange Avenue, south west corner of Decker Avenue and Orange Avenue, Block 1061, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

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For Applicant: Adam Rothkrug.

For Opposition: Jeannine Borkowski, Eileen Martin, John Donnarama, Joanne Donnarama, Maro Buonniaqgio.

ACTION OF THE BOARD – Laid over to May 10, 2011, at 1:30 P.M., for continued hearing.

7-11-BZ

APPLICANT – Sheldon Lobel, P.C., for NRP LLC II, owners; Dyckman Fitness Group, LLC, lessee.

SUBJECT – Application January 26, 2011 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Planet Fitness*. C4-4 zoning district.

PREMISES AFFECTED – 177 Dyckman Street, southeast corner of the intersection of Dyckman Street and Vermilyea Avenue, Block 2224, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Elizabeth Safian.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 3, 2011, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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April 13, 2011

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DOCKET

New Case Filed Up to April 5, 2010

35-11-BZ

226-20 Francis Lewis Boulevard, Southerly side of Francis Lewis Boulevard, 1,105 feet westerly of Francis Lewis Boulevard where it turns south., Block 12825, Lot(s) 149, Borough of **Queens, Community Board: 13**. Variance (§72-21) to allow for the enlargement of an existing synagogue (Congregation Ohel), contrary to floor area, lot coverage (ZR 24-11), front yard (§ 24-34), side yard (ZR 24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district. R2A district.

36-11-BZ

270 Greenwich Street, Facing the west side of Joe DiMaggio Highway., Block 142, Lot(s) 7501, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (SoulCycle) located in a C6-3 zoning district. C6-3 district.

37-11-BZ

1337 East 26th Street, East side 300' east of intersection of Avenue M & East 26th Street., Block 7662, Lot(s) 32, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space §23-141; side yards §23-461 and §23-48 and less than the required rear yard §23-47. R-2 zoning district. R-2 district.

38-11-BZ

1368 East 27th Street, Between Avenue M & N., Block 7662, Lot(s) 80, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space §23-141(a); side yard §23-461(a) and less than the required rear yard §23-47. R-2 zoning district. R2 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

MAY 3, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 3, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

188-78-BZ

APPLICANT –Mark Verkhosky, for Anthony Beradi, owner; Spiro Ioannou, lessee.

SUBJECT – Application May 4, 2010 – Pursuant to (§11-412) for an Amendment to a previously granted Variance (§72-21) for the added uses of automobile body and automobile sales (UG16) to an existing (UG16) automobile repair and auto laundry. R-5 zoning district.

PREMISES AFFECTED – 8102 New Utrecht Avenue, southwest corner of New Utrecht Avenue and 81st Street, Block 6313, Lot 31, Borough of Brooklyn.

APPEALS CALENDAR

195-10-BZY

APPLICANT – Eric Palatnik, P.C., for Michael Batalia, owner.

SUBJECT – Application October 26, 2010 –Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-2/R5B zoning district.

PREMISES AFFECTED – 38-28 27th Street, between 38th and 39th Avenue, Block 387, Lot 31, Borough of Queens.

COMMUNITY BOARD #1Q

MAY 3, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 3, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

13-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, Miriam Loeb and Chaim Loeb, owner.

SUBJECT – Application February 3, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space §23-141; side yard §23-461 and 23-48; and less than the required rear yard §23-47. R2 zoning district.

PREMISES AFFECTED – 1040 East 26th Street, west side of East 26th Street, between Avenue J and Avenue K, Block 7607, Lot 66, Borough of Brooklyn.

COMMUNITY BOARD #14BK

16-11-BZ

APPLICANT – Eric Palatnik, P.C., for Judah Rosenweig, owner.

SUBJECT – Application February 14, 2011 - Special Permit (§73-621) for the enlargement of an existing two story with attic single family home contrary to floor area and open space §23-141(a). R1-2 zoning district.

PREMISES AFFECTED – 181-30 Aberdeen Road, between Surrey and Tyron Place, Block 7224, Lot 34, Borough of Queens.

COMMUNITY BOARD #8Q

20-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 30 West 18th Associates Association, LLC, owner; Just Calm Down II, Inc., lessee.

SUBJECT – Application February 28, 2011 – Special Permit (§73-36) to allow the proposed physical culture establishment (*Just Calm Down*). C6-4A zoning district.

PREMISES AFFECTED – 30 West 18th Street, south side of West 18th Street, Block 819, Lot 59, Borough of Manhattan.

COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, APRIL 5, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

881-59-BZ

APPLICANT – Dorothy Ames, owner.
SUBJECT – Application November 19, 2010 – Extension of
Term (§11-411) for the continued use of a theatre (*Soho
Playhouse*) which expires on April 11, 2011. R6 zoning
district.

PREMISES AFFECTED – 15 Vandam Street, between
Avenue of the Americas and Varick Street, Block 506, Lot
47, 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 Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and
an extension of term for the continued use of a theatre; and

WHEREAS, a public hearing was held on this
application on March 1, 2011 after due notice by publication
in *The City Record*, with a continued hearing on March 15,
2011, and then to decision on April 5, 2011; and

WHEREAS, the premises and surrounding area had site
and neighborhood examinations by Chair Srinivasan, Vice-
Chair Collins, Commissioner Hinkson, and Commissioner
Ottley-Brown; and

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

WHEREAS, the site is located on the north side of
Vandam Street, between Varick Street and Sixth Avenue,
within an R6 zoning district; and

WHEREAS, the subject site is occupied by a three-story
mixed-use building with theatre use at the first floor and cellar,
and residential use on the second and third floors; and

WHEREAS, the Board has exercised jurisdiction over
the subject site since May 3, 1960 when, under the subject
calendar number, the Board granted a variance to permit the
change in use of an existing building from card room to light
manufacturing and grinding of optical lenses; and

WHEREAS, on April 11, 1961, the Board granted a
variance to permit a change of use of the subject building to
theatre and dwelling, for a term of ten years; and

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

WHEREAS, most recently, on January 16, 2001, the
Board granted an extension of term for ten years from the
expiration of the prior grant, to expire on April 11, 2001;
and WHEREAS, the applicant now seeks an additional
extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may
permit an extension of term; and

WHEREAS, based upon its review of the record, the
Board finds 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 *reopens* and *amends* the resolution, dated April 11,
1961, so that as amended this portion of the resolution shall
read: “to extend the term for an additional ten years from
April 11, 2011, to expire on April 11, 2021; *on condition*
that the use and operation of the site shall comply with
BSA-approved plans associated with the prior grant; and *on
further condition*:

THAT the term of the grant shall expire on April 11,
2021;

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

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 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. 413/1971)

Adopted by the Board of Standards and Appeals April 5,
2011.

198-00-BZ

APPLICANT – C. Anthony LoPresti, owner.

SUBJECT – Application January 31, 2011 – Extension of
Term of a Special Permit (§73-125) for the conversion of a
portion of the first floor community facility to medical
offices, which expired on December 12, 2010. R1-2 zoning
district.

PREMISES AFFECTED – 4641 Hylan Boulevard, Hylan
Boulevard and Arden Avenue, Block 5386, Lot 76, Borough
of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: C. Anthony LoPresti.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5

MINUTES

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term of a previously granted special permit for the conversion of a portion of the first floor community facility building to medical offices, which expired on December 12, 2010; and

WHEREAS, a public hearing was held on this application on March 8, 2011, after due notice by publication in *The City Record*, and then to decision on April 5, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 3, Staten Island, recommends approval of this application; and

WHEREAS, the site is located on the northeast corner of Hylan Boulevard and Arden Avenue, in an R1-2 zoning district within the Special South Richmond Development District; and

WHEREAS, the subject site is occupied by a two-story mixed-use building consisting of a dental office with a floor area of 1,500 sq. ft. and a medical office with a floor area of 1,091 sq. ft. on the first floor, and a one-family residence on the second floor; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 12, 2000 when, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-125 to permit the conversion of a portion of the first floor to medical office use, such that more than 1,500 sq. ft. of floor area in the building is occupied by medical office use contrary to ZR § 22-14, which expired on December 12, 2010; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, based upon its review of the record, the Board finds 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 *reopens* and *amends* the resolution, as adopted on December 12, 2000, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from December 12, 2010, to expire on December 12, 2020; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans associated with the prior approval; and *on further condition*:

THAT the term of this grant shall expire on December 12, 2020;

THAT the signage on the site shall be limited to the existing four double-sided signs;

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;

THAT the Department of Buildings must ensure compliance 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.”

(Alt. No. 287-1983)

Adopted by the Board of Standards and Appeals, April 5, 2011.

122-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Revlation Development Incorporated, owner. Bensonhurst MRI, P.C., lessee.

SUBJECT – Application January 26, 2011 – Extension of Time to Complete Construction of a Variance (§72-21) for the enlargement of an existing medical office building and the construction of residences, which expired on February 6, 2011. R5 and C2-3/R5 zoning district.

PREMISES AFFECTED – 2671 86th Street, West 11th and West 12th Streets, Block 7115, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction for the enlargement of an existing commercial building to be occupied by medical office and residential space; and

WHEREAS, a public hearing was held on this application on March 8, 2011, after due notice by publication in *The City Record*, and then to decision on April 5, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, the site is located on the east side of 86th Street near the intersection with West 12th Street and between Avenue U and Avenue V; and

WHEREAS, the subject lot is triangular-shaped with a total lot area of 4,486 sq. ft., and is located partially within a C2-3 (R5) zoning district and partially within an R5 zoning district; and

WHEREAS, the portion of the site located within the C2-3 (R5) zoning district is occupied by a one-story medical office building with a floor area of 2,809 sq. ft.; the remainder of the site is vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 6, 2007 when, under the subject calendar number, the Board granted a variance to permit the enlargement of the one-story commercial building to be occupied by additional medical office space and two residential dwelling units; and

MINUTES

WHEREAS, substantial construction was to be completed by February 6, 2011, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that construction has been delayed due to financing issues; and

WHEREAS, thus, the applicant requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction 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, dated February 6, 2007, so that as amended this portion of the resolution shall read: “to grant an extension of time to complete construction for a term of four years, to expire on February 6, 2015; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT substantial construction shall be completed by February 6, 2015;

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

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 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. 320262979)

Adopted by the Board of Standards and Appeals April 5, 2011.

215-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 92-16 95th Avenue Realty Corporation by Alfred Smith, owners. SUBJECT – Application February 17, 2011 – Extension of Time to obtain a Certificate of Occupancy, which expired on May 17, 2010, for a previously approved amendment (§§11-411 & 11-413) which permitted a change of use from a wholesale (Use Group 7) to a retail (Use Group 6) use on the ground floor of a three-story building; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 92-16 95th Avenue, southwest corner of 93rd Street and 95th Avenue, Block 9032, Lot 8, Borough of Queens.

COMMUNITY BOARD #9Q

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, Commissioner Hinkson and Commissioner Montanez5
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 obtain a certificate of occupancy for a three-story mixed-use commercial/residential building; and

WHEREAS, a public hearing was held on this application on March 8, 2011, after due notice by publication in *The City Record*, and then to decision on April 5, 2011; and

WHEREAS, the premises is located on the southwest corner of 93rd Street and 95th Avenue, in an R5 zoning district; and

WHEREAS, the site is occupied by a three-story mixed-use commercial/residential building, with retail use on the first floor and residential uses on the second and third floors; and

WHEREAS, on September 27, 1960, under BSA Cal. No. 440-59-BZ, the Board granted a variance to permit the change in use of the first floor of the existing three-story building, with two one-story additions, from store and storage, to offices, storage and wholesale sales of imported food products for a term of ten years, to expire on September 27, 1970; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, on November 17, 2009, under the subject calendar number, the Board reinstated the prior approval and granted an extension of term, an extension of time to obtain a certificate of occupancy, minor modifications to the previously-approved plans, and a change in use from wholesale sales of imported food products (Use Group 7) to retail use (Use Group 6) on the first floor; a condition of the grant was that a certificate of occupancy be obtained by May 17, 2010; and

WHEREAS, the applicant now requests a further extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that it was unable to obtain a certificate of occupancy by the stipulated date because the owner had not installed one fire door prior to the expiration of the time to obtain a certificate of occupancy; and

WHEREAS, the applicant notes that the fire door has since been received and installed at the site; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time 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 November 17, 2009, so that as amended this portion of the resolution shall read: “to extend the time to obtain a certificate of occupancy for one year, to expire on April 5, 2012; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a new certificate of occupancy be obtained by April 5, 2012;

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

MINUTES

THAT 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. 420013103)

Adopted by the Board of Standards and Appeals, April 5, 2011.

435-74-BZ

APPLICANT –Eric Palatnik, P.C., for J. B. Automotive Center of New York, Inc., owner.

SUBJECT – Application January 26, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of an automotive repair center which expired on January 14, 2011; waiver of the rules. R3-1 zoning district.

PREMISES AFFECTED – 552 Midland Avenue, southwest corner of Midland and Freeborn Street, Block 3804, Lot 18, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 3, 2011, at 10 A.M., for continued hearing.

516-75-BZ

APPLICANT – Tarter Krinsky & Drogin, LLP, for Vertical Projects LLC, owner; MP Sports Club Upper Eastside LLC, lessee.

SUBJECT – Application December 17, 2010 – Amendment of a bulk variance (§72-21) for a building occupied by a Physical Culture Establishment (*The Sports Club/LA*). The amendment proposes an increase in PCE floor area and a change operator; Extension of Term which expired on October 17, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on October 17, 2002; and Waiver of the Rules. C8-4 zoning district.

PREMISES AFFECTED – 330 East 61st Street aka 328 East 61st Street, between First Avenue and ramp of Queensboro Bridge (NYS Route 25), Block 1435, Lots 16 & 37, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Jonathan Grippo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 3, 2011, at 10 A.M., for decision, hearing closed.

866-85-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Anne Marie Cicciu Incorporated, owner.

SUBJECT – Application October 19, 2010 – Extension of Term of a Variance (§72-21) for a UG8 open parking lot and storage of motor vehicles which expired on May 12, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on November 23, 2000; Waiver of the Rules.

R7-1 zoning district.

PREMISES AFFECTED – 2338 Cambreleng Avenue, east side of 2338 Cambreleng Avenue, 199.25’ south of intersection of Cambreleng Avenue and Crescent Avenue, Block 3089, Lot 22, Borough of Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 3, 2011, at 10 A.M., for decision, hearing closed.

216-97-BZ

APPLICANT – Moshe M. Friedman, for King Carroll LLC, owner; Dr. Rosen M.D., lessee.

SUBJECT – Application December 28, 2010 – Amendment to a special permit (§73-125) to enlarge UG4 medical offices within the cellar of an existing four-story residential building. R-2 zoning district.

PREMISES AFFECTED – 1384 Carroll Street, aka 352 Kingston Avenue, south side of Carroll Street and Kingston Avenue, Block 1292, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #9BK

For Applicant: Tzvi Friedman

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 3, 2011, at 10 A.M., for decision, hearing closed.

273-00-BZ

APPLICANT – Mitchell Ross, Esq., for 10 West Thirty Third Joint Venture, owner; Spa Sol, Incorporated, lessee.

SUBJECT – Application July 22, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Spa Sol*) which expires on February 13, 2011; Amendment to legalize interior layout/increase in number of treatment rooms. C6-4 zoning district.

PREMISES AFFECTED – 3 West 33rd Street, 1.07’ southwest of West 33rd Street and Fifth Avenue, Block 834, Lot 49, Borough of Manhattan.

MINUTES

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Laid over May 3, 2011, at 10 A.M., for continued hearing.

427-05-BZ

APPLICANT – Eric Palatnik, P.C., for Linwood Holdings, LLC, owner.

SUBJECT – Application February 28, 2011 – Extension of Time to complete construction for a Special Permit (§73-44) to permit a retail, community facility and office development with less than the required parking which expired on March 20, 2011. C4-2 zoning district.

PREMISES AFFECTED – 133-47 39th Avenue, between Price Street and College Point Boulevard, Block 4972, Lot 59, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 10, 2011, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

837-85-A

APPLICANT – Angelo F. Liarkos, R.A., for Cesar A. Linares, D.D.S., owner.

SUBJECT – Application December 23, 2010 – Extension of term to allow the continued operation of a medical office (UG4) in an existing frame structure which expired on December 17, 2010. R2 Zoning District.

PREMISES AFFECTED – 166-18 73rd Avenue, southwest corner of 73rd Avenue and 167th Street, Block 6974, Lot 19, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Pamela Liarkos.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term of a previously granted appeal to permit the operation of medical offices (Use Group 4) in an existing frame structure, which expired on December 17, 2010; and

WHEREAS, a public hearing was held on this application on March 8, 2011 after due notice by publication in *The City Record*, and then to decision on April 5, 2011; and

WHEREAS, Community Board 8, Queens, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the southwest corner of 73rd Avenue and 167th Street, within an R2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 17, 1985 when, under the subject calendar number, the Board granted an appeal of a decision by the Department of Buildings (“DOB”), to permit the use of a one-story and cellar wood frame (Class IV) building located within the Fire Limits for medical offices, for a term of five years; and

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

WHEREAS, most recently, on August 6, 2002, the Board granted a ten-year extension of the term from December 17, 2000, which expired on December 17, 2010; and

WHEREAS, the applicant now requests an additional extension of term; and

WHEREAS, based upon its review of the record, 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 *reopens* and *amends* the resolution, as adopted on December 17, 1985, so that as amended this portion of the resolution shall read: “to extend the term for ten years from December 17, 2010, to expire on December 17, 2020; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans associated with the prior approval; and *on further condition*:

THAT the term of this grant shall expire on December 17, 2020;

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 App. No. Alt. No. 457/1985)

Adopted by the Board of Standards and Appeals, April 5, 2011.

MINUTES

189-10-A

APPLICANT – Bracewell & Giuliani, LLP on behalf of Chelsea Business & Property Owners, for 127 West 25th LLC, owner; Bowery Residents’ Committee, Incorporated, lessee.

SUBJECT – Application October 8, 2010 – Appeal challenging the Department of Buildings’ interpretation that the proposed use is a transient hotel. M1-6 zoning district. PREMISES AFFECTED – 127-131 West 25th Street, between 6th and 7th Avenue, Block 801, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Daniel S. Connolly.

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION: 1

WHEREAS, this appeal comes before the Board in response to a final determination letter from the Manhattan Borough Commissioner of the Department of Buildings (“DOB”), dated September 9, 2010 (the “Final Determination”); and

WHEREAS, the Final Determination was issued in response to a request by a representative of the Chelsea Flatiron Committee, a group of area residents and businesspeople (the “Appellant” or “CFC”), to revoke DOB Permit No. 120288054 (the “Permit”) issued to the Bowery Residents’ Committee, a lessee/not-for-profit transitional housing and service provider (“BRC”) for the conversion of a 12-story building at 127-131 West 25th Street (the “Building”) into a homeless shelter and offices; and

WHEREAS, this appeal challenges DOB’s use classifications of the two proposed components of the Building and the resultant determination that the proposal complies with zoning and other relevant regulations; and

WHEREAS, the Final Determination reflects DOB’s position that the proposed uses are Use Group 5 Transient Hotel and Use Group 6 Professional Office, both of which are permitted as of right in the subject M1-6 zoning district; the Appellant asserts that the appropriate use classification is Use Group 3 Non-Profit Institution with Sleeping Accommodations and either Use Group 3 Health Related Facility or Use Group 4 Ambulatory Diagnostic or Treatment Health Care Facility, none of which are conforming uses in an M1-6 zoning district; and

WHEREAS, the Final Determination provides in pertinent part:

The Department of Buildings (the “Department”) is in receipt of your letter dated September 2, 2010 in which you request the revocation of Permit No.

120288054 (the “Permit”) issued by the Department based on Alteration Type-1 Application No. 120288054 (the “Application”) for 127 West 25th Street, New York, NY. The Department has conducted a review of the construction documents submitted with the Application and has determined that the Permit was lawfully issued; and

WHEREAS, a public hearing was held on this appeal on March 1, 2011, after due notice by publication in *The City Record*, and then to decision on April 5, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the Appellant, BRC, and DOB were represented by counsel in this proceeding; and

THE PROPOSAL

WHEREAS, the subject site is within an M1-6 zoning district and is occupied by a 12-story factory building that BRC proposes to convert to a homeless shelter and professional offices; and

WHEREAS, the DOB-approved plans reflect the following program: Cellar: Offices, Storage, Mechanical/Electrical Room, Laundry Room – Use Group 5; 1st Floor: Kitchen – Use Group 5 and Retail Space, Office – Use Group 6; 2nd Floor: Dining, Servery Station – Use Group 5; 3rd to 9th Floors: Lodging House – Use Group 5 and Offices – Use Group 6; 10th to 12th Floors: Offices – Use Group 6; and

WHEREAS, BRC provided the following supplementary information about the Building’s use and occupancy to support its application to DOB; the information reflects that the Building will include: (1) a 32-bed Chemical Dependency Crisis Center serving men and women of all ages who have a history of addiction and who are seeking to attain or maintain sobriety, on the third floor; (2) a 96-bed Reception Center serving homeless men and women of all ages who have a history of mental illness and who are seeking to attain or maintain stability in their mental health on the fourth and fifth floors; (3) a 200-bed Shelter serving homeless men of all ages who have a history of mental illness and who are seeking to attain or maintain stability in their mental health on the sixth through ninth floors; (4) an outpatient Substance Abuse Center serving approximately 65 men and women daily; and (5) an outpatient Continuing Day Treatment program serving approximately 35 men and women daily, who have a history of mental illness; and

PROCEDURAL HISTORY

WHEREAS, on December 23, 2009, BRC submitted a request for a zoning resolution determination (a “ZRD1”) that the proposed homeless shelter was permitted as an as-of-right Use Group 5 Transient Hotel in the M1-6 zoning district; and

WHEREAS, on January 4, 2010, DOB issued a determination that “a transient facility with multiple beds rented to different individuals or families located within the same dwelling unit (per the Housing Maintenance Code [HMC] § 27-2004(a)(27)) can be appropriately classified as

1 Headings are utilized only in the interest of clarity and organization.

MINUTES

Use Group 5 ‘transient hotel’ pursuant to the ZR and, as such, may be located in the subject M1-6 district;” and

WHEREAS, on March 9, 2010, BRC filed an application, based on DOB’s approval of the proposed uses, pursuant to the PW1A: Schedule A – Occupancy Use form (“Schedule A”), which reflected the following: Cellar: Offices, Storage, Mechanical/Electrical Room, Laundry Room – Use Group 5; 1st Floor: Retail Space, Kitchen, Offices – Use Group 5; 2nd Floor: Dining – Use Group 5; 3rd Floor to 9th Floor: Offices, Lodging House – Use Group 5; 10th Floor to 12th Floor: Offices – Use Group 5; and

WHEREAS, on June 24, 2010, DOB approved the application and on July 9, 2010 issued the Permit; and

WHEREAS, on June 28, 2010, DOB received a complaint from the Appellant alleging that the classification of the use as a Use Group 5 Transient Hotel was improper and, further, that the approved application and plans were not consistent with information being disseminated to the public from BRC or with documents submitted by BRC to other city, state, and federal agencies; and

WHEREAS, based on the Appellant’s complaint, DOB conducted a review of the application and BRC provided additional information about the proposed use of the site, including the information about the programs, noted above; and

WHEREAS, on August 4, 2010, BRC filed amended plans, which reflect that a firewall will separate the sleeping accommodations from the offices and that separate entrances and elevator access is provided for each use, and an amended Schedule A, which identifies the uses as Use Group 5 Transient Hotel and Use Group 6 Professional Offices; and

WHEREAS, the amended Schedule A contains the following note: “Floors occupied by lodging house (Use Group 5) and Professional Offices (Use Group 6) are separated by fire-rated walls equipped with alarmed, fireproofed self-closing doors;” and

WHEREAS, on August 5, 2010, DOB approved the amended plans; and

WHEREAS, the Appellant initiated an action against the Department of Homeless Services (DHS), DOB, the Department of Housing Preservation and Development (HPD), BRC, and others in New York State Supreme Court (Chelsea Business & Property Owners’ Association LLC v. City of New York et al, Index No. 113194/10); the case is ongoing, but the court determined that the Appellant must exhaust its administrative remedies for its claims related to DOB permits and zoning issues and, thus, the Appellant filed its case at the Board; and

RELEVANT STATUTORY PROVISIONS

ZR § 12-10 (Definitions)

A transient hotel is a building or part of a building in which:

- (a) living or sleeping accommodations are used primarily for transient occupancy, and may be rented on a daily basis;
- (b) one or more common entrances serve all such living or sleeping units; and

(c) twenty-four hour desk service is provided, in addition to one or more of the following services: housekeeping, telephone, or bellhop service, or the furnishing or laundering of linens.

Permitted accessory uses include restaurants, cocktail lounges, public banquet halls, ballrooms, or meeting rooms.

* * *

ZR § 11-22 (Applications of Overlapping Regulations)

Whenever any provision of this Resolution and any other provisions of law, whether set forth in this Resolution or in any other law, ordinance or resolution of any kind, impose overlapping or contradictory regulations over the #use# of land, or over the #use# or #bulk# of #buildings or other structures#, or contain any restrictions covering any of the same subject matter, that provision which is more restrictive or imposes higher standards or requirements shall govern . . .

* * *

ZR § 22-00 (Use Regulations – General Provisions) also ZR §§ 33-00, 42-00)

. . . Whenever a use is specifically listed in a Use Group and also could be construed to be incorporated within a more inclusive listing, either in the same or another Use Group, the more specific listing shall control . . .; and

THE APPELLANT’S POSITION

WHEREAS, the Appellant asserts that DOB’s acceptance of the proposed homeless shelter and offices as part Use Group 5 Transient Hotel and part Use Group 6 Professional Offices is erroneous in that the facility should appropriately be characterized as Use Group 3 Non-Profit Institution with Sleeping Accommodations and either Use Group 3 Health Related Facility or Use Group 4 Ambulatory Diagnostic or Treatment Health Care Facility; and

WHEREAS, the Appellant’s primary assertions are that (1) the plain meaning of the word “hotel” dictates that the facility is not a transient hotel, (2) the proposed sleeping accommodations are a non-profit institution with sleeping accommodations, (3) the proposed facility cannot be classified alternately as Use Group 5 or Use Group 3 depending on which zoning district it is in, (4) if the offices are not Use Group 3, then they should be classified as Use Group 4 Ambulatory Diagnostic or Treatment Health Care Facility, (5) the Building cannot be a Lodging House under the Multiple Dwelling Law (MDL) and Housing Maintenance Code (HMC) and a transient hotel per zoning, and (6) the occupancy exceeds that permitted by Administrative Code § 21-312; and

1. The Definition of Hotel

WHEREAS, the Appellant asserts that the proposed facility is not a hotel according to (1) the plain meaning of “hotel,” (2) the ZR or other statutory framework, and (3) prior Board determinations; and

MINUTES

WHEREAS, the Appellant asserts that in evaluating the meaning of “hotel,” one must analyze the term hotel, which means more than just “transient accommodations;” and

WHEREAS, the Appellant cites to case law and the principles of statutory construction for the principle that “statutory language [be] interpreted according to its natural and obvious sense without resorting to an artificial or forced construction” City of New York v. Stringfellow’s of N.Y., 253 A.D.2d 110, 115-16 (1st Dep’t 1999); and

WHEREAS, accordingly, the Appellant asserts that a homeless shelter is not commonly understood to be a hotel and that fact cannot be ignored when classifying a homeless shelter for zoning purposes; and

WHEREAS, the Appellant asserts that DOB and BRC strain the definition of hotel and negated any import of having the word “hotel” in the ZR definition; and

WHEREAS, the Appellant asserts that the ZR definition is for “hotel, transient,” so the “hotel” aspect is first and foremost and cannot be ignored; the Appellant asserts that the ZR presents the definition this way so as to distinguish transient hotels from other kinds of hotels, such as “apartment hotels,” which are also defined; and

WHEREAS, the Appellant states that the common understanding of what a hotel is cannot be ignored and that the inclusion of any use that may meet the criteria of the ZR § 12-10 definition of hotel would lead to absurd results; and

WHEREAS, the Appellant states that the ZR does not require any temporary provision of sleeping accommodations that also has front-desk and laundry service to be classified as a Use Group 5 Transient Hotel; and

WHEREAS, the Appellant asserts that a use is not a transient hotel, even when it meets the criteria of the ZR § 12-10 definition, if it is not commonly understood to also be a “hotel;” and

WHEREAS, the Appellant asserts that any analysis of the “transient hotel” definition that fails to first resolve whether the facility is a hotel, as commonly understood, will lead to an unreasonable or absurd application of the law; and

WHEREAS, the Appellant cites to a case in which residents of an adult care facility sought to establish that the facility was subject to the Rent Stabilization Law for instruction on how to interpret “hotel” (Fischer v. Taub, 127 Misc.2d 518, 525 (1st Dep’t 1984)); in Fischer, the facility was determined not to be a hotel, and the court stated that “a facility is the sum of its parts and not a manifestation of any one of them;” and

WHEREAS, the Appellant asserts that, based on Fischer, merely satisfying the ZR § 12-10 criteria (including the provision of a reception desk and housekeeping) does not, in and of itself, establish that the Building is proposed to be used as a conforming Use Group 5 Transient Hotel; rather, when the facility is looked at as a whole, which includes counseling services, medical care, and rooming units, the proposed use is not consistent with a hotel; and

WHEREAS, however, the Appellant asserts that even if the ZR § 12-10 definition of transient hotel were to apply,

the use is not transient, if the definition of transient as applied by DOB is that stays are for 30 days or less; and

WHEREAS, the Appellant cites to documentation that BRC has released which states that occupants of the homeless shelter may stay for as long as nine months and beyond, upon approval from the DHS; and

WHEREAS, as to the Board’s prior decisions, the Appellant cites to a number of variance cases in which homeless shelters or similar facilities were identified as Use Group 3, for precedent that the Board has considered and accepted Use Group 3 as the appropriate classification for such use; and

WHEREAS, accordingly, the Appellant asserts that the proposed use is neither a hotel, if one applies the common understanding of what a hotel is, nor transient, because BRC materials reflect that stays could last for nine months or longer; and

2. The Appropriate Use Group Classification for the Sleeping Accommodations

WHEREAS, the Appellant asserts that the Building should be classified as a Use Group 3 Non-Profit Institution with Sleeping Accommodations, pursuant to ZR § 22-13 because there is a connection between BRC’s purpose and the facility’s sleeping accommodations; and

WHEREAS, the Appellant states that because the sleeping accommodations are part of the facility’s overall not-for-profit purpose, the facility must be characterized as a Use Group 3 Non-Profit Institution with Sleeping Accommodations; and

WHEREAS, the Appellant notes that DOB identified the facility as Use Group 3, and not Use Group 5, before BRC added the wall to provide a physical separation between the two components of the Building; and

WHEREAS, the Appellant notes that DOB stated that the facility could not be both Use Group 3 and Use Group 5; and

WHEREAS, the Appellant finds that there is a nexus between the social service programs offered in the offices and the sleeping accommodations, despite the physical separation, and, thus, the use must be classified as Use Group 3; and

WHEREAS, the Appellant cites to the Board’s decision in BSA Cal. No. 307-06-A (the “Youth Hostel Case”) (a case in which the Board upheld DOB’s determination that a youth hostel was a Use Group 5 use in part because there was no nexus between the program and the provision of sleeping accommodations) in support of its assertion that when there is a “clear” or “reasonable nexus between the not-for-profit purpose and [the] provision of sleeping accommodations,” the use is Use Group 3, rather than Use Group 5; and

WHEREAS, the Appellant cites to information released by and about the facility, which describes the interrelation between the social services and the sleeping accommodations; and

WHEREAS, the Appellant notes, specifically, that there will be a 24-hour inpatient detoxification program

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onsite, which necessarily draws a connection between the two uses in the Building; and

WHEREAS, the Appellant cites to contracts between BRC and DHS about the provision of services to the occupants of the homeless shelter; and

WHEREAS, the Appellant is also concerned that DOB initially identified the facility as a Use Group 3 use but that BRC later, at DOB's direction, added measures to create a physical separation between the two portions of the Building while maintaining the initially proposed program; and

3. The Limitations on Use Group Classification

WHEREAS, the Appellant relies on statutory interpretation principles to conclude that the facility cannot be Use Group 5 and, in the alternate, Use Group 3, as set forth in (1) New York State case law and (2) ZR provisions; and

WHEREAS, as to New York State case law, the Appellant asserts that to permit a building or proposed development to be within two use groups at the same time would render the existence of use groups superfluous and meaningless; and

WHEREAS, the Appellant asserts that statutory construction principles assume that every provision of a statute is intended to serve some useful purpose, *See Crimmins v. Dennison*, 12 Misc. 3d 725, 729-30 (Sup. Ct. N.Y. Cty. 2006) (quoting *Allen v. Stevens*, 15 E.H. Smith 122, 145 (1899)) and that every statute should be construed to avoid rendering language superfluous; and

WHEREAS, the Appellant cites to Manton v. Board of Standards and Appeals, 117 Misc.2d 255, 265 (Sup Ct. Queens Cty) which states that “[t]he plan of the Zoning Resolution is to classify and list all permissible uses of land in ‘Use Groups,’ and to then specify which districts the various use groups may be located;” and

WHEREAS, the Appellant states that Use Group 3 Non-Profit Institutions with Sleeping Accommodations are prohibited in manufacturing districts and that Use Group 5 Transient Hotels are prohibited in residential districts, thus allowing an applicant to identify a facility as either Use Group 3 or Use Group 5, depending on which zoning district it is in would negate the ZR restrictions and run contrary to the legislature's intent; and

WHEREAS, the Appellant asserts that the possibility of identifying a specific use in more than one use group category renders the distinctions of use groups meaningless; and

WHEREAS, the Appellant cites to the Board's decision in the Youth Hostel Case for support of the position that the Board recognizes distinctions between uses and use groups so that applicants cannot “impermissibly locate . . . facilities in districts where such uses would otherwise be prohibited;” and

WHEREAS, the Appellant also expressed concern about multiple use group classifications leading to inconsistent application of the ZR and that parties should be discouraged from choosing one use group classification over another depending on the applicable zoning district; and

WHEREAS, as to instruction from the ZR, the Appellant cites to the preambles of ZR chapters (for example, ZR § 22-00) which state that “[w]henver a use is specifically listed in a Use Group and could also be construed to be incorporated within a more inclusive listing, either in the same or another Use Group, the more specific listing shall control;” and

WHEREAS, the Appellant asserts that Use Group 3 Non-Profit Institution with Sleeping Accommodations is more specific than Use Group 5 Transient Hotel, so the former is the controlling use group classification; and

WHEREAS, the Appellant cites to ZR § 11-22 (Applications of Overlapping Regulations) for a similar principle that, even if the facility could also be classified as a Use Group 5 Transient Hotel, Use Group 3 Non-Profit Institution with Sleeping Accommodations is more restrictive and should control; and

4. The Appropriate Classification for the Use Group 6 Professional Offices

WHEREAS, initially, the Appellant asserted that the proposed Use Group 6 Professional Office use must be classified as a mix of Use Group 3 Health Related Facility and a Use Group 3 Domiciliary Care Facility for Adults pursuant to ZR § 22-13 because there will be nurses, doctors, and medical professionals present in the building to assist in counseling of BRC's clients, including occupants of the shelter; and

WHEREAS, the Appellant asserted that because the sleeping accommodations portion of the Building should be classified as Use Group 3, the social service program, given its nexus to the sleeping accommodations, should be classified as Use Group 3 as well; and

WHEREAS, in the alternate, the appellant asserted that the offices were not consistent with Use Group 6 Professional Offices and should rather be classified as Use Group 4 Ambulatory Diagnostic or Treatment Health Care Facility use, given the presence of medical personnel, among other factors; and

WHEREAS, in a later submission, after DOB noted a ZR text amendment which now includes Ambulatory Diagnostic or Treatment Health Care Facilities within Use Group 6 offices, the Appellant stated that its analysis does not change since it maintains that both portions of the Building should be classified as Use Group 3; and

5. Additional Regulatory Restrictions

WHEREAS, the Appellant asserts that certain provisions of the Multiple Dwelling Law (MDL) and Housing Maintenance Code (HMC) prohibit the designation of the Building as a Transient Hotel under the ZR; and

WHEREAS, specifically, the Appellant claims that the designation of the Building as a lodging house, pursuant to the MDL and HMC is erroneous and is inconsistent with the designation of the Building as a Use Group 5 Transient Hotel; and

WHEREAS, the Appellant also asserts that the Building does not comply with Administrative Code § 21-312, which limits the occupancy of a homeless shelter to 200 beds and the total number within the Building exceeds

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that; and

THE DEPARTMENT OF BUILDINGS' POSITION

WHEREAS, DOB has determined that that the proposed use of the Building complies with the ZR as a Use Group 5 Transient Hotel and Use Group 6 Professional Office and that pursuant to ZR § 42-00, both use groups are permitted as-of-right in the subject M1-6 zoning district; and

1. The Proposed Use is Consistent with a Use Group 5 Transient Hotel

WHEREAS, DOB states that the proposed use of the Building, as reflected in the approved plans and other information BRC submitted, complies with the definition of transient hotel set forth at ZR § 12-10; and

WHEREAS, specifically, DOB's conclusion is based on BRC's representations that the sleeping accommodations on floors three through nine will be made available on a daily basis and that the occupants will not remain in the same dwelling space for more than 30 days at a time; and

WHEREAS, secondly, the amended plans reflect and BRC has informed DOB that 24-hour desk service will be provided on the ground floor for the entrance to the Use Group 5 portion of the building and 24-hour desk service will be provided at the 3rd Floor interior entrance to the Use Group 5 sleeping accommodations; and

WHEREAS, as to the third element of the definition for transient hotel, DOB states that BRC has noted that housekeeping and laundry services will be provided and the amended plans indicate that laundry will be processed at the cellar level; and

WHEREAS, finally, DOB notes that the amended plans also indicate that the Building will be served by two separate entrances: a common entrance on the eastern portion of the building with an elevator that will exclusively serve all the living or sleeping units of the Use Group 5 Transient Hotel and an entrance on the western portion of the building with an elevator that will exclusively serve the Use Group 6 Professional Offices; and

WHEREAS, DOB states that based on the foregoing, the portion of the Building which is proposed as a Use Group 5 Transient Hotel meets the ZR § 12-10 definition of transient hotel and does not find that the fact that the occupants of the Building may be homeless or may have mental health issues precludes the proposal from meeting the definition of transient hotel in the ZR; and

WHEREAS, accordingly, DOB determined that the proposed Use Group 5 Transient Hotel complies with the ZR and is permitted as-of-right; and

WHEREAS, in response to the Appellant's assertion that the occupants in the proposed Use Group 5 Transient Hotel will not be "transient" because they claim that the occupants will be staying in excess of 30 days, DOB states that BRC has informed it that the occupants in the Chemical Dependency Crisis Center, the Reception Center, and the Shelter will only stay in the same dwelling space for a maximum of 30 days; and

WHEREAS, DOB states that it accepts BRC's representations and concludes that the occupants will occupy the Building transiently; DOB states that it cannot

withhold an approval based on a speculative non-compliance and that if DOB later determines that the occupancy is not conforming to the transient use requirement, then it would handle such a case as an enforcement issue; and

WHEREAS, in response to the Appellant's assertion that the use must be classified as Use Group 3 Non-Profit Institution with Sleeping Accommodations, pursuant to ZR § 22-13, because there is a "clear or reasonable nexus" between BRC's purpose and the facility's sleeping accommodations, DOB states that based on its review of BRC's amended plans and the information provided to it, there is no basis to assume that BRC's counseling programs, including the outpatient Substance Abuse Center and the outpatient Continuing Day Treatment program, are integral to the sleeping accommodations for the Shelter program; and

WHEREAS, DOB adds that BRC has informed it that the counseling programs provided in the Use Group 6 space will be available to the general public, not just to occupants using the Shelter, Chemical Dependency Crisis Center, and the Reception Center and the amended plans confirm that the counseling uses to be provided in the Use Group 6 Professional Office space will not only operate independently from the Use Group 5 transient use on the 3rd to 9th Floors, but that the counseling and office use will be physically separated from the transient use on those floors by fire-rated walls equipped with alarmed, fireproofed self-closing doors and independent elevators will serve the Use Group 5 use and the Use Group 6 use; and

WHEREAS, DOB concludes that based on the information BRC provided, it had a reasonable and sufficient basis for accepting the sleeping accommodations as a separate, transient use from BRC's other programs operated out of the Use Group 6 Professional Office space; and

WHEREAS, DOB disagrees with the Appellant about its application of the Youth Hostel Case, and cites to the Board's resolution for a different provision: "the language of Section 22-13 of the ZR does not unambiguously require any philanthropic or non-profit institution that also offers sleeping accommodations to be classified as a Community Facility within Use Group 3" and that the "primary purpose of a 'philanthropic or Non-Profit Institution with Sleeping Accommodations' properly classified within Use Group 3 cannot be the provision of sleeping accommodations;" and

WHEREAS, DOB states that in the Youth Hostel Case, the Board upheld DOB's determination that the youth hostel "did not demonstrate a necessary connection between its provision of sleeping accommodations and its educational and cultural mission as properly required by DOB;" and

WHEREAS, DOB does not find that the facts in the subject appeal are at odds with the Board's decision in the Youth Hostel Case since the amended plans and the information provided to DOB indicate that BRC's sleeping accommodations provided in the Use Group 5 Transient Hotel portion of the Building are separate and distinct from

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the counseling and other services provided in the Use Group 6 Professional Offices; and

WHEREAS, DOB does not find it to be conclusive that the counseling programs are run by the same entity or might share some of the same clients and, furthermore, BRC has indicated to DOB that the primary purpose of the Shelter is to provide sleeping accommodations to homeless; DOB adds that BRC has stated that the counseling and services offered in the Use Group 6 Professional Offices will be open to the general public and is not a component, much less a necessary component, of the transient sleeping accommodations provided for the Shelter occupants; and

WHEREAS, DOB distinguished the subject case from the cited Board variance cases for Use Group 3 facilities in manufacturing districts in that a variance is not required for a Use Group 5 Transient Hotel in an M1-6 zoning district; DOB finds its approval of a homeless shelter as a Use Group 5 Transient Hotel in this case to be consistent with prior approvals including the Temporary Certificate of Occupancy No. 103051206-T issued on February 20, 2002 at 324 Lafayette Street, Manhattan for a Use Group 5 Transient Hotel operated as a homeless shelter by BRC; and

2. The Proposed Use is Consistent with Use Group 6 Professional Offices

WHEREAS, DOB states that it accepts that a portion of the third through ninth floors, as reflected on the amended plans, will be occupied by Use Group 6 Professional Offices that will be separated from the Use Group 5 Transient Hotel by fire-rated walls equipped with alarmed, fireproofed self-closing doors; and

WHEREAS, DOB states that BRC represents that these offices, as well as the offices on the 10th and 11th Floors, will provide professional and counseling services for substance abusers and for mentally ill men and women, regardless of whether they are occupants of the Use Group 5 Transient Hotel; and

WHEREAS, DOB states that although medically licensed individuals, such as nurses and psychiatrists will serve the counseling program, a significant part of services will be performed by social workers and case managers, many of whom are recovering addicts and former clients of BRC and the 12th Floor will be occupied by office space as the headquarters for BRC; and

WHEREAS, DOB states that all of the Use Group 6 Professional Office space will be accessed by a different elevator from the elevator that serves the occupants of the Use Group 5 Transient Hotel and that DOB accepts such use as being consistent with a Use Group 6 Professional Office; and

WHEREAS, DOB provided a supplemental argument that, in light of a ZR text amendment, effective February 2, 2011, Use Group 6 office uses at ZR § 32-15 (Uses Permitted As of Right – Use Group 6) now includes “offices, business, professional including ambulatory diagnostic or treatment health care, or governmental;” and

WHEREAS, accordingly, if the office use is identified as an ambulatory diagnostic or treatment facility as the Appellant suggests, in the alternate, DOB states that the ZR

now clearly classifies such use as Use Group 6, so it would be conforming either as professional offices or ambulatory diagnostic or treatment facility; and

3. The Proposed Uses are not Consistent with a Use Group 3 Health Related Facility or a Use Group 3 Domiciliary Care Facility for Adults

WHEREAS, DOB asserts that the proposed uses are not consistent with a Use Group 3 Health Related Facility or a Use Group 3 Domiciliary Care Facility for Adults because of (1) the separation between the sleeping accommodations under the Use Group 5 Transient Hotel use and the Use Group 6 Professional Office use and independent elevators serving each use, and (2) the information from BRC that the primary purpose of the facility is to provide transient living and sleeping accommodations for the homeless in the Use Group 5 portion of the Building and office space for BRC executive offices and counseling programs in the Use Group 6 portion of the building; and

WHEREAS, DOB rejects the Appellant’s claim that the entire Building is rendered a Health Care or a Domiciliary Care Facility simply because there may be doctors, nurses or other medically trained professionals present and finds it to be contrary to the ZR’s description of Use Group 3 Health Related Facilities and Domiciliary Care Facilities; and

WHEREAS, DOB states that the ZR makes it clear that the noted Use Group 3 uses do not include temporary or transient housing, but are intended to provide residents of such facilities with long-term housing and care for persons who cannot care for themselves; and

WHEREAS, DOB also cites to the ZR’s use of the term Domiciliary Care Facility, which, by its plain meaning, refers to long-term or permanent living arrangements for those who cannot live on their own, in contrast to BRC’s representations that the Building’s occupants will be transient and will not be occupying the Building for long term, institutional care; and

4. The Proposed Use is Not Prohibited by the Multiple Dwelling Law or the Housing Maintenance Code

WHEREAS, DOB states that neither the MDL nor the HMC govern land use but that Section 2 of the MDL was enacted to ensure, “the establishment and maintenance of proper housing standards requiring sufficient light, air, sanitation and protection from fire hazards” and, pursuant to Administrative Code § 27-202, the HMC was enacted to establish “minimum standards of health and safety, fire protection, light and ventilation, cleanliness, repair and maintenance, and occupancy in dwellings” in New York City; and

WHEREAS, DOB distinguishes the purposes of the MDL and the HMC from the ZR because the ZR governs land use in New York City and the 18 use groups defined in the ZR do not perfectly correlate with the definitions set forth in the MDL or the HMC; and

WHEREAS, DOB adds that there are many instances where a building’s designation under the ZR seemingly contradicts its designation under the MDL or HMC, which

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reflects nothing more than a function of three separate regulatory schemes governing similar activity; and

WHEREAS, DOB states that the designation of the portion of the Building containing Use Group 5 Transient Hotel sleeping accommodations is appropriately characterized as a Lodging House under the MDL and HMC and designation as an MDL Lodging House on the Schedule A, and eventually on the certificate of occupancy (CO), indicates that the Building complies with the fire and safety requirements under Section 66 of the MDL, rather than Section 67 of the MDL which governs MDL Hotels; and

WHEREAS, DOB does not find that the designation as an MDL and HMC Lodging House negates the transient use of the Building; and

WHEREAS, DOB notes that the ZR only has one use group, Use Group 5, for transient occupancy, which, in contrast, may take many forms individually recognized in the MDL or HMC; and

WHEREAS, DOB states that under the ZR, the only use group that appropriately encompasses an MDL Lodging House is a Use Group 5 Transient Hotel; therefore, as is the case with the proposed use of the Subject Premises, it is possible for a building to be a Transient Hotel for purposes of the ZR, but a Lodging House under the MDL and HMC and the fact that the Schedule A and CO label a building a Lodging House for MDL and HMC fire and safety purposes does not negate the proper designation of the Subject Premises as a Transient Hotel under the ZR; and

WHEREAS, additionally, DOB notes that the Appellant claims that the approval of the Building with HMC Rooming Units is inconsistent with the approval of a Use Group 5 Transient Hotel in the ZR; however, nothing in the ZR precludes a Transient Hotel from having HMC Rooming Units; and

The Appellant's Supplemental Claims

WHEREAS, DOB has been informed by BRC and has confirmed with DHS that the proposed operation of the 200-bed Shelter at the Subject Premises will be in compliance with the applicable provisions of the Administrative Code governing the capacity of shelters and BRC's proposal to operate the Shelter is the subject of pending litigation in which the issue of permitted capacity will be addressed; and

WHEREAS, finally, DOB addresses the Appellant's claims that the plans submitted to it differ from plans and information provided to other entities, including the New York State Office of Alcoholism and Substance Abuse Services (OASAS); and

WHEREAS, DOB states that the plans and information an applicant submits to it must reflect compliance with the ZR, the 2008 Construction Codes, and other applicable rules and regulations but DOB is not required to review nor is it authorized to evaluate information provided to other entities regarding requests for funding; and

WHEREAS, DOB states that it has reviewed the application and plans and has determined that they comply with the ZR, the 2008 Construction Codes, and other applicable rules and regulations; and

BOWERY RESIDENTS' COMMITTEE'S POSITION

WHEREAS, BRC makes the following primary assertions in support of its approval, (1) the definition of "transient hotel" under the ZR is clear and unambiguous; (2) the Building is properly designated as, in part, a Use Group 5 Transient Hotel and clearly satisfies all the elements of the ZR's definition of "transient hotel;" (3) the remainder of the Building is used for a separate purpose, has separate access and separate elevators and is properly designated as, Use Group 6 Professional Offices; (4) the Building is not required to be designated a non-profit institution with sleeping accommodations, a health-related or domiciliary care facility, or a diagnostic and treatment healthcare facility under Use Groups 3 or 4; (5) the proposed Use Group 5 use of the Building is consistent with the MDL and HMC; and (6) the Appellant's claims based on the AC are not properly before the Board and, in any event, the proposed use of the Building is consistent with the AC's requirements; and

WHEREAS, as to the classification as Use Group 5, BRC states that the proposed use satisfies each element of a "transient hotel" as defined in the ZR; and

WHEREAS, BRC rejects the Appellant's invocation of the common meaning of the word hotel because the ZR definition is clear and unambiguous and it is not necessary or proper to consult outside sources; and

WHEREAS, BRC likens the proposed use to that of a hotel in that both host clients for short stays and cites to the New York Court of Appeals for the principle that "where statutory language is clear and unambiguous, *the court should construe it so as to give effect to the plain meaning of the words used.*" Raritan Dev. Corp. v. Silva, 91 N.Y.2d 98, 107 (1997) (emphasis in the original) (citation omitted); and

WHEREAS, as to the assertion that the Building is a Use Group 3 Non-Profit Institution with Sleeping Accommodations, BRC asserts that its revised plans reflect a separation between the sleeping accommodations and BRC's social service program offices and, thus, the portion that is only sleeping accommodations can only be Use Group 5 because it is occupied by transient accommodations in a facility for which the provision of sleeping accommodations is the primary purpose; and

WHEREAS, BRC cites to the Board's decision in the Youth Hostel Case for the proposition that a facility with a primary purpose of providing sleeping accommodations could not be Use Group 3 Non-Profit with Sleeping Accommodations, but must be a Use Group 5 Transient Hotel; and

WHEREAS, however, BRC disagrees with DOB and finds that absent the separation between the Use Group 5 and Use Group 6 portions of the Building, other homeless shelters and similar programs could potentially be either a Use Group 5 Transient Hotel or a Use Group 3 Non-Profit with Sleeping Accommodations; and

WHEREAS, BRC notes that homeless shelters are not identified in the ZR as belonging to any use group and, thus, may be classified as either a Use Group 5 or Use Group 3 facility; and

WHEREAS, BRC also notes that the ZR § 12-10

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definition of transient hotel provides the threshold requirements for such use, but does not reflect an exhaustive list of elements or uses which may be present at a hotel; and

WHEREAS, BRC finds that the Board's decision in the Youth Hostel Case stated that an institution cannot be a Use Group 3 community facility unless there is "a reasonable nexus between the non-profit purpose and its provision of sleeping accommodations" but it did not determine that if there is a sufficient nexus between the non-profit purpose and the provision of sleeping accommodation, then the use cannot be classified as Use Group 5; and

WHEREAS, BRC asserts that a facility with a nexus between the non-profit purpose and the provision of sleeping accommodations could be classified as Use Group 3 or Use Group 5; and

WHEREAS, BRC notes that the Board also stated that "the language of ZR § 22-13 does not unambiguously require any philanthropic or non-profit institution that also offers sleeping accommodations to be classified as a Community Facility within Use Group 3;" and

WHEREAS, BRC asserts that even if there were no separation between the Use Group 5 accommodations and the Use Group 6 professional offices in the Building, it could still be a Use Group 5 facility; and

WHEREAS, BRC concludes that since the Building provides a separation, it is an even clearer example of a Use Group 5 Transient Hotel since the vast majority of what is provided in that portion of the Building is transient sleeping accommodations; and

WHEREAS, BRC disagrees with the Appellant that the Building must be a Use Group 3 community facility because "non-profit institution with sleeping accommodations" is "more specific" than a "transient hotel;" and

WHEREAS, in response to the Appellant's assertion that the facility cannot be classified as Use Group 5 and Use Group 3, BRC notes that "homeless shelter" does not have a specific listing in the ZR, thus, the cited preamble provisions do not apply; and

WHEREAS, BRC notes that if a term has a specific listing, as prison does, then it must apply the use group classification of that specific listing rather than another listing, which might also apply; and

WHEREAS, as to the application of ZR § 11-22, BRC states that there are no "overlapping or contradictory regulations" at issue in the subject case, but rather two definitions that could potentially apply to the same facility; and

WHEREAS, BRC states that even if ZR § 11-22 did apply, it finds the Use Group 5 designation to be more restrictive since it is permissible only in commercial and manufacturing zoning districts while if Use Group 3 and 4 uses, the facility would be permitted also in residential districts; and

CONCLUSION

WHEREAS, the Board has considered all of the arguments made by all parties in light of the entire record; and

WHEREAS, the Board concludes that the proposed

use of the Building is consistent with a Use Group 5 Transient Hotel and Use Group 6 Professional Offices under the ZR and that its classification as a lodging house and the creation of rooming units for purposes associated with the MDL and HMC requirements, does not disturb that classification; and

WHEREAS, the Board agrees with DOB that the ZR § 12-10 definition of transient hotel is clear and unambiguous and that the proposed use of the building meets the three criteria of the definition in that, as presented by BRC, it (1) provides sleeping accommodations used primarily for transient occupancy, (2) has a common entrance to serve the sleeping accommodations, and (3) provides 24-hour desk service, housekeeping, telephone, and linen laundering; and

WHEREAS, because the statute is unambiguous, the Board does not find that it is necessary or appropriate to consult sources outside of the ZR for clarity; and

WHEREAS, the Board recognizes that perhaps there may be some ambiguity to the concept of what a hotel is, but since the ZR has defined hotel, for zoning purposes, and the case at issue concerns a zoning matter, the ZR is the best and only resource for the meaning of the term for zoning purposes; and

WHEREAS, even if the word "hotel," ascribed to the ZR definition may be embedded with different common meanings, the three criteria set forth at ZR § 12-10 are not ambiguous and it is rational to apply definitions or criteria, rather than titles of definitions to a specific use that is not otherwise defined in the ZR; and

WHEREAS, the Board does not find that it is appropriate to apply definitions from common experience or from other statutes, which have different purposes other than zoning; as examples in the MDL and HMC suggest, other statutes' definitions may be more specific given their mandates and not take land use principles into consideration; and

WHEREAS, the Board finds that the Appellant's reliance on Fischer is misplaced since Fischer was not a zoning case and involved the interpretation of hotel within the context of rent stabilization, rather than the ZR; and

WHEREAS, further, the Board cites to Fischer (quoting another case that did not review the ZR definition of hotel) in a discussion about different statutes having different definitions of hotel: "[t]he word 'hotel' is not one with a fixed and unalterable meaning; in fact, whether a place is or is not a hotel in a given instance may depend on the particular statute involved or the circumstance of the individual case;" and

WHEREAS, the Board finds that to apply a common meaning would defeat the distinct purposes of individual statutes; and

WHEREAS, as to the question of transiency, the Board defers to DOB to enforce the occupancy and finds that it was reasonable for DOB to accept that the use of the homeless shelter will be transient, based on BRC's representations; and

WHEREAS, specifically, the Board notes that BRC's contract with DHS does not require it to allow stays of nine months or longer, so BRC is able to comply with the zoning (and its CO) as well as its contract with DHS; and

WHEREAS, the Board notes that the ZR also sets forth

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certain permitted accessory uses for transient hotels, which serve as examples of common accessory uses, but, notably, do not exclude any accessory uses; and

WHEREAS, accordingly, the Board finds that it is reasonable to conclude that the Use Group 6 Professional Offices or Ambulatory Diagnostic and Treatment Health Care Facility, however it is characterized, may be able to exist in the Building with the sleeping accommodations and not necessitate the change in the use classification from Use Group 5 to Use Group 3; and

WHEREAS, the Board notes that its decision is limited to whether DOB appropriately approved the proposed project as part Use Group 5 Transient Hotel and part Use Group 6 Professional Offices and it does not address the question of whether all homeless shelters and social service programs function identically and should be classified as such; and

WHEREAS, the Board notes that the record before it is limited to the facts of BRC's Building and its program for occupancy that it has submitted to DOB; and

WHEREAS, the Board states that other similar facilities may operate differently, in terms of length of stay or the relationship between programming and sleeping accommodations, and may be appropriately classified in a different use group; and

WHEREAS, the Board does not find that the Manton decision conflicts with DOB's position and cites two principles from the court's decision: (1) any use which properly falls within a use group listing is permitted in a zoning district where such use is permitted as a matter of right and neither DOB nor the Board has discretionary authority to refuse permission and (2) on the matter of determining whether a statute is vague or ambiguous: "[t]he board is the administrative agency charged with interpreting the zoning resolution and its determination is to be given great weight" (Manton at 257 citing East Bayside Homeowners v. Board of Standards and Appeals, 77 A.D.2d 858); and

WHEREAS, as to the Appellant's assertion that the facility cannot be both a Use Group 5 Transient Hotel and a Use Group 3 Non-Profit Institution with Sleeping Accommodations because of statutory interpretation principles, the Board does not need to answer the question since it finds that the use is appropriately classified as Use Group 5, but it disagrees that statutory interpretation principles preclude a particular use from being within more than one use group, as set forth in the ZR; and

WHEREAS, the Board finds that the Appellant's concern - that allowing a use to be classified within more than one use group leads to inconsistency, uncertainty, or renders the ZR distinctions meaningless - is baseless; and

WHEREAS, the Board notes that there are 18 use groups in the ZR with a significant number of sub-groups and that allowing certain uses to be classified within more than one use group still allows for consistency and certainty when applying the ZR as there would then be at least 16 use groups that would not apply; and

WHEREAS, further, the Board notes that the ZR

classifies a significant number of uses within more than one use group, including ambulatory diagnostic or treatment health care (Use Group 4 or 6), banquet halls (Use Group 9 or 13), bicycle rental or repair shops (Use Group 7 or 14), drug stores (Use Group 6 or 12) and that one use group may be restricted in certain zoning districts where the other is permitted; and

WHEREAS, accordingly, the Board disagrees with the Appellant that the legislators intended to restrict use group classifications to the extent that the Appellant suggests since there are so many examples of uses that may be classified within more than one use group; and

WHEREAS, the Board states that if DOB determined the use could also be classified as Use Group 3, that would not preclude it from being Use Group 5, but, as noted, the Board does not need to evaluate whether or not it is also Use Group 3 because it accepts that it is Use Group 5, an as of right use in the subject zoning district; and

WHEREAS, further, the Board is not persuaded that Use Group 3 Non-Profit Institution with Sleeping Accommodations cannot objectively be determined to be more or less specific or restrictive than Use Group 5 Transient Hotel, and does not find that the chapter preambles or ZR § 11-22 (Applications of Overlapping Regulations) apply to the question of how to classify a use that is not listed in the ZR; and

WHEREAS, the Board accepts that the proposed offices meet the criteria for Use Group 6 Professional Offices and are not necessarily an ambulatory diagnostic or treatment health care facility because medical personnel will be on staff; and

WHEREAS, however, as far as ambulatory diagnostic or treatment health care facilities, the Board notes that Use Group 4 and Use Group 6 facilities are permitted in the majority of the same commercial zoning districts, but that Use Group 4 are permitted in certain residential zoning districts and Use Group 6 facilities are also permitted in certain manufacturing zoning districts; and

WHEREAS, the Board notes that the two use classifications of ambulatory diagnostic or treatment health care facilities allow them to be in a wide range of zoning districts, which demonstrates a degree of flexibility in the ZR and a reflection that certain uses are deemed to be compatible with many other uses and use groups throughout the city; and

WHEREAS, the Board finds that the Youth Hostel Case, in which it determined that a youth hostel should be classified as a Use Group 5 Transient Hotel rather than Use Group 3, does not establish that a facility with social service programs that have a clear nexus to the sleeping accommodations could not be a Use Group 5 Transient Hotel; and

WHEREAS, additionally, the Board cites the Youth Hostel Case for the proposition that, in certain circumstances, hotels may be deemed more restrictive (in that they are not permitted) than Use Group 3 uses; and

WHEREAS, the Board notes that it did not interpret the appropriateness of the Use Group 3 classification of

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similar uses in the variance cases cited by the Appellant, so the Appellant's reliance on those cases is misplaced; and

WHEREAS, lastly, as to the question of whether or not the Building complies with Administrative Code § 21-312(2)(b), the Board notes that its jurisdiction over the subject matter on appeal, pursuant to New York City Charter § 666(6)(a), arises from a DOB determination on matters properly before DOB; and

WHEREAS, the Board notes that DHS, rather than DOB enforces the noted provision and that DOB has deferred to DHS for confirmation of compliance with AC § 21-312(2)(b); accordingly, the Board also defers to DHS for interpretation and enforcement of the cited provision and abstains from determining whether DHS has appropriately interpreted its own provision, which is now also a matter before the court.

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Manhattan Borough Commissioner, dated September 9, 2010, is hereby denied.

Adopted by the Board of Standards and Appeals, April 5, 2011.

200-10-A, 203-10-A thru 205-10-A

APPLICANT – Sheldon Lobel, P.C., for Williams Davies, LLC, owner.

SUBJECT – Application October 29, 2010 – Appeal seeking a common law vested right to continue construction commenced under the prior R5 zoning district. R4-1 zoning district.

PREMISES AFFECTED – 1359, 1361, 1365 & 1367 Davies Road, southeast corner of Davies Road and Caffrey Avenue, Block 15622, Lots 15, 14, 13, 12, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 10, 2011, at 10 A.M., for decision, hearing closed.

221-10-A

APPLICANT – Robert W. Cunningham, R.A., for Robert W. Cunningham, owner.

SUBJECT – Application December 1, 2010 – An appeal challenging a determination by Department of Buildings that owner authorization is needed from the adjacent property owner in order to perform construction at the site in accordance with Section 28-104.8.2 of the Administrative Code. R3-1 zoning district

PREMISES AFFECTED – 123 87th Street, north side of 87th Street and Ridge Boulevard, Block 6042, Lot 67, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Robert W. Cunningham

For Opposition: Ticia Parente and Chris Slowik.

For Administration: Amanda Derr, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 3, 2011, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, APRIL 5, 2011
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

194-09-BZ

CEQR #09-BSA-120K

APPLICANT – Sheldon Lobel, P.C., for Dabes Realty Company, Incorporated, owner.

SUBJECT – Application June 17, 2009 – Variance to allow the construction of a four story mixed use building contrary to floor area (§23-141), open space (§23-141), lot coverage (§23-141), front yard (§23-45), height (§23-631), open space used for parking (§25-64) and parking requirements (§25-23); and to allow for the enlargement of an existing commercial use contrary to §22-10. R3-2 zoning district.

PREMISES AFFECTED – 2113 Utica Avenue, 2095-211 Utica Avenue, East side of Utica Avenue between Avenue M and N, Block 7875, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #18BK

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 14, 2011, acting on Department of Buildings Application No. 302310942, reads in pertinent part:

- “1. Proposed floor area exceeds that which is permitted pursuant to ZR 23-141;
2. Proposed lot coverage and open space are less than that required pursuant to ZR 23-141;
3. Proposed number of dwelling units exceeds that permitted by ZR 23-22;
4. Proposed front yard along Utica Avenue is less than required pursuant to ZR 23-45(a);
5. Proposed aggregate wall width exceeds that permitted by ZR 23-463;
6. Proposed perimeter wall height at Utica Avenue is more than permitted pursuant to ZR 23-631;
7. Proposed use of more than 50% of development’s open space for parking is contrary to ZR 25-64;
8. Proposed enlargement of existing, legal non-conforming manufacturing building in a R3-2

zoning district is contrary to ZR 22-10;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R3-2 zoning district, the construction of four single-family homes, a three-story residential building, 30 accessory parking spaces, and the enlargement of an existing commercial building, which exceeds the maximum permitted floor area, lot coverage, number of dwelling units, aggregate wall width, perimeter wall height, and open space used for parking, does not provide the required front yard along Utica Avenue, and includes a non-conforming use, contrary to ZR §§ 23-141, 23-22, 23-45(a), 23-463, 23-631, 25-64, and 22-10; and

WHEREAS, a public hearing was held on this application on April 27, 2010, after due notice by publication in the *City Record*, with continued hearings on September 14, 2010, December 7, 2010 and January 25, 2011, and then to decision on April 5, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 18, Queens, recommended disapproval of an earlier iteration of the proposal, citing concerns about the bulk and height of the proposed project and its effect on the character of the neighborhood; and

WHEREAS, representatives of the Mill Basin Civic Association provided oral testimony in opposition to the original proposal; and

WHEREAS, certain members of the community provided oral testimony in opposition to the original proposal; and

WHEREAS, the subject premises is located on a through lot bounded by Utica Avenue to the west and East 51st Street to the east, within an R3-2 zoning district; and

WHEREAS, the site is an L-shaped lot with 240 feet of frontage on Utica Avenue, 100 feet of frontage on East 51st Street, a depth ranging between 100 feet and 200 feet, and a total lot area of 34,000 sq. ft.; and

WHEREAS, the site is occupied by a pre-existing two-story sales and storage building with a floor area of 5,383 sq. ft., which is occupied in connection with a legal non-conforming building materials supply yard operated at the site; a portion of the existing building fronting Utica Avenue is also rented to a used car dealer; and

WHEREAS, the Board notes that the applicant has gone through several iterations of the proposal throughout the hearing process; and

WHEREAS, the applicant originally proposed to construct: (1) a four-story residential building along Utica Avenue with a floor area of 37,440 sq. ft., a perimeter wall and total height of 39’-8”, and 32 dwelling units; (2) four single-family semi-detached homes along East 51st Street with a floor area of 1,500 sq. ft. each; (3) a total residential floor area on the zoning lot of 43,437 sq. ft. (1.28 FAR); (4) a 1,150 sq. ft. enlargement to the existing commercial building, for a total commercial floor area of 6,531 sq. ft. (0.19 FAR); (5) a total floor area for the zoning lot of 49,968 sq. ft. (1.47 FAR); and

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(6) 30 accessory parking spaces; and

WHEREAS, in response to concerns raised by the Board, the applicant submitted an interim proposal which reduced the size of the proposed residential building along Utica Avenue to a three-story building with a floor area of 28,080 sq. ft. (for a total residential floor area of 34,080 sq. ft. (1.0 FAR)), a perimeter wall and total height of 31'-6" (with no setback), and 26 dwelling units; and

WHEREAS, the Board directed the applicant to further reduce the size of the multi-family building and the number of dwelling units so that the project was more compatible with adjacent uses and the neighborhood context and so that the proposal met the minimum variance finding; and

WHEREAS, the applicant now proposes to construct: (1) a three-story residential building along Utica Avenue with a floor area of 22,667 sq. ft., a perimeter wall and total height of 31'-6" with a 20'-4" setback along Utica Avenue above a height of 21'-6", and 20 dwelling units; (2) four single-family semi-detached homes along East 51st Street with a floor area of 1,178 sq. ft. each; (3) a total residential floor area of 27,379 sq. ft. (0.81 FAR); (4) a 1,150 sq. ft. enlargement to the existing commercial building, for a total commercial floor area of 6,531 sq. ft. (0.19 FAR); (5) a total floor area for the zoning lot of 33,910 sq. ft. (1.0 FAR); and (6) a total of 30 accessory parking spaces (two spaces located adjacent to each single-family home, and an accessory parking lot with 22 spaces located behind the three-story residential building); and

WHEREAS, the applicant states that the proposal results in the following non-compliances: a residential floor area of 27,378 sq. ft. (the maximum permitted floor area is 17,000 sq. ft.); a residential FAR of 0.81 (the maximum permitted FAR is 0.50); lot coverage of 46 percent (the maximum permitted lot coverage is 35 percent); an open space of 54 percent (the minimum required open space is 65 percent); a total of 24 dwelling units (the maximum number of dwelling units permitted on the zoning lot is 19); a perimeter wall height of 31'-6" (the maximum permitted perimeter wall height is 21'-0"); a front yard with a depth of 10'-0" along Utica Avenue (a front yard with a minimum depth of 15'-0" is required); an aggregate street wall width of 180'-0" along Utica Avenue (the maximum permitted aggregated street wall width is 125'-0"); utilization of 53 percent of the zoning lot's open space for driveways and parking (a maximum of 50 percent of the zoning lot's open space may be utilized for driveways and parking); and

WHEREAS, additionally, the applicant proposes to enlarge the commercial building on the site occupied by a legal non-conforming commercial use; commercial use is not permitted in the subject R3-2 zoning district, thus, the applicant also seeks a use variance; 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 zoning district regulations: (1) soil contamination due to the site's history as a legal non-conforming lumber and building supplies yard; (2) the presence of a pre-existing and obsolete building on the site; (3) the location on a heavily traveled roadway; and (4) the commercial nature of Utica Avenue; and

WHEREAS, as to the soil contamination, the applicant states that the site's history of use as a legal non-conforming open lumber and building materials supply yard, has resulted in elevated concentrations of heavy metals; and

WHEREAS, in support of the legal non-conforming status of the use on the site, the applicant submitted: (1) certificates of occupancy from 1954 which lists the site's uses as "Lumber yard-sale and storage of lumber" and "Lumber storage trim, building materials, store for retail sales. 488 sq. ft. loading and unloading space. Office;" and (2) a certificate of occupancy dated February 1, 2010 which lists the site's uses as "Open building material sales. Building materials, store for retail and storage for retail sales. Loading and unloading space. Accessory offices;" and

WHEREAS, the applicant states that properties that have been used as lumber and building supply yards for extended periods of time have the potential for the presence of elevated concentrations of heavy metals due to the chemicals that were used in the treatment of preserved lumber and galvanized building materials; and

WHEREAS, the applicant represents that the open storage of these materials at the subject site led to contamination of the soil; and

WHEREAS, the applicant submitted a subsurface investigation report which states that ten boring samples were taken from the site, which showed elevated concentrations of heavy metals including lead, arsenic, copper, chromium, nickel and zinc which exceed the soil cleanup objectives set by the New York State Department of Environmental Conservation; and

WHEREAS, the subsurface investigation report notes that the combination of heavy metals found at the site is consistent with the storage of treated lumber and galvanized building materials; and

WHEREAS, the applicant states that the presence of heavy metals at the site, some of which approach hazardous levels, will require remediation of the site prior to development with residential use; and

WHEREAS, the applicant submitted a remediation and cost analysis which estimates that the costs attributed to remediation of the site range between \$532,128 for the proposed development of the site and \$575,771 for the as-of-right development of the site; and

WHEREAS, the applicant represents that the requested waivers are necessary to overcome the premium costs associated with soil remediation on the site; and

WHEREAS, as to the existing commercial building on the site, the applicant states that the subject building was originally constructed more than 60 years ago and was designed to serve the building supply business which is no longer commercially viable at the site; and

WHEREAS, the applicant states that the L-shaped building has a width of 22 feet along the Utica Avenue frontage and a width of 40 feet along the rear portion of the building; and

WHEREAS, the applicant states that the unique L-shaped configuration creates an inefficient floor plate with the wider open space being located in the rear of the lot and not

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along the street frontage; and

WHEREAS, the applicant states that the proposed 1,150 sq. ft. enlargement of the existing commercial building will enable the applicant to square-off the building to create a more efficient floor plate so that the building can be utilized independent of the open sales yard; and

WHEREAS, as to the site's location on a heavily traveled thoroughfare, the applicant states that Utica Avenue is a four-lane, heavily traveled commercial thoroughfare that connects the Flatlands and Mill Basin neighborhoods in southern Brooklyn via Flatbush Avenue to Atlantic Avenue in Crown Heights; and

WHEREAS, the applicant states that Utica Avenue is not only heavily traveled by the residents of this part of Brooklyn, but also by bus traffic resulting from the Metropolitan Transit Authority bus terminal located two block south of the site, and by truck traffic from the many commercial and manufacturing uses located along the 4.5 mile length of Utica Avenue; and

WHEREAS, the applicant represents that the busy nature of Utica Avenue significantly reduces the value of as-of-right, low-density residential uses; and

WHEREAS, as to the commercial nature of Utica Avenue, the applicant states that, in addition to being located on a heavily traveled thoroughfare, the site is also located on a block that is predominantly commercial/industrial in nature; and

WHEREAS, specifically, the applicant submitted a land use map reflecting that, of the 24 lots with frontage on Utica Avenue between Avenue M and Avenue N, 17 of the lots are occupied either partially or wholly by legal non-conforming commercial uses; and

WHEREAS, the applicant states that the stretch of Utica Avenue between Avenue M and Avenue N is the only portion of Utica Avenue that is zoned for low-density residential uses, as the majority of Utica Avenue's 4.5 mile length is zoned for intense commercial or manufacturing uses (C8-1, C8-2 and M1-1) and most of the remaining blocks have commercial overlays; and

WHEREAS, the applicant further states that there are only seven blocks fronting Utica Avenue that are zoned solely for residential use and the blocks fronting Utica Avenue between Avenue M and Avenue N are the only blocks along the entire length of Utica Avenue that have a zoning designation lower than R5; and

WHEREAS, the applicant represents that the commercial and manufacturing use classifications along the entire length of Utica Avenue generate far more automotive and truck traffic than a typical street that is zoned R3-2; and

WHEREAS, accordingly, the applicant represents that the commercial nature of the properties located along Utica Avenue in the vicinity of the site, in addition to the volume of traffic that travels along the roadway, significantly decreases the value of low-density residential uses at the site; and

WHEREAS, the Board does not find that the preponderance of commercial uses on Utica Avenue or the site's location on a heavily trafficked street present unique conditions that create practical difficulty or unnecessary hardship; and

WHEREAS, however, the Board agrees that the increased construction costs as a result of contamination, in combination with the preponderance of commercial uses in the vicinity and the site's location on a heavily trafficked street may inhibit the marketability of low-density residential development along Utica Avenue; and

WHEREAS, 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 submitted financial analyses of: (1) a 0.60 FAR as-of-right scenario of 12 two-family homes (with eight homes fronting Utica Avenue and four homes fronting East 51st Street) and two single-family homes fronting Utica Avenue, with no commercial use at the site; (2) a 0.77 FAR alternative as-of-right scenario of four single-family homes fronting East 51st Street, two two-story residential buildings with 16 dwelling units fronting Utica Avenue, and the existing commercial building; (3) a 0.81 FAR lesser variance scenario of four single-family homes fronting East 51st Street, two two-story residential buildings with 16 dwelling units fronting Utica Avenue, and the enlargement of the existing commercial building from 5,382 sq. ft. to 6,531 sq. ft.; (4) a 0.89 FAR lesser variance scenario of four single-family homes fronting East 51st Street, one two-story residential building with 20 units fronting Utica Avenue, and the enlargement of the existing commercial building from 5,382 sq. ft. to 6,531 sq. ft.; and (5) the proposed 1.0 FAR scenario development; and

WHEREAS, the applicant concluded that the proposed 1.0 FAR scenario was the only scenario of the five analyzed that provided a reasonable rate of return; and

WHEREAS, as noted, throughout the hearing process, the Board directed the applicant to reduce the degree of waivers requested to reflect the minimum variance; thus, the applicant modified the financial analysis to reflect different scenarios and to respond to the Board's concerns; and

WHEREAS, ultimately, the applicant provided a revised financial analysis which reflects that the proposed 1.0 FAR scenario of four single-family homes fronting East 51st Street, one three-story residential building with 20 units fronting Utica Avenue, and the enlargement of the existing commercial building from 5,382 sq. ft. to 6,531 sq. ft. is the minimum capable of yielding a reasonable return; and

WHEREAS, thus, the applicant asserts that the use, number of dwelling units, FAR, open space, lot coverage, height, front yard, and aggregate wall width waivers are required to overcome the premium construction costs, construct a marketable residential use, and provide an efficient floor plate for the existing obsolete commercial building, given the constraints of the site; and

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

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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 East 51st Street frontage, the applicant states that East 51st Street is a residential street developed primarily with single-family and two-family homes; and

WHEREAS, the applicant notes that the subject proposal includes the construction of four single-family homes along East 51st Street; and

WHEREAS, the applicant states that each of the proposed single-family homes along East 51st Street will have a floor area of 1,178 sq. ft., and the homes will be fully compliant with the R3-2 district regulations if this portion of the property were to be treated as a separate zoning lot; and

WHEREAS, as to the Utica Avenue frontage, the applicant states that the section of Utica Avenue in the vicinity of the site has a great variation in building types and sizes, as well as in the types of uses; and

WHEREAS, the applicant represents that the proposed three-story multi-family residential building and the enlargement of the existing commercial building along Utica Avenue will not alter the character of the surrounding area because the diversity of use and building types on Utica Avenue supports commercial use and denser residential development than what is found on the low-density residential side streets; and

WHEREAS, as to the proposed commercial use, the applicant states that the range of uses located on Utica Avenue in the vicinity of the site include two- and three-story mixed-use buildings, automotive sales and/or warehouse buildings, attached row homes, open contractor or building supply yards, and automotive service stations or repair facilities; and

WHEREAS, the applicant notes that the proposed commercial building has existed as a legal non-conforming use at the site for more than 50 years, and the proposed enlargement will merely square-off the L-shaped building to provide a more efficient rectangular floor plate; and

WHEREAS, as noted above, the applicant submitted a land use map reflecting that, of the 24 lots with frontage on Utica Avenue between Avenue M and Avenue N, 17 of the lots are occupied either partially or wholly by legal non-conforming commercial uses; and

WHEREAS, as to the proposed bulk of the three-story residential building, the applicant submitted an FAR survey that identified all properties that front commercially-oriented streets in the vicinity of the site and have FARs exceeding 1.0; and

WHEREAS, the FAR survey reflects that of the 111 tax lots with frontage on one of the commercial streets in the study area, 46 percent have an FAR that exceeds 1.0; and

WHEREAS, the FAR survey further reflects that of the 26 lots on the subject block with frontage on Utica Avenue, 81 percent have an FAR that exceeds 1.0; and

WHEREAS, the applicant states that, based on the FAR survey, the proposed buildings along Utica Avenue are

consistent with the density of properties within the study area; and

WHEREAS, the applicant also submitted a survey of buildings stories and heights within approximately 500 feet of the site; and

WHEREAS, the height survey submitted by the applicant reflects that: (1) 14 semi-detached two-family three-story homes located on Avenue M and East 52nd Street range in height from 27'-0" to 27'-9"; (2) two semi-detached homes located on East 51st Street immediately behind the site have a height in excess of 26'-0"; (3) a three-story building on the southeast corner of Utica Avenue and Avenue N has a height of approximately 30'-0"; and (4) the row of attached mixed-use buildings directly to the south of the site have a height of approximately 25'-0"; and

WHEREAS, the applicant notes that although the proposed three-story residential building along Utica Avenue has a height of 31'-6", the front of the building is setback 20'-4" above a height of 21'-6"; and

WHEREAS, accordingly, the applicant states that there are many buildings in the vicinity of the site with comparable heights to the proposed three-story residential building along Utica Avenue; 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, 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, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, as noted, the Board does not regard the contaminated soil condition to be a self-created hardship since it can be attributed to a legal non-conforming use at the site which predates modern environmental regulations; and

WHEREAS, the Board notes that the applicant initially claimed that even greater floor area, height, and dwelling units were required to overcome the hardship at the site; and

WHEREAS, the Board agrees that there is practical difficulty due to the unique conditions of the site, which require additional floor area and the other noted waivers, but disagrees that the initially proposed degree of FAR, height and dwelling count waivers were needed to make the building feasible; and

WHEREAS, the Board notes that the applicant has significantly reduced the total residential floor area on the site from 43,437 sq. ft. (1.28 FAR) to 27,379 sq. ft. (0.81 FAR), reduced the number of dwelling units from the 36 initially proposed to 24, and reduced the total height and perimeter wall height for the three-story residential building from 39'-8" to 31'-6"; and

WHEREAS, accordingly, the Board finds that the current 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 Unlisted action pursuant to 6 NYCRR, Part 617.2; and

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WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement (“EAS”) 09BSA120K, dated March 29, 2011; 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 Department of Environmental Protection’s (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP reviewed the August 2010 Phase II Environmental Subsurface Investigation Report and requested that a Remedial Action Plan and Construction Health and Safety Plan be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, a Restrictive Declaration was executed on March 30, 2011 and filed for recording on April 3, 2011; and

WHEREAS, the New York City Landmarks Preservation Commission requested a Phase I archaeological documentary study; and

WHEREAS, a Restrictive Declaration regarding the preparation of this documentary study was executed on March 8, 2010 and filed for recording on April 29, 2010; 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 R3-2 zoning district, the construction of four single-family homes, a three-story residential building with 20 dwelling units, 30 accessory parking spaces, and the enlargement of an existing commercial building, contrary to ZR §§ 23-141, 23-22, 23-45(a), 23-463, 23-631, 25-64, and 22-10; *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 February 18, 2011” – eleven (11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum residential floor area of 27,379 (0.81

FAR); a maximum commercial floor area of 6,531 sq. ft. (0.19 FAR); a maximum of 24 dwelling units; a maximum lot coverage of 46 percent; a minimum open space of 54 percent; a maximum total height and perimeter wall height of 31’-6”; a front yard with a minimum depth of 10’-0” along Utica Avenue; a maximum aggregate street wall width of 180’-0” along Utica Avenue; and 30 parking spaces, as illustrated on the BSA-approved plans;

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor shall obtain from DEP a Notice to Proceed and from LPC a Notice of No Objection or a Notice to Proceed;

THAT prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain from DEP and LPC a Notice of Satisfaction;

THAT the parking spaces shall be limited to accessory parking for the proposed residential development;

THAT the parking layout shall be as approved by DOB;

THAT the commercial building shall be limited to Use Group 6 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;

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

THAT construction shall be substantially completed in accordance with the requirements of ZR § 72-23; and

THAT the Department of Buildings must ensure compliance 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 5, 2011.

192-10-BZ

CEQR #11-BSA-033Q

APPLICANT – Vincent L. Petraro, PLLC, for The Leavitt Street LLC, owner.

SUBJECT – Application October 20, 2010 – Special Permit (§73-66) to allow for a waiver of height restrictions around airports. C4-2 zoning district.

PREMISES AFFECTED – 39-16 College Point Boulevard, west side of College Point Boulevard, at the cross section of Roosevelt Avenue and College Point Boulevard, Block 462, Lot 4, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Steven Simicich.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,

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Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough
Commissioner, dated September 24, 2010, acting on
Department of Buildings Application No. 420057592, reads
in pertinent part:

“The proposed building height is exceeding the
maximum height limitation by the Flight
Obstruction map of La Guardia airport as per ZR
61-20...a special permit by BSA is required as per
ZR 73-66;” and

WHEREAS, this is an application under ZR §§ 73-66
and 73-03, to permit the construction of a 12-story hotel
building which exceeds the maximum height limits around
airports, contrary to ZR § 61-20; and

WHEREAS, a public hearing was held on this
application on February 8, 2011, after due notice by
publication in *The City Record*, with a continued hearing on
March 8, 2011, and then to decision on April 5, 2011; and

WHEREAS, the premises and surrounding area had
site and neighborhood examinations by Chair Srinivasan,
Vice-Chair Collins, Commissioner Montanez, and
Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens,
recommends approval of this application; and

WHEREAS, the subject site is located on the
northwest corner of Roosevelt Avenue and College Point
Boulevard, within a C4-2 zoning district; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a 12-
story hotel building; and

WHEREAS, the Board notes that ZR § 61-21
(Restriction on Highest Projection of Building or Structure)
restricts the height of buildings or structures within
designated flight obstruction areas; and

WHEREAS, specifically, the provision sets forth that
the highest projection of any building or structure may not
penetrate the most restrictive of either approach surfaces,
transitional surfaces, horizontal surfaces, or conical surfaces,
within an Airport Approach District of a flight obstruction
area; and it may not penetrate the horizontal surface or
conical surface within the Airport Circling District of the
flight obstruction area; and

WHEREAS, however, pursuant to ZR § 73-66 (Height
Regulations around Airports) the Board may grant a special
permit to permit construction in excess of the height limits
established under ZR §§ 61-21 (Restriction on Highest
Projection of Building or Structure) or 61-22 (Permitted
Projection within any Flight Obstruction Area), only (1)
subsequent to the applicant submitting a site plan, with
elevations, reflecting the proposed construction in relation to
such maximum height limits, and (2) if the Board finds that
the proposal would not create danger and would not disrupt
established airways; and

WHEREAS, the provision also provides that, in its
review, the Board shall refer the application to the Federal

Aeronautics Administration (“FAA”) for a report as to
whether such construction will constitute a danger or disrupt
established airways; and

WHEREAS, as to the information submitted by the
applicant, the Board notes that the applicant submitted a site
plan with elevations reflecting the proposed construction,
which includes information about the maximum as-of-right
height and the maximum height approved by the FAA for
the subject building; and

WHEREAS, as to the Board’s determination about the
safety of the proposed construction with regard to the
proximity to the airport, the Board notes that the FAA
regulates the heights of buildings within proximity to
airports and that since the subject site is located within the
flight obstruction area for LaGuardia Airport, it falls within
the area regulated by the FAA; and

WHEREAS, the applicant represents that it filed an
application with the FAA for review and approval of the
subject building, and the FAA issued a Determination of No
Hazard to Air Navigation, approving the proposed building
on February 25, 2010, with the condition that FAA-required
lighting and/or markings be installed on the building; and

WHEREAS, the proposed height for the building is
146 feet Above Ground Level (“AGL”) and 184 feet Above
Mean Sea Level (“AMSL”); and

WHEREAS, the maximum height approved by the
FAA is 146 feet AGL (184 feet AMSL); and

WHEREAS, the Board notes that the FAA-approved
height includes all appurtenances to the building; and

WHEREAS, accordingly, the Board notes that the
proposed building height is within that approved by the
FAA; and

WHEREAS, the Board notes that the FAA regulations
are similar to those found in the ZR but differ slightly based
on updated reference points and runway elevations; and

WHEREAS, the applicant has also submitted requests
for approval to the Port Authority of New York/New Jersey
(PA), which operates LaGuardia Airport; and

WHEREAS, as reflected in a no objection letter dated
November 24, 2010, the PA approves of the project and
references the FAA reports; and

WHEREAS, the Board notes that its review was
limited to the request for an increase in height above that
permitted as-of-right, pursuant to the special permit; 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 §§ 73-66 and 73-03; and

WHEREAS, the Board notes that the FAA report
states that there is a requirement that the FAA be notified
ten days prior to the start of construction (Part I) and five
days after construction reaches its greatest height (Part II);
and

WHEREAS, the project is classified as an Unlisted

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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) 11BSA033Q, dated January 18, 2011; 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 §§ 73-66 and 73-03, to permit, within a C4-2 zoning district, the construction of a 12-story hotel building which exceeds the maximum height limits around airports, contrary to ZR § 61-20; *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 1, 2011"- nineteen (19) sheets and *on further condition*:

THAT the maximum height of the building, including all appurtenances, is 146 feet AGL and 184 feet AMSL;

THAT the relief granted is only that associated with ZR § 73-66 and all construction at the site shall be as approved by DOB and must comply with all relevant Building Code and zoning district regulations;

THAT the applicant must comply with all FAA notification requirements associated with the construction at the site;

THAT substantial construction be completed in accordance with ZR § 73-70;

THAT 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, April 5, 2011.

193-10-BZ

CEQR #11-BSA-034Q

APPLICANT – Vincent L. Petraro, PLLC, for Jia Ye Realty, LLC, owner.

SUBJECT – Application October 20, 2010 – Special Permit (§73-66) to allow for a waiver of height restrictions around airports. C4-3 zoning district.

PREMISES AFFECTED – 35-27 Prince Street, at the congruence of 36th Road and Prince Street, Block 4971, Lot 8, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Steven Simicich.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated September 24, 2010, acting on Department of Buildings Application No. 420113451, reads in pertinent part:

“The proposed building height is exceeding the maximum height limitation by the Flight Obstruction map of La Guardia airport as per ZR 61-20...a special permit by BSA is required as per ZR 73-66;” and

WHEREAS, this is an application under ZR §§ 73-66 and 73-03, to permit the construction of a 12-story mixed-use hotel/residential building which exceeds the maximum height limits around airports, contrary to ZR § 61-20; and

WHEREAS, a public hearing was held on this application on February 8, 2011, after due notice by publication in *The City Record*, with a continued hearing on March 8, 2011, and then to decision on April 5, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Prince Street between 37th Avenue and Northern Boulevard, partially within a C4-2 zoning district and partially within a C4-3 zoning district; and

WHEREAS, the site is currently occupied by a two-story commercial building; and

WHEREAS, the applicant proposes to construct a 12-story mixed-use hotel/residential building; and

WHEREAS, the Board notes that ZR § 61-21 (Restriction on Highest Projection of Building or Structure) restricts the height of buildings or structures within designated flight obstruction areas; and

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WHEREAS, specifically, the provision sets forth that the highest projection of any building or structure may not penetrate the most restrictive of either approach surfaces, transitional surfaces, horizontal surfaces, or conical surfaces, within an Airport Approach District of a flight obstruction area; and it may not penetrate the horizontal surface or conical surface within the Airport Circling District of the flight obstruction area; and

WHEREAS, however, pursuant to ZR § 73-66 (Height Regulations around Airports) the Board may grant a special permit to permit construction in excess of the height limits established under ZR §§ 61-21 (Restriction on Highest Projection of Building or Structure) or 61-22 (Permitted Projection within any Flight Obstruction Area), only (1) subsequent to the applicant submitting a site plan, with elevations, reflecting the proposed construction in relation to such maximum height limits, and (2) if the Board finds that the proposal would not create danger and would not disrupt established airways; and

WHEREAS, the provision also provides that, in its review, the Board shall refer the application to the Federal Aeronautics Administration (“FAA”) for a report as to whether such construction will constitute a danger or disrupt established airways; and

WHEREAS, as to the information submitted by the applicant, the Board notes that the applicant submitted a site plan with elevations reflecting the proposed construction, which includes information about the maximum as-of-right height and the maximum height approved by the FAA for the subject building; and

WHEREAS, as to the Board’s determination about the safety of the proposed construction with regard to the proximity to the airport, the Board notes that the FAA regulates the heights of buildings within proximity to airports and that since the subject site is located within the flight obstruction area for LaGuardia Airport, it falls within the area regulated by the FAA; and

WHEREAS, the applicant represents that it filed an application with the FAA for review and approval of the subject building, and the FAA issued a Determination of No Hazard to Air Navigation, approving the proposed building on February 25, 2010, with the condition that FAA-required lighting and/or markings be installed on the building; and

WHEREAS, the proposed height for the building is 159 feet Above Ground Level (“AGL”) and 203 feet Above Mean Sea Level (“AMSL”); and

WHEREAS, the maximum height approved by the FAA is 159 feet AGL (203 feet AMSL); and

WHEREAS, the Board notes that the FAA-approved height includes all appurtenances to the building; and

WHEREAS, accordingly, the Board notes that the proposed building height is within that approved by the FAA; and

WHEREAS, the Board notes that the FAA regulations are similar to those found in the ZR but differ slightly based on updated reference points and runway elevations; and

WHEREAS, the applicant has also submitted requests for approval to the Port Authority of New York/New Jersey

(PA), which operates LaGuardia Airport; and

WHEREAS, as reflected in a no objection letter dated November 24, 2010, the PA approves of the project and references the FAA reports; and

WHEREAS, the Board notes that its review was limited to the request for an increase in height above that permitted as-of-right, pursuant to the special permit; 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 §§ 73-66 and 73-03; and

WHEREAS, the Board notes that the FAA report states that there is a requirement that the FAA be notified ten days prior to the start of construction (Part I) and five days after construction reaches its greatest height (Part II); 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) 11BSA043Q, dated January 18, 2011; 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 §§ 73-66 and 73-03, to permit, partially within a C4-2 zoning district and partially within a C4-3 zoning district, the construction of a 12-story mixed-use hotel/residential building which exceeds the maximum height limits around airports, contrary to ZR § 61-20; *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 1, 2011”-eighteen (18) sheets and *on further condition*:

THAT the maximum height of the building, including all appurtenances, is 159 feet AGL and 203 feet AMSL;

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THAT the relief granted is only that associated with ZR § 73-66 and all construction at the site shall be as approved by DOB and must comply with all relevant Building Code and zoning district regulations;

THAT the applicant must comply with all FAA notification requirements associated with the construction at the site;

THAT substantial construction be completed in accordance with ZR § 73-70;

THAT 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, April 5, 2011.

226-10-BZ

CEQR #11-BSA-042M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Montbatten Equities, LLP, owner; Equinox Fitness, lessee. SUBJECT – Application December 10, 2010 – Special Permit (§73-36) to allow a Physical Culture Establishment (*Equinox Fitness*) on the first, ninth and tenth floors of an existing 10-story mixed-use building; Amendment to a prior variance (§72-21) to reflect the proposed establishment. M1-5 zoning district.

PREMISES AFFECTED – 405/42 Hudson Street, southwest corner of Hudson and Leroy Streets, Block 601, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #2M

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated January 25, 2011, acting on Department of Buildings Application No. 120527778, reads in pertinent part:

“ZR 42-10. Proposed physical culture establishment is not permitted in M1-5 zone and requires special permit from the Board of Standards and Appeals per ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within an M1-5

zoning district, the legalization of a physical culture establishment (PCE) at portions of the first, ninth, and tenth floors of a ten-story mixed-use commercial/residential building, contrary to ZR § 42-10; and

WHEREAS, the applicant filed a companion case under BSA Calendar No. 606-75-BZ, to allow an amendment to a prior variance to reflect the existing conditions within the commercial space at the subject site and to permit the renovation of the health club facility for operation as part of the subject PCE; that application was granted on April 5, 2011; and

WHEREAS, a public hearing was held on this application on February 15, 2011 after due notice by publication in *The City Record* and then to decision on April 5, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

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

WHEREAS, the subject site is located on a through lot bounded by Leroy Street to the north, Hudson Street to the east, and Clarkson Street to the south, within an M1-5 zoning district; and

WHEREAS, the site is occupied by a ten-story mixed-use commercial/residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 20, 1976 when, under BSA Cal. No. 606-75-BZ, the Board granted a variance to permit the conversion of the existing building from manufacturing use to residential use with a health facility and restaurant on the ninth and tenth floors, and commercial space on a portion of the first floor; and

WHEREAS, on July 20, 1976, under BSA Cal. No. 607-75-A, the Board also granted an administrative appeal of a Department of Buildings determination, to allow variances from the Multiple Dwelling Law required for the proposed residential uses; and

WHEREAS, the proposed PCE occupies 29,441 sq. ft. of floor area on portions of the first, ninth, and tenth floors of the subject building; and

WHEREAS, the PCE will be operated by Equinox Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, from 5:30 a.m. to 11:00 p.m.; Friday, from 5:30 a.m. to 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, at hearing, the Board directed the applicant to clarify the noise attenuation measures that are proposed for the subject building; and

WHEREAS, in response, the applicant states that the following noise attenuation measures will be undertaken at the site: (1) all slab penetrations between the first floor and second floor will be tightly sealed; (2) a suspended gypsum board ceiling will be installed above the PCE space at the

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first floor; (3) the group fitness studio and cycling studio at the first floor will be constructed of isolated partitions; (4) a one-inch thick rubber flooring will be provided throughout the strength area at the first floor; (5) the partitions surrounding the mechanical room at the first floor will comprise two layers of gypsum board on either side of metal studs with batt insulation in the stud cavities; (6) an isolated concrete floor will be installed in the cardio room on the ninth floor; and (7) one-inch thick resilient floor tile will be installed throughout the open fitness area on the ninth and tenth 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 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 Board notes that the PCE has been in operation by Equinox Fitness since January 1, 2011, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between January 1, 2011 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; 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. 11BSA042M, dated December 23, 2010; and

WHEREAS, the EAS documents 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, 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 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, on a site located within an M1-5 zoning district, the legalization of a physical culture establishment on portions of the first, ninth and tenth floors of a ten-story mixed-use commercial/residential building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received December 10, 2010"- 2 sheets and "Received March 2, 2011"- 4 sheets; and *on further condition*:

THAT the term of this grant shall expire on January 1, 2021;

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 all massages shall be performed by New York State licensed massage therapists;

THAT the following noise abatement measures shall be installed to insure that the sound level in the residential portions of the building do not exceed 45 dBA: (1) all slab penetrations between the first floor and second floor will be tightly sealed; (2) a suspended gypsum board ceiling will be installed above the PCE space at the first floor; (3) the group fitness studio and cycling studio at the first floor will be constructed with isolated partitions; (4) a one-inch thick rubber flooring will be provided throughout the strength area at the first floor; (5) the partitions surrounding the mechanical room at the first floor will comprise two layers of gypsum board on either side of metal studs with batt insulation in the stud cavities; (6) an isolated concrete floor will be installed in the cardio room on the ninth floor; and (7) one-inch thick resilient floor tile will be installed throughout the open fitness area on the ninth and tenth floors;

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

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);

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 5, 2011.

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606-75-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Montbatten Equites, LP, owner; Equinox Fitness, lessee.

SUBJECT – Application December 10, 2010 – Special Permit (§73-36) to allow a Physical Culture Establishment (*Equinox Fitness*) on the first, ninth and tenth floors of an existing 10-story mixed-use building; Amendment to a prior variance (§72-21) to reflect the proposed establishment. M1-5 zoning district.

PREMISES AFFECTED – 405/42 Hudson Street, southwest corner of Hudson and Leroy Streets, Block 601, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #2M

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an amendment to a previously approved variance for the conversion of an existing building from manufacturing use to residential use with a health facility and restaurant on the ninth and tenth floors; and

WHEREAS, a public hearing was held on this application on February 15, 2011, after due notice by publication in *The City Record*, and then to decision on April 5, 2011; and

WHEREAS, the applicant filed a companion case under BSA Calendar No. 226-10-BZ, for a special permit pursuant to ZR § 73-36 to allow the legalization of a physical culture establishment (PCE) on portions of the first, ninth and tenth floors of the existing ten-story mixed-use commercial/residential building; that application was granted on April 5, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

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

WHEREAS, the subject site is located on a through lot bounded by Leroy Street to the north, Hudson Street to the east, and Clarkson Street to the south, within an M1-5 zoning district; and

WHEREAS, the site is occupied by a ten-story mixed-use commercial/residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 20, 1976 when, under the subject calendar number, the Board granted a variance to permit the conversion of the existing building from manufacturing use to residential use with a health facility and restaurant on the ninth and tenth floors, and commercial space on a portion of the first floor; and

WHEREAS, on July 20, 1976, under BSA Cal. No. 607-75-A, the Board also granted an administrative appeal of a

Department of Buildings determination, to allow variances from the Multiple Dwelling Law required for the proposed residential uses; and

WHEREAS, the applicant states that since the original grant there have been a variety of changes to the commercial spaces within the building, including the discontinuance of the restaurant use; and

WHEREAS, the applicant notes that all commercial floor area on the first, ninth and tenth floors is currently used as part of the proposed PCE; and

WHEREAS, the applicant now seeks an amendment to reflect the existing conditions within the commercial space and to permit the renovation of the health club facility for operation as part of the proposed PCE; and

WHEREAS, based upon the above, the Board finds that the requested amendment 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, as adopted on July 20, 1976, so that as amended this portion of the resolution shall read: “to permit the noted modifications to the BSA-approved plans; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received December 10, 2010”- (2) sheets and “Received March 2, 2011”- (4) 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. 120527778)

Adopted by the Board of Standards and Appeals, April 5, 2011.

189-09-BZ

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace, west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

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Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 10, 2011, at 1:30 P.M., for decision, hearing closed.

190-09-A

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 10, 2011, at 1:30 P.M., for decision, hearing closed.

227-09-BZ

APPLICANT – Gerald J. Caliendo, R.A., for David Rosero/Chris Realty Holding Corporation, lessee.

SUBJECT – Application July 10, 2009 – Variance (§72-21) to allow a two-story commercial building, contrary to use regulations (§22-10). R6B zoning district.

PREMISES AFFECTED – 100-14 Roosevelt Avenue, south side of Roosevelt Avenue, 109.75' west of the corner of 102nd Street and Roosevelt Avenue, Block 1609, Lot 8, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Laid over to May 17, 2011, at 1:30 P.M., for continued hearing.

236-09-BZ

APPLICANT – Marvin Mitzner, Esq, for Crosstown West 28 LLC, owner.

SUBJECT – Application July 31, 2009 – Variance (§72-21) to allow for a 29 story mixed use commercial and residential building contrary to use regulations (§42-00), floor area (§43-12), rear yard equivalent (§43-28), height (§43-43), tower regulations (§43-45) and parking (§13-10). M1-6 zoning district.

PREMISES AFFECTED – 140-148 West 28th Street, south side of West 28th Street, between 6th Avenue and 7th Avenue,

block 803, Lots 62 and 65, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Marvin Mitzner and Jack Freeman.

For Opposition: Patricia A. Kirshner, Sueanne Kim, Tina Barth, Bill Schaffner, Henry P. Davis and Gregory Rogers.

ACTION OF THE BOARD – Laid over to May 24, 2011, at 1:30 P.M., for continued hearing.

304-09-BZ

APPLICANT – Stuart A. Klein, Esq. for Junius-Glenmore Development, LLC, owner; Women in Need, Inc., lessee.

SUBJECT – Application November 4, 2009 – Variance (§72-21) to allow the erection of a ten-story, mixed-use community facility (*Women In Need*) and commercial building, contrary to floor area (§42-00, 43-12 and 43-122), height and sky exposure plane (§43-43), and parking (§44-21). M1-4 zoning district.

PREMISES AFFECTED – 75-121 Junius Street, Junius Street, bounded by Glenmore Avenue and Liberty Avenue, Block 3696, Lot 1, 10, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Jay Goldstein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 10, 2011, at 1:30 P.M., for decision, hearing closed.

95-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Raymond Kohanbash, owner.

SUBJECT – Application May 27, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461 and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2216 Quentin Road, south side of Quentin Road between East 22nd Street and East 23rd Street, Block 6805, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to May 10, 2011, at 1:30 P.M., for continued hearing.

118-10-BZ

APPLICANT – Eric Palatnik, P.C., for Arkady Nabatov, owner.

SUBJECT – Application June 28, 2010 – Reinstatement (§11-411 & §11-413) of an approval permitting the operation of an automotive service station (UG 16B), with

MINUTES

accessory uses, which expired on December 9, 2003; amendment to legalize a change in use from automotive service station to automotive repair, auto sales and hand car washing. R4 zoning district.

PREMISES AFFECTED – 2102/24 Avenue Z, aka 2609/15 East 21st Street. Block 7441, Lot 371. Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Katherine D’Ambrosi.

ACTION OF THE BOARD – Laid over to May 10, 2011, at 1:30 P.M., for continued hearing.

9-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Riverdale Equities, LTD, owner; White Plains Road Fitness Group, LLC, lessee.

SUBJECT – Application January 31, 2011 – Special Permit (§73-36) to permit the operation of the proposed physical culture establishment (*Planet Fitness*). C4-4 zoning district.

PREMISES AFFECTED – 2129A-39A White Plains Road, a/k/a 2129-39 White Plains Road, a/k/a 626-636 Lydig Avenue, southeast corner of the intersection of White Plains Road and Lydig Avenue, Block 4286, Lot 35, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Elizabeth Safien, Marilyn Sopher and Chase Villofana.

For Opposition: Marcy S. Gross.

ACTION OF THE BOARD – Laid over to May 10, 2011, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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AND APPEALS

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April 21, 2011

DIRECTORY

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Tuesday, April 12, 2011**

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DOCKET

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39-11-BZ

2230-2234 Kimball Street, Kimball Street between Avenue U and Avenue V., Block 8556, Lot(s) 55, Borough of **Brooklyn, Community Board: 18**. Variance (§72-21) to legalize a mixed use building, contrary to floor area (§24-162), parking (ZR 25-31), permitted obstructions (§24-33/23-44), open space access (§12-10), side yard setback (§24-55), distance required from windows to lot line (§ 23-861). R4 zoning district. R4 district.

40-11-A

25 Central Park West, West side of Central Park West, West 62nd and West 63rd Streets., Block 1115, Lot(s) 7501 (29), Borough of **Manhattan, Community Board: 7**. Appeal challenging a determination by the Department of Building that the non conforming commercial use of a Condominium retail space was discontinued pursuant to §52-61 . C1-1, C-2 & C-3 Zoning district . R10A/C4-7 district.

41-11-A

1314 Avenue S, Between East 13th and East 14th Streets., Block 7292, Lot(s) 6, Borough of **Brooklyn, Community Board: 15**. Appeal seeking a determination that the owner has acquired a common law vested right to continue development under R-6 zoning district. R4-1 district.

42-11-BZ

135-11 40th Road, North side of 40th Road between Prince and Main Streets., Block 5036, Lot(s) 55, Borough of **Queens, Community Board: 7**. Special Permit (§73-44) to permit the reduction in required parking for an ambulatory or diagnostic treatment facility and for office uses. C4-2 zoning district. C4-2 district.

43-11-BZ

1926 East 21st Street, West side 220'-0" south of Avenue R between Avenue R and S., Block 6826, Lot(s) 19, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of a single family home. R3-2 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

MAY 10, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 10, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

307-81-BZ

APPLICANT – Francis R. Angelino, Esquire, for 50 East 69th Street Corporation, owner.

SUBJECT – Application March 14, 2011 – Extension of Term of a previously approved variance (§72-21) which permitted a five story medical office (UG 6) with an owner occupied penthouse apartment (UG 2). The term of the variance is set to expire on September 15, 2011. R8B (LH-1A) zoning district.

PREMISES AFFECTED – 50 East 69th Street, South side between Madison and Park Avenues. Block 1383, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #8M

65-90-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Street Retail Incorporated, owner; Meadows Spa, lessee.

SUBJECT – Application March 1, 2011 – Extension of Term to a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (Meadows Spa) which expired on January 29, 2011; Amendment to eliminate the PCE from the first floor and relocate floor area in the cellar. C4-1/PC zoning district.

PREMISES AFFECTED – 61-19 190th Street, Northeast corner formed by the intersection of 190th Street and 64th Avenue. Block 7117, Lot 4, Borough of Queens.

COMMUNITY BOARD #8Q

145-99-BZ

APPLICANT – Bryan Cave LLP/Frank E. Chaney, Esq., for Hudson Spring Partners, LLP, owners.

SUBJECT – Application March 24, 2011 – Application for a re-hearing, pursuant to BSA Rules Section 1-10(e), of a previously denied variance application. M1-6 zoning district.

PREMISES AFFECTED – 286 Spring Street, southeast corner of Spring Street and Hudson Street, Block 579, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #2M

111-01-BZ

APPLICANT – Eric Palatnik, P.C. for Barge Realty, Incorporated, owner; Wendy's International, lessee.

SUBJECT – Application February 23, 2011 – Extension of term of a previously granted Special Permit (§73-243) for an accessory drive thru facility at an eating and drinking establishment (Wendy's) which expired February 1, 2011; Amendment for minor modification to previous conditions on the site. C1-2 (R5) zoning district.

PREMISES AFFECTED – 9001 Ditmas Avenue, Corner of Ditmas Avenue and Remsen Avenue. Block 8108, Lot 6. Borough of Brooklyn.

COMMUNITY BOARD #17BK

APPEALS CALENDAR

202-10-BZY

APPLICANT – Law Offices of Marvin B. Mitzner, for Long Island City Partners, LLC, owner.

SUBJECT – Application October 29, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior M1-3D zoning district. M1-2/R5D zoning district.

PREMISES AFFECTED – 29-11 39th Avenue, north side of 39th Avenue between 29th and 30th Street, Block 384, Lots 31 and 32, Borough of Queens.

COMMUNITY BOARD #1Q

MAY 10, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 10, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

2-11-BZ

APPLICANT – Cozen O'Connor, for 117 Seventh Avenue South Property Company, LP, owner.

SUBJECT – Application January 4, 2011 – Variance (§72-21) to allow for a residential and community facility enlargement to an existing commercial building, contrary to setback (ZR §33-432) and open space regulations (ZR §23-14). C4-5 zoning district.

PREMISES AFFECTED – 117 Seventh Avenue South, southeast corner of Seventh Avenue South and West 10th Street, Block 610, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #2M

CALENDAR

25-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Health Science Center at Brooklyn Foundation, Incorporated, owner; Downstate Technology Center, Incorporated, lessee.

SUBJECT – Application March 9, 2011 – Variance (§72-21) to permit the enlargement of an existing medical research facility (Downstate Advanced Biotechnology Incubator), contrary to floor area (ZR §43-10), height and setback (ZR §43-20), required parking (ZR §43-21), parking space dimensions (ZR §44-42) and off street loading bay (ZR §44-52) regulations. M1-1 zoning district.

PREMISES AFFECTED – 760 Parkside Avenue, South side of Parkside Avenue, mid-block between New York Avenue and Nostrand Avenue. Block 4828, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #9BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, APRIL 12, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

433-65-BZ

APPLICANT – Andrea Claire/Peter Hirshman, for 15 West 72 Owner Corporation, owner; Mafair Garage Corporation, lessee.

SUBJECT – Application July 22, 2010 – Extension of Term of an approval pursuant to the Multiple Dwelling Law for transient parking, which expired on June 22, 2010. R8B/R10A zoning district.

PREMISES AFFECTED – 15 West 72nd Street, 200’-2½ west of Central Park West 72nd Street, Block 1125, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Peter Hirshman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for a transient parking garage, which expired on June 22, 2010; and

WHEREAS, a public hearing was held on this application on November 16, 2010, after due notice by publication in *The City Record*, with continued hearings on January 11, 2011, February 8, 2011 and March 29, 2011, and then to decision on April 12, 2011; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject premises is located on a through lot bounded by West 73rd Street to the north and West 72nd Street to the south, partially within an R8B zoning district and partially within an R10A zoning district; and

WHEREAS, the site is occupied by a 34-story and penthouse residential building; and

WHEREAS, the cellar and sub-cellar are occupied by a 206-space accessory garage, with 96 spaces in the cellar and 110 spaces in the sub-cellar; and

WHEREAS, on June 22, 1965, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law (“MDL”) to permit a maximum of 50 surplus parking spaces to be used for transient parking, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on December 5, 2000, the Board granted a ten-year extension of term, which expired on June 22, 2010; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents’ right to recapture the surplus parking spaces; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution having been adopted on June 22, 1965, 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 22, 2010, to expire on June 22, 2020; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received December 29, 2010”- (1) sheet and “Received March 15, 2011”- (1) sheet; and *on further condition*:

THAT this term shall expire on June 22, 2020;

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 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 Application No. 120405515)

Adopted by the Board of Standards and Appeals, April 12, 2011.

MINUTES

1069-27-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 6702 New Utrecht Avenue LLC by Frank Momando, owner.

SUBJECT – Application February 23, 2011– Extension of Term (§11-411) of for the continued operation of an automatic automobile laundry, simonizing room and offices which expired on March 6, 201; Extension of Time to obtain a Certificate of Occupancy. C1-2/R5 zoning district.

PREMISES AFFECTED – 6702-6724 New Utrecht Avenue, bounded by New Utrecht Avenue, 15th Avenue and Ovington Avenue/68th Street, Block 5565, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to May 10, 2011, at 10 A.M., for continued hearing.

677-53-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for James Marchetti, owner.

SUBJECT – Application April 22, 2010 – Extension of Term (§11-411) of a Variance for the operation of a UG16 Auto Body Repair Shop (*Carriage House*) with incidental painting and spraying which expired on March 24, 2007; Extension of Time to Obtain a Certificate of Occupancy which expired on January 13, 1999; Amendment (§11-412) to enlarge the building; Waiver of the Rules. R4/C2-2 zoning district.

PREMISES AFFECTED – 61-26/30 Fresh Meadow Lane, west side of Fresh Meadow Lane, 289’ northerly of the intersection with 65th Avenue, Block 6901, Lot 48, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to May 10, 2011, at 10 A.M., for continued hearing.

827-55-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products, Incorporated, owner.

SUBJECT – Application October 5, 2010 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*British Petroleum*) which expires on January 31, 2011. R3-2 zoning district.

PREMISES AFFECTED – 245-20 139th Avenue, southwest corner of Conduit Avenue, Block 13614, Lot 23, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to June 7, 2011, at 10 A.M., for adjourned hearing.

982-83-BZ

APPLICANT – H Irving Sigman, for Barone Properties, Inc., owner.

SUBJECT – Application February 22, 2011 – Extension of Term (§11-411) of a previously approved variance permitting retail and office use (UG 6), which expired on March 6, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on May 25, 2006; Amendment (§11-412) to increase number of stores/offices from five to six; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 191-20 Northern Boulevard, southwest corner of 192nd Street, Block 5513, Lot 27, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: I. Irving Sigman.

For Opposition: Terri Pouymari and Henry Euler.

ACTION OF THE BOARD – Laid over to May 24, 2011, 10 A.M., for continued hearing.

964-87-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum Incorporated, owner.

SUBJECT – Application October 18, 2010 – Extension of Term for the continued operation of (UG16) Gasoline Service Station (*Getty*) which expired on February 6, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on January 15, 2003; Amendment to the hours of operation and Waiver of the Rules. C1-3/R6 zoning district.

PREMISES AFFECTED – 780-798 Burke Avenue, southwest corner of Burke and Barnes Avenue, Block 4571, Lot 28, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 10, 2011, at 10 A.M., for decision, hearing closed.

MINUTES

APPEALS CALENDAR

Jeff Mulligan, Executive Director

222-10-A

APPLICANT – Laleh Hawa, for Yaelle Yorán – Wastin, owner.

Adjourned: P.M.

SUBJECT – Application December 6, 2010 – Appeal challenging the Department of Buildings’ revocation of a permit for a parking space and curb cut. R6B zoning district
PREMISES AFFECTED – 97 Saint Marks Avenue, 392’ west of Saint Marks Avenue and Carlton Avenue, Block 1143, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Laleh Hawa.

For Opposition: Patti Hagan.

For Administration: Lisa M. Orrantia, Department of Buildings.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 10, 2011, at 10 A.M., for decision, hearing closed.

228-10-BZY

APPLICANT – Akerman Senterfitt, for 180 Lidlow Development, LLC, owner.

SUBJECT – Application December 15, 2010 – Extension of time (§11-332) to complete construction under the prior C6-1 zoning district regulations. C4-4A zoning district.

PREMISES AFFECTED – 180 Ludlow Street, east side of Ludlow Street, 125’ south of Houston Street, Block 412, Lots 48-50, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to May 10, 2011, at 10 A.M., for continued hearing.

229-10-BZY

APPLICANT – Akerman Senterfitt, for 163 Orchard Street, LLC, owner.

SUBJECT – Application December 17, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior C6-1 zoning district. C4-4A zoning district.

PREMISES AFFECTED – 163 Orchard Street, Orchard and Houson Streets, between Sytanton and Rivington Street, Block 416, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to May 10, 2011, at 10 A.M., for continued hearing.

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, APRIL 12, 2011
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

277-07-BZ

CEQR #10-BSA-078Q

APPLICANT – Miele Associates, LLP, for Barnik Associates LLC & Lama Holdings, LLC, owner.

SUBJECT – Application December 3, 2007 – Variance (§72-21) for the development of a one-story automotive service station with accessory convenience store, contrary to §22-10. R3-1 zoning district.

PREMISES AFFECTED – 165-35 North Conduit Avenue, North west corner of North Conduit Avenue & Guy R, Brewer Boulevard. Block 12318, Lot 10, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Hiram Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated July 15, 2009, acting on Department of Buildings Application No. 410078623, reads in pertinent part:

“Proposal to alter existing automotive service station to accommodate an automotive service station with an accessory convenience store in an R3-1 zoning district is contrary to 22-10 of the Zoning Resolution;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-1 zoning district, the re-establishment of an automotive service station (Use Group 16) with an accessory convenience store, which does not conform to district use regulations, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on August 17, 2010 after due notice by publication in *The City Record*, with continued hearings on November 9, 2010, December 14, 2010, January 25, 2011, and February 15, 2011, and then to decision on April 12, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, Council Member James Sanders, Jr. recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of North Conduit Avenue and Guy Brewer Boulevard, within an R3-1 zoning district; and

WHEREAS, the site has 103'-11" of frontage on Guy Brewer Boulevard, 152'-3" of frontage on North Conduit Avenue, and a lot area of 11,190 sq. ft.; and

WHEREAS, on April 13, 1966, under BSA Cal. No. 697-59-BZ, the Board granted a variance for the subject site, to permit the construction of an automotive service station with accessory uses and accessory signs within a residential zoning district, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board until its expiration on April 13, 2001; and

WHEREAS, the applicant notes that, despite the expiration of the term of the variance, the site continued to operate as an automotive service station until January 2007; and

WHEREAS, the Board notes that the prior variance has expired and the automotive service station use is not grandfathered on the site; therefore the applicant filed the subject application for a new variance for the entire site; and

WHEREAS, the applicant states that the subject site is currently occupied by the vacant one-story automotive service station building with a floor area of 1,767 sq. ft.; and

WHEREAS, the applicant initially proposed to re-establish the automotive service station use and enlarge the existing building at the site for use as an accessory convenience store with a floor area of 2,100 sq. ft., with seven accessory parking spaces; and

WHEREAS, in response to concerns raised by the Board, the applicant submitted revised plans reflecting a reduction in the size of the proposed convenience store, the addition of landscaped buffering along the side and rear lot lines, and the elimination of one of the proposed accessory parking spaces; and

WHEREAS, the applicant now proposes to re-establish the automotive service station use and to enlarge the existing building at the site for use as an accessory convenience store with a floor area of 1,908 sq. ft., with six accessory parking spaces; and

WHEREAS, commercial use is not permitted in the subject R3-1 zoning district, thus the applicant seeks a use variance to permit the Use Group 16 use; 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 development: the history of development on the site and associated contamination; and

WHEREAS, the applicant states that the site's history as an automotive service station has resulted in contamination that requires soil remediation which increases the costs associated with the construction of a conforming residential development; and

WHEREAS, the applicant submitted a report from its environmental consultant, stating that soil borings indicate that

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there is both soil and groundwater contamination present at the subject site that exceeds the New York State Department of Environmental Conservation (“DEC”) regulatory standards requiring remedial action; and

WHEREAS, the Board notes that the prior approved use of the site as an automotive service station pre-dates the enactment of modern environmental standards and regulations; and

WHEREAS, accordingly, the applicant states that, due to the contamination, the soil must be remediated before any development can occur on the site; and

WHEREAS, the applicant submitted a cost estimate for the soil remediation, which reflects a remediation cost for the development of any commercial use on the site of approximately \$253,000, which includes costs associated with excavating and disposing of backfilled concrete and contaminated soils, installation of monitoring wells, installation of vapor extraction and sparge systems with groundwater treatment, monthly operation and maintenance of the remedial systems, and quarterly sampling and testing; and

WHEREAS, the report submitted by the applicant’s environmental consultant states that the full extent of contamination at the site has not yet been determined because below grade obstructions in the areas where tanks were removed and pump islands were located prevented soil borings from being performed in those areas, which are likely areas of contamination; and

WHEREAS, the environmental consultant’s report also states that regulatory standards are more stringent for residential use than for commercial use, and therefore additional remediation services will apply if the site is developed with a conforming residential use, resulting in total remediation costs for residential use of approximately \$362,000; and

WHEREAS, the applicant represents that the requested use waiver is necessary to overcome the premium costs associated with soil remediation on the site; and

WHEREAS, the Board finds that the increased construction costs as a result of contamination is a unique physical condition which creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted financial analyses of: (1) a conforming residential scenario consisting of a two-family home; (2) a lesser variance retail scenario; and (3) the proposed automotive service station and accessory convenience store building; and

WHEREAS, at hearing, the Board directed the applicant to analyze an alternative with a stand-alone owner-operated convenience store on the site; and

WHEREAS, in response, the applicant submitted a revised financial analysis which included a lesser variance scenario featuring a stand-alone owner-operated convenience store; and

WHEREAS, the study concluded that the as-of-right and lesser variance scenarios would not result in a reasonable return, but that the proposed scenario would realize 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 conformance with zoning 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, the applicant represents that the surrounding area is characterized primarily by residential uses to the north, however a commercial storage yard and two retail stores are located on the lot immediately adjacent to the north of the site, and the area to the south of the site consists of the Southern Parkway and North and South Conduit Avenues, which operate as service roads to the Parkway; and

WHEREAS, the applicant states that North Conduit Avenue is a one-way, three-lane north/south arterial which serves as the service road for the Belt Parkway, and Guy R. Brewer Boulevard is a two-way, four-lane east/west arterial; and

WHEREAS, the applicant further states that there is heavy traffic along North Conduit Avenue and Guy R. Brewer Boulevard, and that the proposed automotive service station would be in character with other commercial and industrial uses located along these two streets; and

WHEREAS, the applicant submitted a pictorial location and zoning map which reflects that there are at least seven other automotive service stations currently in operation along North Conduit Avenue in the vicinity of the site; and

WHEREAS, the applicant notes that the proposal is consistent with the historical use of the site, which legally operated as an automotive service station for 35 years; and

WHEREAS, at hearing, the Board raised concerns about the effect of the proposed automotive service station on the surrounding residential uses, and requested that the applicant reduce the size of the proposed convenience store and provide landscaping and buffering at the site; and

WHEREAS, in response, the applicant submitted revised plans which reflect that the size of the proposed convenience store will be reduced and there will be a landscaped buffer with a width of nine feet between the convenience store and the North Conduit Avenue frontage and a landscaped buffer with a width of eight feet between the convenience store and the adjacent lot to the north; and

WHEREAS, the applicant notes that there is also a sidewalk with a width of 15 feet along North Conduit Avenue; thus, the proposed convenience store would be set back a total of 24 feet from the service road; and

WHEREAS, the applicant states that the site has been designed so that vehicular movements into or out of the site will cause minimum obstruction on streets and sidewalks, and submitted a detailed vehicle circulation plan depicting circulation patterns and a passing lane located within the pump island area, and reflecting that one of the existing curb cuts along North Conduit Avenue will be eliminated, and one existing curb cut along Guy R. Brewer Boulevard will be

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relocated; and

WHEREAS, at hearing, the Board directed the applicant to show that it meets the requirements of the special permit available under ZR § 73-211 for locating automotive service stations in certain commercial zoning districts; and

WHEREAS, in response, the applicant states that: (1) the lot area of 11,171 sq. ft. meets the lot area requirements of the special permit; (2) there are no lubrication or repair operations on the site; (3) as noted above, vehicular movement into or from the site will cause a minimum of obstruction on streets or sidewalks; (4) fencing (at least 50 percent opaque) is proposed along the rear and side lot lines; and (5) there is a total of approximately 99 sq. ft. of signage at the site, which complies with C1 district signage regulations; and

WHEREAS, as to the requirement under ZR § 73-211(b)(2), that the site is so designed as to provide reservoir space for five waiting automobiles within the zoning lot in addition to space available within an enclosed lubricatorium or at the pumps, the applicant represents that this condition is meant to pertain to lubricatoriums/repair facilities on the site rather than queuing space for gasoline, and that in any event there will be six accessory parking spaces for the convenience store; 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 site's unique physical conditions; and

WHEREAS, the Board notes that it does not regard the contaminated soil condition to be a self-created hardship because it can be attributed to a permitted use at the site which predated modern environmental regulations; and

WHEREAS, as noted above, the applicant originally proposed to provide an accessory convenience store with a floor area of 2,100 sq. ft., but revised its plans to reduce the size of the proposed convenience store to a floor area of 1,908 sq. ft., in response to concerns raised by the Board; and

WHEREAS, accordingly, 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 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") 10BSA078Q, dated March 31, 2011; 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, DEC reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEC reviewed the September 24, 2010 Soil and Groundwater Investigation report prepared by Berninger Environmental, which identified petroleum contamination in the soil and groundwater on the site that exceeded the applicable regulatory guideline values (Spill Case No. 10-06820); and

WHEREAS, on March 30, 2011, DEC issued a letter which stated that the former tenants (Exxon/Mobil) of the subject site agreed to submit a Soil and Groundwater Management Plan to DEC for review and approval; 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, in an R3-1 zoning district, the re-establishment of an automotive service station (Use Group 16) with an accessory convenience store, which does not conform to district use regulations, contrary to ZR § 22-10; *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 February 1, 2011"- (8) sheets; and *on further condition*:

THAT the former tenants (Exxon/Mobil) of the subject site shall submit a Soil and Groundwater Management Plan to DEC for review and approval;

THAT the term of the grant shall expire on April 12, 2021;

THAT all signage shall comply with C1 district regulations;

THAT all exterior lighting on the site shall be directed downward and away from nearby residential uses;

THAT landscaping and fencing shall be maintained in accordance with the BSA-approved plans;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT 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 12, 2011.

47-10-BZ

CEQR #10-BSA-060X

APPLICANT – Eric Palatnik, P.C., for 2352 Story Avenue Realty Corporation, owner; Airgas-East, Incorporated, lessee.

SUBJECT – Application April 8, 2010 – Variance (§72-21) to allow a manufacturing use in a residential district, contrary to ZR §22-00. M1-1/R3-2 zoning district.

PREMISES AFFECTED – 895 Zerega Avenue, aka 2352 Story Avenue, Block 3698, Lot 36, Borough of The Bronx.

COMMUNITY BOARD #9BX

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated April 6, 2010, acting on Department of Buildings Application No. 220048160, reads:

“Manufacturing use within residential district is non-compliant with ZR 22-00;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located partially within an M1-1 zoning district and partially within an R3-2 zoning district, the use of the portion of the site within the R3-2 zoning district for truck access and parking associated with the proposed Use Group 16 warehouse and gas storage facility on the portion of the lot within the M1-1 zoning district, which does not conform to district use regulations, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on August 24, 2010 after due notice by publication in *The City Record*, with continued hearings on October 19, 2010, January 11, 2011, February 15, 2011 and March 15, 2011, and then to decision on April 12, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 9, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Zerega Avenue and Story Avenue, partially in an M1-1 zoning district and partially in an R3-2 zoning district, within the Zerega Industrial Business Zone (“Zerega IBZ”); and

WHEREAS, the site has approximately 103 feet of frontage on Zerega Avenue, 191 feet of frontage on Story Avenue, 15,462 sq. ft. of lot area located within the M1-1 zoning district, 4,270 sq. ft. of lot area located in the R3-2

zoning district, and a total lot area of 19,673 sq. ft.; and

WHEREAS, the applicant states that the subject site is currently occupied by a one-story and mezzanine warehouse building (Use Group 16) with a floor area of 9,485 sq. ft., located along Zerega Avenue on the easternmost side of the M1-1 portion of the site (the “Warehouse Building”); and

WHEREAS, the applicant proposes to renovate the Warehouse Building for use as a Use Group 16 warehouse and gas storage facility, and to use the R3-2 portion of the site for truck access and parking associated with the Use Group 16 use; and

WHEREAS, as to the need for truck access, the applicant submitted a letter from a commercial realtor which states that any future use of the site would likely be by a heavy industrial user that would require ingress to and egress from the site by an 18-wheel truck in order to make deliveries to the Warehouse Building; and

WHEREAS, the applicant’s original proposal contemplated that 18-wheel trucks would enter and exit the site from the curb cut that straddles the R3-2 and M1-1 district boundary along Story Avenue, and would maneuver within the available open space in the M1-1 portion of the site in order to make deliveries to the Warehouse Building; and

WHEREAS, at the Board’s direction, the applicant revised its plans to accommodate the delivery of goods within the Warehouse Building by entering the site directly from Zerega Avenue; however, the applicant states that the subject variance is still necessary for egress from the site through the curb cut that straddles the R3-2 and M1-1 district boundary along Story Avenue because an 18-wheel truck cannot exit the Warehouse Building by backing up onto Zerega Avenue; and

WHEREAS, the applicant represents that by providing a pass-through for 18-wheel trucks within the Warehouse Building, a significant portion of the existing open space within the M1-1 portion of the lot must be used to accommodate storage and operations that could otherwise be located within the building, and therefore use of the R3-2 portion of the site is required both for egress from the site by 18-wheel trucks and to accommodate operations such as the parking of smaller container trucks and vehicles that may otherwise have been located on the M1-1 portion of the site; and

WHEREAS, the commercial realtor’s letter submitted by the applicant also states that the Warehouse Building cannot be reduced in size in order to provide improved maneuverability on the site such that 18-wheel trucks could be accommodated wholly within the M1-1 portion of the site because any future user of the site would likely require a warehouse building capable of storing the large quantity of materials delivered by an 18-wheel truck; and

WHEREAS, the applicant represents that, therefore, a reduction in the size of the Warehouse Building, in conjunction with the storage space lost by providing a pass-through for 18-wheel trucks within the building, would result in a situation in which a large volume of materials could be delivered to the site, but could not be stored on the site; and

WHEREAS, at hearing, the Board questioned whether the applicant could relocate the existing curb cut to the east, so that it was situated solely within the M1-1 portion of the site, to

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allow an 18-wheel truck to exit from the site without entering onto the R3-2 portion of the site; and

WHEREAS, in response, the applicant submitted a vehicle circulation plan which shows how an 18-wheel truck would maneuver on the site if the existing curb cut on Story Avenue were relocated entirely within the M1-1 portion of the site; and

WHEREAS, the vehicle circulation plan reflects that the relocation of the curb cut would result in delivery trucks being unable to easily maneuver on the site and may require the trucks to back up within the premises in order to exit the site, which is not desirable when maneuvering an 18-wheel truck; and

WHEREAS, the circulation plan also reflects that relocating the curb cut would force the delivery trucks to maneuver in close proximity to goods and equipment that would be stored within the open area of the M1-1 portion of the site, and would also necessitate the removal of a street tree along Story Avenue; and

WHEREAS, accordingly, the applicant states that it cannot relocate the curb cut from the R3-2 portion of the site; and

WHEREAS, Use Group 16 use is not permitted in the R3-2 zoning district, thus the applicant seeks a use variance; 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 development: (1) the history of commercial and manufacturing use of the site; (2) the site's location in the Zerega IBZ; and (3) the surrounding industrial and manufacturing uses; and

WHEREAS, the applicant represents that the R3-2 portion of the site has historically been occupied by commercial and industrial uses, rather than residential uses; and

WHEREAS, in support of this statement the applicant submitted Sanborn Maps reflecting that between 1919 and 1929 a contractor's storage yard was established on the portion of the site currently within the R3-2 district; and

WHEREAS, the Sanborn Maps submitted by the applicant indicate that between 1950 and 1977 the contractor's storage yard use ceased, and by 1986 the site was vacant; and

WHEREAS, the applicant also submitted records which reflect that the City of New York acquired title to the entire site by court order in 1976 and that the New York City Public Development Corporation disposed of the site in 1987, pursuant to a deed with a private party that specifically restricted the use of the site to "non-residential business operations" for at least five years; and

WHEREAS, the applicant represents that this deed restriction is evidence of the incompatibility of residential use at the site; and

WHEREAS, as to the site's location in the Zerega IBZ, the applicant submitted the Zerega IBZ Map, which reflects that the subject site is within the Zerega IBZ; and

WHEREAS, the applicant notes that the website for the Mayor's Office of Industrial and Manufacturing Businesses

("IMB") states that IBZs are geographic areas which "build upon the existing In-Place Industrial Parks to better reflect industrial land uses within the City;" and

WHEREAS, the IMB website further states that "IBZs reflect a commitment by the City not to support the re-zoning of industrial land within these areas for residential use;" and

WHEREAS, the applicant represents that, by including the subject site within the Zerega IBZ, the City recognizes that the site is part of an in-place industrial park; and

WHEREAS, as to the adjacent industrial and manufacturing uses, the applicant states that the site is surrounded on all sides by commercial and/or manufacturing uses; and

WHEREAS, specifically, the applicant submitted a 400-ft. radius diagram which reflects that directly across Story Avenue to the north is a FedEx Ground distribution center, directly across Zerega Avenue to the east is a power supply manufacturer, further south across Zerega is a Department of Sanitation garage, immediately adjacent to the south of the site is a vacant lot used to store construction equipment, and immediately adjacent to the west of the site are two commercial vehicle parking lots; and

WHEREAS, the applicant states that further from the site the remainder of the Zerega IBZ, which continues along Zerega Avenue for approximately six blocks to the south of Story Avenue and ten blocks to the north of Story Avenue, is characterized by manufacturing, warehouse/distribution, and garage/parking uses; and

WHEREAS, the applicant states that the surrounding commercial and manufacturing uses completely isolate the R3-2 portion of the site from the residential uses located further to the west on Story Avenue, and make residential use of the site infeasible; and

WHEREAS, the applicant represents that the requested use waiver is therefore necessary to overcome the hardship associated with the history of use of the site, its inclusion within the Zerega IBZ, and its location surrounded by commercial and manufacturing uses; 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 financial analyses of: (1) a conforming scenario consisting of the Warehouse Building shortened by 19 feet to allow for 18-wheel truck activity solely within the M1-1 portion of the site, with the R3-2 portion of the site vacant; (2) a conforming scenario consisting of the Warehouse Building shortened by 19 feet to allow for 18-wheel truck activity solely within the M1-1 portion of the site, with a two-family home on the R3-2 portion of the site; (3) a conforming scenario consisting of the Warehouse Building without 18-wheel truck access and with a two-family home on the R3-2 portion of the site; and (4) the proposed warehouse use with 18-wheel truck access on the R3-2 portion of the site; and

WHEREAS, at hearing, the Board directed the applicant to analyze an existing condition scenario, which consists of the

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Warehouse Building and which allows for access by small trucks through only the M1-1 portion of the site and without residential development of the R3-2 portion of the site; and

WHEREAS, in response, the applicant submitted a revised financial analysis which included the requested existing condition scenario; and

WHEREAS, the financial analyses submitted by the applicant concluded that the as-of-right scenarios would not result in a reasonable return, but that the proposed scenario would realize 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 conformance with zoning 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, the applicant represents that the surrounding area is characterized by a mix of residential, commercial, and manufacturing uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which reflects that, while there are residential uses located to the west and north of the site along Story Avenue, the site is immediately surrounded by commercial and manufacturing uses, including a FedEx Ground distribution center directly across Story Avenue to the north, a power supply manufacturer directly across Zerega Avenue to the east, a vacant lot used to store construction equipment immediately adjacent to the south, and two commercial vehicle parking lots immediately adjacent to the west; and

WHEREAS, as noted above, the site is located within the Zerega IBZ, which the City of New York has expressly recognized as being industrial in character; and

WHEREAS, the applicant notes that the Zerega IBZ also encompasses all of the sites bordering on Zerega Avenue up to six blocks south of Story Avenue and up to ten blocks north of Story Avenue, which are predominantly occupied by manufacturing, warehouse/distribution, and garage/parking uses; and

WHEREAS, the applicant represents that the proposed operations on the R3-2 portion of the site will be limited to one 18-wheel truck delivery per weekday, along with parking for smaller trucks; and

WHEREAS, the applicant states the 18-wheel trucks will use the R3-2 portion of the site solely for egress from the curb cut on Story Avenue, as the trucks will enter the site from Zerega Avenue and unload within the existing building on the M1-1 portion of the site; and

WHEREAS, at hearing, the Board raised concerns about the safety of materials proposed to be stored at the site; and

WHEREAS, in response, the applicant submitted a letter from its engineer stating that the proposed gas storage facility will comply with the performance standards regulating fire and explosive hazards within M1 zoning districts pursuant to ZR § 42-27; and

WHEREAS, at hearing, the Board directed the applicant to provide landscaping and new fencing along Story Avenue, to buffer the site from the nearby residential uses on Story Avenue; and

WHEREAS, in response, the applicant submitted revised plans reflecting the installation of three planting beds and a new fence with a height of eight feet along Story Avenue; 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, at hearing, the Board requested that the applicant provide evidence of the lot's history to establish that the hardship on the site was not self-created; and

WHEREAS, in response, the applicant submitted a series of Sanborn Maps and deeds to establish the history of the site; and

WHEREAS, the applicant points to the fact that the City of New York acquired the entire site in 1976 and subsequently conveyed it in 1987 subject to the requirement that the site be put to "non-residential business operations and corporate purposes" for at least five years, as evidence that the hardship on the site was not self-created; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the site's unique physical conditions; and

WHEREAS, the Board notes that the proposed use will be as of right for the majority of the site, and that the requested use variance is only necessary to accommodate minor operations on the R3-2 portion of the site, including egress from the site by delivery trucks and the parking of smaller trucks, which will be buffered from the nearby residential uses by new landscaping and fencing along Story Avenue; and

WHEREAS, accordingly, 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; 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. 10BSA060X, dated February 26, 2010; 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

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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 located partially within an M1-1 zoning district and partially within an R3-2 zoning district, the use of the portion of the site within the R3-2 zoning district for truck access and parking associated with the proposed Use Group 16 warehouse and storage facility on the portion of the lot within the M1-1 zoning district, which does not conform to district use regulations, contrary to ZR § 22-10; *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 29, 2011" (7) sheets; and *on further condition*:

THAT fencing and landscaping shall be installed as per the BSA-approved plans;

THAT the storage facility shall comply with the performance standards of ZR § 42-27;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT 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 12, 2011.

130-10-BZ

CEQR #11-BSA-006K

APPLICANT – Sheldon Lobel, P.C., for John Ingravallo, owner.

SUBJECT – Application July 16, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141) and perimeter wall height (§23-631) regulations. R3X zoning district.

PREMISES AFFECTED – 1153 85th Street, north side of 85th Street, between 11th and 12th Avenue, Block 6320, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated October 19, 2010, acting on Department of Buildings Application No. 310115862, reads in pertinent part:

1. The proposed Floor Area Ratio exceeds permitted maximum Floor Area Ratio and is contrary to Section 23-141 ZR
2. Height of New Extension above Base Plane exceeds the maximum permitted and is contrary to Section 23-631 ZR; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3X zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio ("FAR") and perimeter wall height, contrary to ZR §§ 23-141, 23-631; and

WHEREAS, a public hearing was held on this application on December 7, 2010, after due notice by publication in *The City Record*, with continued hearings on January 11, 2011, February 1, 2011 and March 15, 2011, and then to decision on April 12, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 10, Brooklyn, recommends disapproval of this application; and

WHEREAS, initially, a neighbor provided oral and written testimony in opposition to the proposal, citing concerns about (1) the measurement of the base plane and the associated perimeter wall height, (2) the front yard depth, and (3) the aesthetic character of the home; and

WHEREAS, during the course of the hearing process, the neighbor withdrew their opposition; and

WHEREAS, the subject site is located on the north side of 85th Street, between 11th Avenue and 12th Avenue, within an R3X zoning district; and

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a single-family home with a floor area of approximately 2,206 sq. ft. (0.36 FAR); and

WHEREAS, the site is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant represents that the home is currently under construction pursuant to an alteration permit for an as of right enlargement, which is on hold pending the outcome of the special permit application before the Board, which reflects a modification to the current DOB-approved plans; and

WHEREAS, the applicant seeks an increase in the floor area from approximately 2,206 sq. ft. (0.36 FAR) to 3,647 sq. ft. (0.6 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.50 FAR); and

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WHEREAS, the applicant proposes to provide a perimeter wall with a height of 23'-9", which it represents is equal to or less than the non-complying perimeter wall height of the home located to the east of the subject home (the maximum permitted perimeter wall height is 21'-0"); and

WHEREAS, the Board notes that a special permit under ZR § 73-622 allows a perimeter wall height to exceed the permitted height in an R3X zoning district, provided that the perimeter wall height is equal to or less than the perimeter wall height of an adjacent single- or two-family detached or semi-detached residence with an existing non-complying perimeter wall facing the street; and

WHEREAS, in support of the requested waiver for perimeter wall height, the applicant provided a survey establishing the height of the adjacent building; and

WHEREAS, the applicant represents that the perimeter wall of the proposed home therefore falls within the scope of the special permit; and

WHEREAS, additionally, the applicant notes that a portion of the pre-existing perimeter wall of the subject home has a height of 24'-11"; and

WHEREAS, the Board has determined that the applicant has submitted sufficient information to establish that applicant may match the pre-existing perimeter wall of the adjacent home, which exceeds a height of 21'-0"; and

WHEREAS, to address the Board's concerns about the accuracy of the base plane measurement, the applicant revised the plans to reflect the base plane elevation, which was approved by DOB in the context of the as of right plans; and

WHEREAS, based upon its review of the record, 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 R3X zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio or perimeter wall height, contrary to ZR §§ 23-141, 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 March 1, 2011"-(13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,647 sq. ft. (0.6 FAR), a maximum perimeter wall height of 23'-9" for the new portion of the home, and a front yard with a minimum depth of 18'-4", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 12, 2011.

149-10-BZ

CEQR #11-BSA-015K

APPLICANT – Eric Palatnik, P.C., for Chaya Singer, owner.

SUBJECT – Application August 13, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and lot coverage (§23-141); side yard (§23-461) and less than the minimum rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1415 East 29th Street, between Avenue N and Kings Highway, Block 7683, Lot 39, 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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 14, 2010, acting on Department of Buildings Application No. 320167467, reads in pertinent part:

1. Proposed floor area exceeds that which is permitted and is contrary to ZR 23-141.

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2. Proposed lot coverage exceeds that which is permitted and is contrary to ZR 23-141.
3. Proposed side yard does not meet min required contrary to ZR 23-461.
4. Proposed rear yard does not meet min required and is 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 home, which does not comply with the zoning requirements for floor area ratio ("FAR"), lot coverage, and side and rear yards, contrary to ZR §§ 23-141, 23-461 and 23-47; and

WHEREAS, a public hearing was held on this application on November 23, 2010, after due notice by publication in *The City Record*, with continued hearings on January 11, 2011, February 15, 2011 and March 15, 2011, and then to decision on April 12, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends disapproval of this application; and

WHEREAS, the subject site is located on the east side of East 29th Street, between Avenue N and Kings Highway, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,200 sq. ft., and is occupied by a single-family home with a floor area of approximately 1,522 sq. ft. (0.36 FAR); and

WHEREAS, the site 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 approximately 1,522 sq. ft. (0.36 FAR) to 4,200 sq. ft. (1.0 FAR); the maximum permitted floor area is 2,100 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of 1,972 sq. ft. (the maximum permitted lot coverage is 1,260 sq. ft.); and

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 4'-2" along the southern lot line (a minimum width of 5'-0" is required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 22'-0" (a minimum rear yard of 30'-0" is required); and

WHEREAS, at hearing, the Board raised concerns about (1) the location of a parking space within the front yard, (2) whether the proposed roof, second floor dormer, and perimeter wall were within the permitted building envelope, and (3) whether the front porch, which was included in the floor area calculations, and the applicant proposes to completely enclose, was considered to be a pre-existing legal encroachment into the front yard; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the parking space would be located within the side yard, rather than the front yard and that the proposed building envelope is permitted; and

WHEREAS, as to the front porch, the applicant

represents that because it is more than 50 percent enclosed and because it has a roof, the porch is deemed to already include floor area and is a legal pre-existing condition in the required front yard; the applicant stated that it will confirm the legality of the front yard condition with DOB; and

WHEREAS, the Board informed the applicant that it would not take a position as to the status of the front porch condition; and

WHEREAS, accordingly, the applicant stated that after obtaining a special permit from the Board, it would request a determination from DOB as to whether or not the front porch may be fully enclosed and seek confirmation that the existing porch is deemed to already be enclosed for zoning purposes and, thus, the proposal to fully enclose the porch does not create any new non-compliance as to the front yard; the applicant would then seek an amendment to the plans approved under the special permit, if necessary; and

WHEREAS, the Board also stated that it would not assess whether all of the applicant's proposed floor area deductions are appropriate and directed the applicant to confirm the deductions with DOB; and

WHEREAS, portions of the existing foundation walls, first and second floor walls, and floor joists on the first floor will remain; and

WHEREAS, based upon its review of the record, 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, within an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, lot coverage and, side and rear 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 March 22, 2011"-(11) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,200 sq. ft. (1.0 FAR); a lot coverage of 1,972 sq. ft.; a side yard with a minimum width of 4'-2" along the southern lot line; a side

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yard with a minimum depth of 8'-0" along the northern lot line; and a rear yard with a minimum depth of 22'-0", as illustrated on the BSA-approved plans;

THAT DOB shall confirm the compliance of the front porch condition, the attic, and all mechanical deductions;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 12, 2011.

**218-10-BZ
CEQR #11-BSA-041K**

APPLICANT – Simons & Wright LLC, for Bermuda Realty LLC, owner.

SUBJECT – Application November 19, 2010 – Special Permit (§73-19) for the construction of a four-story school (*Brownsville Ascend Charter School*). C8-2 zoning district.

PREMISES AFFECTED – 123 East 98th Street, aka 1 Blake Avenue, corner of the intersection of East 98th and Blake Avenue between Ralph Avenue and Union Street, Block 3531, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Emily Simons.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 18, 2010, acting on Department of Buildings Application No. 302217134, reads in pertinent part:

“The proposed educational facilities and accessory uses in schools are not permitted as-of-right in C8-2 zoning district as per Zoning Resolution Section ZR 32-12;” and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site within a C8-2 zoning district, the

proposed operation of a school (Use Group 3), contrary to ZR § 32-12; and

WHEREAS, a public hearing was held on this application on February 15, 2011, after due notice by publication in the *City Record*, with a continued hearing on March 29, 2011, and then to decision on April 12, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 16, Brooklyn, recommends approval of this application; and

WHEREAS, New York State Assemblyman William F. Boyland, Jr. provided testimony in support of this application; and

WHEREAS, the application is brought on behalf of The Brownsville Ascend Charter School (the “School”); and

WHEREAS, the site is located on the northeast corner of East 98th Street and Blake Avenue, within a C8-2 zoning district; and

WHEREAS, the site has a lot area of 11,535 sq. ft.; and

WHEREAS, the site is currently occupied by a vacant, newly-constructed four-story building with a floor area of 46,140 sq. ft.; and

WHEREAS, the applicant proposes to occupy the existing building for use as a school (Use Group 3); and

WHEREAS, the applicant represents that the proposed school meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in a C8 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate the inability to obtain a site for the development of a school within the neighborhood to be served and with a size sufficient to meet the programmatic needs of the school within a district where the school is permitted as-of-right; and

WHEREAS, the applicant states that the proposed building will serve an estimated 250 students from kindergarten through fourth grade in year one, and will expand its educational program in the next several years to include the fifth through eighth grades, with a total student body of approximately 500 students; and

WHEREAS, the School’s program includes classrooms, a music room, an art studio, a library, a cafeteria/multi-purpose room, a computer laboratory, science laboratories, offices, storage space, and rooftop recreation space; and

WHEREAS, the applicant states that the School’s program requires a building with a floor area of at least 40,000 sq. ft.; and

WHEREAS, the applicant states that the School has an additional programmatic need to be located within Community School District 23 in the Brownsville neighborhood of Brooklyn, as per the School’s New York State Department of Education Charter; and

WHEREAS, the applicant further states that due to the School’s Charter requirements and because the majority of

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the students are anticipated to live in the Brownsville area, it conducted a search for a suitable location for the School in that area; and

WHEREAS, specifically, the applicant states that the parameters of its site search encompassed a 90-block area from Rockaway Parkway to the east, Livonia Avenue to the south, Junius Street to the west and East New York Avenue to the north; and

WHEREAS, the applicant represents that during the site search it specifically evaluated the feasibility of ten lots within the search parameters: 1620 Pitkin Avenue, 1797 Pitkin Avenue, 313 Powell Street, 365 Bristol Street, 633-635 Rockaway Avenue, 231 Livonia Avenue, 279 Grafton Street, 512 Saratoga Avenue, 402 Rockaway Avenue, and 69 Chester Street; and

WHEREAS, the applicant states that 231 Livonia Avenue, 279 Grafton Street, 512 Saratoga Avenue, 402 Rockaway Avenue, and 69 Chester Street are all vacant 5,000 sq. ft. lots which could only accommodate a school building with a maximum floor area of 24,000 sq. ft., which would not meet the School's programmatic needs or enrollment requirements; and

WHEREAS, the applicant further states that 1797 Pitkin Avenue consists of a vacant three-story commercial building located on an 8,000 sq. ft. lot, which the applicant determined to be infeasible because the building owner was not willing to enlarge the existing building to make it suitable to meet the School's programmatic needs, and because the maximum floor area on the lot is only 30,000 sq. ft.; and

WHEREAS, the applicant states that 313 Powell Avenue is occupied by a five-story commercial building with a floor area of 44,000 sq. ft., and while large enough to accommodate the School, the building is currently occupied by a community facility use and the owner was not willing to sell or lease the building to the School; and

WHEREAS, the applicant states that 633-635 Rockaway Avenue is occupied by a severely dilapidated three-story vacant former school building with a floor area of 27,000 sq. ft., which the owner was unwilling to renovate and enlarge in order to lease it to the School; and

WHEREAS, the applicant further states that the lots located at 1620 Pitkin Avenue, a 24,724 sq. ft. lot occupied by a one-story building with a floor area of 10,000 sq. ft., and 365 Bristol Street, a 15,000 sq. ft. vacant lot, were both of a sufficient size to construct a building that could accommodate the School, however, they were found to be economically infeasible due to their high acquisition costs; and

WHEREAS, therefore, the applicant concluded that none of the sites within zoning districts where the use would be permitted as of right would be able to accommodate the proposed school; and

WHEREAS, the applicant maintains that the results of the site search reflect that there is no practical possibility of obtaining a site of adequate size in a nearby zoning district where a school would be permitted as-of-right; and

WHEREAS, accordingly, the Board finds that the

requirements of ZR § 73-19 (a) are met; and

WHEREAS, ZR § 73-19 (b) requires an applicant to demonstrate that the proposed school is located no more than 400 feet from the boundary of a district in which such a school is permitted as of right; and

WHEREAS, the applicant submitted a land use map which reflects that the subject site is less than 400 feet from R6 zoning districts to the north, west and east, where the proposed use would be permitted as-of-right; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (b) are met; and

WHEREAS, ZR § 73-19 (c) requires an applicant to demonstrate how it will achieve adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district; and

WHEREAS, the applicant states that adequate separation from noise, traffic and other adverse effects of the surrounding C8-2 zoning district will be provided through the use of sound attenuating exterior wall and window construction; and

WHEREAS, specifically, the applicant states that the building construction will include triple-glazed windows and an alternate means of ventilation, which will provide window/wall attenuation of 44 dBA for all facades of the building, and therefore result in interior noise levels of less than 45 dBA, in accordance with the New York City CEQR Technical Manual; and

WHEREAS, the applicant states that separation from noise and traffic will be further maintained by locating the entrance to the School on Blake Avenue, a lightly trafficked street; and

WHEREAS, the Board finds that the conditions surrounding the site and the construction of the building, including the installation of triple-glazed windows and an alternate means of ventilation, will adequately separate the School from noise, traffic and other adverse effects of any of the uses within the surrounding C8-2-2 zoning district; thus, the Board finds that the requirements of ZR § 73-19 (c) are met; and

WHEREAS, ZR § 73-19 (d) requires an applicant to demonstrate how the movement of traffic through the street on which the school will be located can be controlled so as to protect children traveling to and from the school; and

WHEREAS, the applicant states that all of the streets adjacent to the School are lightly trafficked, and therefore the students travelling to and from the School will not be affected by the movement of traffic on the adjacent streets; and

WHEREAS, the applicant states that approximately 85 percent of the students attending the School are expected to arrive and depart by school bus, mass transit, or walking; the remaining 15 percent are expected to be driven to and from the School's pick up/drop off location at the Blake Avenue entrance; and

WHEREAS, the applicant further states that it anticipates that school buses will be used primarily for the students from kindergarten through fourth grade, and for approximately 25 percent of the students from fifth grade

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through eighth grade; and

WHEREAS, accordingly, the applicant anticipates that two school buses will be provided for the 2011 school year, and that four to five school buses will be provided when the school reaches its full capacity of 500 students; and

WHEREAS, the applicant notes that it has requested that the Department of Transportation (“DOT”) install a “No Standing Zone” during school hours for the portion of Blake Avenue where school buses and cars will be dropping off and picking up students; and

WHEREAS, at hearing, the Board questioned whether a traffic signal should be installed at the intersection of Blake Avenue and East 98th Street; and

WHEREAS, in response, the applicant submitted an engineer’s report which states that it analyzed the subject intersection according to the criteria used by DOT for determining whether the installation of a traffic signal is warranted, and concluded that the intersection at Blake Avenue and East 98th Street does not meet the basic DOT requirements for installing a traffic signal; and

WHEREAS, the applicant represents that it will request that the local police precinct assign a crossing guard to the intersection of Blake Avenue and East 98th Street, which will be assessed by the New York City Police Department when the School formally opens; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation (“DOT”); and

WHEREAS, by letter dated January 12, 2011, DOT Safety states that it has no objection to the proposed school; and

WHEREAS, the Board also referred the application to DOT’s Traffic Planning Office; and

WHEREAS, by letter dated March 31, 2011, DOT states that the proposed traffic improvement measures, including signal timing modifications, the installation of a “No Standing Zone” along the north curb of Blake Avenue between East 98th Street and Union Street, and the anticipated request for a crossing guard at the intersection of Blake Avenue and East 98th Street from NYPD, appear reasonable and feasible and DOT will investigate the need for implementing the improvement measures or similar measures when the project is built and occupied in 2011; and

WHEREAS, the Board finds that the above-mentioned measures maintain safe conditions for children going to and from the School; and

WHEREAS, the applicant also submitted an Environmental Assessment Statement which indicated that the School will not generate a significant number of vehicle trips and will not have a significant adverse impact on traffic; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19 (d) are met; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-19; and

WHEREAS, the New York City Department of

Environmental Protection’s (“DEP”) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, DEP reviewed the November 2009 Environmental Assessment Statement, September 2009 Phase I report, July 2009 Phase II Environmental Investigation Workplan, July 2009 Phase II Subsurface Investigation report, Health and Safety Plan, and November 2010 Supplemental Phase II report; and

WHEREAS, DEP requested that a Construction Health and Safety Plan (“CHASP”) be submitted for review and approval; and

WHEREAS, DEP accepted the February 2011 CHASP and requested that a professional engineer-certified Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP reviewed the applicant’s stationary and mobile sources air quality analyses and determined that significant impacts related to the proposed project are not anticipated; and

WHEREAS, DEP reviewed the March 28, 2011 noise assessment report and supplemental information regarding the specifications for the windows that would maintain the required interior noise level of 45 dBA, and determined that significant impacts related to the proposed project are not anticipated based on using an alternate means of ventilation (air-conditioning) to maintain a closed window condition; 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 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 §§ 73-19 and 73-03 and grants a special permit, to allow the proposed construction of a school (Use Group 3), on a site within a C8-2 zoning district; *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, 2011” - (7) sheets and “Received April 7, 2011” - (5) sheets; and *on further condition*:

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor shall obtain from DEP a Notice to Proceed;

THAT prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain from DEP a Notice of Satisfaction;

THAT an interior noise level of 45 dBA or less shall be maintained through the installation of double sets of fixed

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(non-operable) windows on each façade and an alternate means of ventilation throughout the building, 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 substantial construction be completed in accordance with ZR § 73-70;

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, April 12, 2011.

240-09-BZ

APPLICANT – T-Mobile Northeast LLC f/k/a Omnipoint Communications Inc., for 452 & 454 City Island Avenue Realty Corp., owner; T-Mobile Northeast LLC, lessee.

SUBJECT – Application August 10, 2009 – Variance (§72-21) to construct a telecommunications facility on the rooftop of an existing building, contrary to height (Special City Island District (CD), §112-103, §33-431) and rear and side yard setback (§§23-47 and 23-464) requirements. R3A/C2-2/CD districts.

PREMISES AFFECTED – 454 City Island Avenue, east side of City Island Avenue bound by Browne Street, south and Beach Street to the north, Block 5646, Lot 3, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Adam Moss.

ACTION OF THE BOARD – Laid over to May 24, 2011, at 1:30 P.M., for adjourned hearing.

31-10-BZ

APPLICANT – Eric Palatnik, P.C., for 85-15 Queens Realty, LLC, owner.

SUBJECT – Application March 16, 2010 – Variance (§72-21) to allow for a commercial building, contrary to use (§22-00), lot coverage (§23-141), front yard (§23-45), side yard (§23-464), rear yard (§33-283), height (§23-631) and location of uses within a building (§32-431) regulations. C1-2/R6, C2-3/R6, C1-2/R7A, R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard aka 51-35 Reeder Street, north side of Queens Boulevard, between Broadway and Reeder Street, Block 1549, Lot 28, 41, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik and Robert B. Pauls.

ACTION OF THE BOARD – Laid over to June 7, 2011, at 1:30 P.M., for continued hearing.

46-10-BZ

APPLICANT – Eric Palatnik, P.C., for 1401 Bay LLC, owner.

SUBJECT – Application April 8, 2010 – Special Permit (§73-44) to permit a reduction in required parking for ambulatory and diagnostic treatment center. C4-2 zoning district.

PREMISES AFFECTED – 1401 Sheepshead Bay Road, Avenue Z and Sheepshead Bay Road, Block 7459, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik, Robert Palermo, George Krasanakis and Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to June 7, 2011, at 1:30 P.M., for continued hearing.

54-10-BZ

APPLICANT – Eric Palatnik, P.C., for Richard Valenti as Trustee, owner; Babis Krasanakis, lessee.

SUBJECT – Application April 19, 2010 – Special Permit (§73-44) to permit reduction in required parking for an ambulatory diagnostic or treatment center. C4-2 zoning district.

PREMISES AFFECTED – 150(c) Sheepshead Bay Road, aka 1508 Avenue Z, south side of Avenue Z, between East 15th and East 16th Street, Block 7460, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik, Robert Palermo, George Krasanakis and Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to June 7, 2011, at 1:30 P.M., for continued hearing.

90-10-BZ

APPLICANT – James Chin & Associates, LLC, for Chan Ahn, owner.

SUBJECT – Application August 14, 2010 – Variance (§72-21) to permit a house of worship (*Korean Central Presbyterian Church*), contrary to front yard (§24-34), side yard (§24-35), and rear yard (§24-36). R2A zoning district.

PREMISES AFFECTED – 58-06 Springfield Boulevard, corner of the west side of Springfield Boulevard, west north side of the Horace Harding Expressway, Block 7471, Lots 7 and 48, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: James Chin and Mindy Chin.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

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ACTION OF THE BOARD – Laid over to May 17, 2011, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

197-10-BZ thru 199-10-BZ

APPLICANT – Antonio S. Valenziano, AIA, for John Merolo, owner.

SUBJECT – Application October 26, 2010 – Variance (§72-21) to allow three residential buildings in a manufacturing district, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 59, 63 & 67 Fillmore Street, 491.88' west of York Avenue, Block 61, Lot 27, 29, 31, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 17, 2011, at 1:30 P.M., for deferred decision.

227-10-BZ

APPLICANT – Eric Palatnik, P.C., for Power Test Realty Company Limited Partnership, owner.

SUBJECT – Application December 14, 2010 – Reinstatement (§11-411) of a previously approved variance permitting the operation of an automotive service station (UG 16B) (*Getty*) which expired on October 11, 2000; Amendment to legalize fuel dispensing islands; Extension of Time to obtain a certificate of occupancy which expired on November 17, 1993; Waiver of the rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 204-12 Northern Boulevard, Northern Boulevard and 204th Street. Block 7301, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Henry Euler and Mandingo Tshaka.

ACTION OF THE BOARD – Laid over to May 17, 2011, at 1:30 P.M., for continued hearing.

1-11-BZ

APPLICANT – Martyn & Don Weston Architects, for RAC LLC Realty, owner; Sahadi Importing Company, lessee.

SUBJECT – Application January 3, 2011 – Variance (§72-21) to allow a ground floor enlargement to a pre-existing non complying commercial building, contrary to floor area regulations (§53-31). C2-3/R6 zoning district.

PREMISES AFFECTED – 189-191 Atlantic Avenue, north side of Atlantic Avenue, 240' east of Clinton Street, Block 276, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Don Weston, Pamela Weston and Robert Buxbarm.

ACTION OF THE BOARD – Laid over to June 7, 2011, at 1:30 P.M., for continued hearing.

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*CORRECTION

This resolution adopted on December 14, 2010, under Calendar No. 104-10-BZ and printed in Volume 95, Bulletin No. 51, is hereby corrected to read as follows:

104-10-BZ

CEQR #10-BSA-077K

APPLICANT – Moshe M. Friedman, P.E., for Congregation Ohr Yisroel Inc., owner.

SUBJECT – Application June 8, 2010 – Variance (§72-21) to permit the extension and conversion of an existing residential building to a synagogue and rectory, contrary to lot coverage and floor area (§24-11) front yard (§24-34), side yard (§24-35) and wall height and sky exposure plane (§24-521). R5 zoning district.

PREMISES AFFECTED – 5002 19th Avenue, aka 1880-1890 50th Street, south side of 50th Street, west of 19th Avenue, Block 5461, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant:

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated May 13, 2010, acting on Department of Buildings Application No. 320152213 reads, in pertinent part:

“Proposed house of worship (UG 4) in an R5 district is contrary to:

- ZR 24-11 Floor Area & Lot Coverage
- ZR 24-521 Height
- ZR 23-34 Front Yard
- ZR 24-35 Side Yard
- ZR 23-521 Sky Exposure Plane

And requires a variance from the Board of Standards and Appeals as per Section 72-21;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R5 zoning district, the conversion and enlargement of an existing residential building to a synagogue (Use Group 4), which does not comply with floor area, lot coverage, front yard, side yard, height and sky exposure plane requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35 and 24-521; and

WHEREAS, a public hearing was held on this application on October 5, 2010, after due notice by publication in *The City Record*, with a continued hearing on November 16, 2010, and then to decision on December 14, 2010; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of the application; and

WHEREAS, certain neighborhood residents provided written testimony in support of this application; and

WHEREAS, this application is being brought on behalf of Congregation Ohr Yisroel, a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject site is located on the southwest corner of 19th Avenue and 50th Street, within an R5 zoning district; and

WHEREAS, the subject lot has a width of 20’-2”, a depth of 100’-0”, and a lot area of 2,081 sq. ft.; and

WHEREAS, the subject site is currently occupied by a two-story residential building with a floor area of 3,464 sq. ft. (1.72 FAR); and

WHEREAS, the proposed building provides for a three-story synagogue with the following parameters: a floor area of 5,696 sq. ft. (the maximum permitted floor area is 4,162 sq. ft.), an FAR of 2.82 (the maximum permitted FAR is 2.0); lot coverage of 95 percent (the maximum permitted lot coverage is 60 percent); a front yard with a depth of 5’-0” along the eastern lot line and no front yard along the northern lot line (a front yard with a minimum depth of 10’-0” is required); no side yards (two side yards with minimum depths of 8’-0” and 9’-6”, respectively, are required); a front wall height of 40’-0” (the maximum permitted front wall height is 35’-0”); and encroachment into the sky exposure plane; and

WHEREAS, the proposal provides for the following uses: (1) a synagogue at the cellar level and first floor; (2) a women’s balcony on the second floor; and (3) a library and rabbinical study room on the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate its growing congregation; and (2) to provide a separate space for men and women during religious services; and

WHEREAS, the applicant states that the congregation currently has a membership of 60 families and there are approximately 60 congregants who worship at the current rented facility on the Sabbath, between 30 and 40 congregants who attend daily services, and approximately 115 congregants who attend holiday services; and

WHEREAS, the applicant further states that the congregation currently worships in rented space and has to rent out additional space for holiday services, which attract a larger number of worshippers; and

WHEREAS, the applicant represents that the size, layout and design of the subject building is inadequate to serve the current congregation; and

WHEREAS, the applicant represents that the congregation is made up of many young families and has been growing steadily since its inception, and that the proposed synagogue is necessary to accommodate the future growth of the congregation; and

WHEREAS, the applicant states that the proposed building can accommodate its growing congregation as well as provide a separate worship space for men and women, as

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required by religious doctrine; and

WHEREAS, the applicant states that the requested waivers enable the Synagogue to provide adequate space for worship services in the cellar synagogue, first floor synagogue, and the women's balcony; and

WHEREAS, the applicant represents that worship space which separates men and women is critical to its religious practice; and

WHEREAS, the applicant further represents that the third floor study space is necessary to accommodate the religious traditions of the congregation, which require that the congregation set aside a study period during prayer times for the study of the Torah, Talmud, and other Jewish religious texts; and

WHEREAS, the Board acknowledges that the Synagogue, as a religious institution, is entitled to significant deference under the 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, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that 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, however, the applicant also represents that the narrow width of the site creates an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, the subject lot has a width of 20'-2"; and

WHEREAS, the applicant states that the site is too narrow to accommodate a complying synagogue building, as providing complying side yards would reduce the width of the building to 4'-9"; and

WHEREAS, the applicant represents that, therefore, the required floor area cannot be accommodated within the as-of-right lot coverage, floor area, and yard parameters and allow for efficient floor plates that accommodate the Synagogue's programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical condition, when considered 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 that the proposed use is permitted in the subject zoning district; and

WHEREAS, as to bulk, the applicant submitted a 400-ft. radius diagram reflecting that the residential character of the surrounding neighborhood includes one-, two- and three-family homes and three- and four-story apartment buildings; and

WHEREAS, the applicant states that the proposed three-story building is consistent with the surrounding area, as three-story residential buildings are permitted in the subject zoning district; and

WHEREAS, at hearing, the Board questioned whether the applicant needed the requested front yard waiver, and the effect it would have on the surrounding residences; and

WHEREAS, in response, the applicant submitted plans for a lesser variance alternative that eliminated the front yard waiver; and

WHEREAS, the plans submitted by the applicant reflect that the lesser variance scenario would limit the occupancy of both the proposed synagogue and balcony to 63 people, and would limit the occupancy of the cellar synagogue to 38 people; and

WHEREAS, the applicant states that while the lesser variance scenario would provide a temporary reprieve to the Synagogue's space requirements for weekday and Sabbath services, it would not meet the programmatic needs of the Synagogue because it would not provide adequate space to accommodate the current congregation during holiday services, and would not provide space to accommodate the anticipated growth of the congregation; and

WHEREAS, the applicant also submitted letters from the adjacent neighbors on 19th Avenue in support of the proposal, including the extension of the building into the front yard; and

WHEREAS, accordingly, 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, 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 Synagogue 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, as noted above, the applicant submitted plans for a lesser variance scenario which was unable to meet the programmatic needs of the Synagogue; and

WHEREAS, accordingly, the Board finds the requested waivers 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

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action pursuant to 6 NYCRR Part 617.2; 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. 10BSA077K, dated September 15, 2010; 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 each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site within an R5 zoning district, the conversion and enlargement of an existing residential building to a synagogue (Use Group 4), which does not comply with floor area, lot coverage, front yard, side yard, height and sky exposure plane requirements for community facilities, contrary to ZR §§ 24-11, 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 June 8, 2010” – (9) sheets and “Received September 15, 2010” – (1) sheet; and *on further condition*:

THAT the building parameters shall be: a floor area of 5,696 sq. ft. (2.82 FAR); lot coverage of 95 percent; a front yard with a depth of 5’-0” along the eastern lot line; and a front wall height of 40’-0”, as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4);

THAT no commercial catering shall take place onsite;

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 construction shall proceed in accordance with ZR

§ 72-23;

THAT the Department of Buildings must ensure compliance 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 14, 2010.

***The resolution has been revised to correct the lot coverage which read: “94 percent” now reads: “95 percent”. Corrected in Bulletin No. 16, Vol. 96, dated April 21, 2011.**

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*CORRECTION

This resolution adopted on January 11, 2011, under Calendar No. 107-10-BZ and printed in Volume 96, Bulletin Nos. 1-3, is hereby corrected to read as follows:

107-10-BZ

APPLICANT – Akerman Senterfitt, for Associazione Sacchese D’America, owner.

SUBJECT – Application June 10, 2010 – Variance (§72-21) to allow for a community facility use (*Associazione Sacchese D’America*), contrary to side yard regulations (§24-35). R2 zoning district.

PREMISES AFFECTED – 12-24 149th Street, between 12th Avenue and Cross Island Parkway, Block 4466, Lot 21, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated May 15, 2010, acting on Department of Buildings Application No. 420092081, reads in pertinent part:

“As per ZR 24-35(a) minimum required side yards:

(a) two side yards shall be provided, each with a minimum required width of eight feet;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R2 zoning district the legalization of a community facility use on the first floor of an existing mixed-use community facility/residential building which does not comply with side yard regulations for community facility use, contrary to ZR § 24-35; and

WHEREAS, a public hearing was held on this application on November 16, 2010, after due notice by publication in the *City Record*, with a continued hearing on December 14, 2010 and then to decision on January 11, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, the Queens Borough President recommends approval of this application; and

WHEREAS, State Senator Frank Padavan and State Assemblywoman Ann-Margaret Carrozza provided written testimony in support of the application; and

WHEREAS, two adjacent neighbors provided letters in support of the application; and

WHEREAS, Saint Luke’s Church provided written

testimony in support of the application, noting that the applicant works in conjunction with the church for religious events and community-based social service events; and

WHEREAS, the application is brought on behalf of the Associazione Sacchese D’America (the “Association”), a nonprofit religious organization; and

WHEREAS, the site is located on the west side of 149th Street, between Cross Island Parkway and 12th Avenue; and

WHEREAS, the site has a lot area of approximately 4,037 sq. ft. (.56 FAR) and is located within an R2 zoning district; and

WHEREAS, the site is occupied by a two-story building, built in 1915 for residential occupancy; the first floor of the building is occupied by the Association (Use Group 4) and the second floor is occupied by residential use (Use Group 2), both of which are proposed to remain; and

WHEREAS, the applicant now proposes to legalize the existing community facility use within the existing building without any physical changes to the building; and

WHEREAS, the existing building is non-complying as to side yards; specifically, the existing side yards have widths of 4’-0” and 1’-0” (a community facility use requires two side yards with minimum widths of 8’-0” each); and

WHEREAS, the side yards are pre-existing legal non-compliances for residential use, but a variance is required due to the change in use and the increased degree of non-compliance as to the side yards associated with the community facility use; and

WHEREAS, the applicant represents that the proposed legalization of the community facility use will not create any other non-compliances and that the building will remain at .56 FAR (a maximum FAR of 1.0 is permitted for the mixed-use building); and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the programmatic needs of the Association; and (2) the narrowness of the zoning lot; and

WHEREAS, specifically, the applicant states that the following are the programmatic needs of the Association which require the requested waivers: to provide a sufficiently-sized gathering place for its members to worship the Roman Catholic Patron Saints of Sacco, Italy, within walking distance of many of its members; and

WHEREAS, the applicant states that the Association conducts religious, cultural and civic functions related to the worship of its patron saint Maria Santissimo D’Angeli, usually conducting worship services in the evening; the Association also works closely with nearby St. Luke’s Church to provide services which the church cannot accommodate; and

WHEREAS, the Board acknowledges that the Association, as a religious institution, is entitled to significant deference under the 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, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution’s application is to be permitted unless it can be

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shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the Board finds that the Association's programmatic needs are legitimate, and agrees that the existing first floor space is required to accommodate the Association's programmatic needs at the subject site; and

WHEREAS, the applicant represents that the building was built as a residential building nearly 100 years ago and that it cannot be occupied by a community facility in strict compliance with zoning district regulations; and

WHEREAS, as to the site's narrow width, the applicant notes that the site has a width of 25 feet and that if a new building were constructed at the site to accommodate the community facility use with two complying side yards with widths of 8'-0", the exterior width of the building would be 9'-0", an insufficient width to accommodate the Association's programmatic needs; and

WHEREAS, as to the uniqueness of the site condition, the Board notes that the 400-ft. radius diagram reflects that there are only approximately two lots with similar or narrower widths that are occupied by detached buildings with two side yards; and

WHEREAS, accordingly, based upon the above, the Board finds that the limitations of the site, when considered in conjunction with the programmatic needs of the Association, creates unnecessary hardship and practical difficulty in occupying the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Association 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, the applicant notes that community facility use is permitted within the zoning district; and

WHEREAS, the applicant states that the existing 1915 building with non-complying side yards will not be changed and is compatible with the context of the immediate area; and

WHEREAS, the applicant notes that the building is compatible in size with the other buildings in the area, including many similar two-story residential buildings; 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 construction that would meet the programmatic needs of the Association 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 applicant represents that the requested side yard waivers are the minimum necessary to accommodate the Association's programmatic needs; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the Association to fulfill its programmatic needs on the narrow site; 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 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 R2 zoning district, the legalization of a community facility use on the first floor of an existing mixed-use community facility/residential building which does not comply with side yard regulations for community facility use, contrary to ZR § 24-35, *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 10, 2010" – two (2) sheets and "Received November 9, 2010" – one (1) sheet and *on further condition*:

THAT any change in control or ownership 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 use of the building 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, January 11, 2011.

***The resolution has been revised to correct the Application Date which read: "September 10, 2010" now reads: "June 10, 2010". Corrected in Bulletin No. 16, Vol. 96, dated April 21, 2011.**

BULLETIN

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DOCKET

New Case Filed Up to May 3, 2011

44-11-A

74 Tioga Walk, West side of Tioga Walk 332.6' north of Breezy Point Boulevard., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14**. Proposed reconstruction and enlargement of an existing single family dwelling, contrary to General City Law Section 35, Article 3. R4 Zoning District R4 district.

45-11-A

29 Kildare Walk, East side of Kildare Walk 223" south of Oceanside Avenue., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14**. Proposed reconstruction and enlargement of an existing single family home, contrary to General City Law Section 36, Article 3 and the proposed upgrade of the private disposal system located partially within the bed of the Service Road is contrary to Department of Buildings Policy . R4 Zoning district . R4 district.

46-11-A

57 Bedford Avenue, East side of Bedford Avenue 174 feet north of 12th Avenue., Block 16350, Lot(s) p/o 300, Borough of **Queens, Community Board: 14**. Proposed reconstruction of an existing single family home , contrary to General City Law Section 36, Article 3 and the proposed upgrade on the existing non-complying private disposal system in the bed of the service road contrary to Department of Buildings Policy .R4 Zoning District R4 district.

47-11-BZ

1213 Bay 25th Street, West side of Bay 25th between Bayswater Avenue and Healy Avenue., Block 15720, Lot(s) 67, Borough of **Queens, Community Board: 14**. Variance (§72-21) to allow a three-story yeshiva with dormitories, contrary to bulk regulations. R2 district.

48-11-BZ

60 Madison Avenue, North side of Madison Avenue at East 26th Street and the north east corner to East 27th Street., Block 856, Lot(s) 58, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to allow the operation of a physical culture establishment. C5-2 zoning district. C5-2 district.

49-11-BZ

135 West 20th Street, North side of West 20th Street between 6th and 7th Avenues., Block 796, Lot(s) 18, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to allow the operation of a physical culture establishment. C6-3A zoning district. C6-3A district.

50-11-A

134-07 87th Avenue, North side of 87th Avenue, 50 feet east of the corner formed by the intersection of 87th Avenue and 134th Street., Block 9630, Lot(s) 11, Borough of **Queens, Community Board: 9**. Appeal seeking a common law vested to continue development under prior zoning district. R4-1 zoning district. R4-1 district.

51-11-BZ

1226 East 26th Street, West side of East 26th Street between Avenue L and Avenue M., Block 7643, Lot(s) 55, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space 23-141; yard less than the required rear yard 23-47. R2 zoning district. R2 district.

52-11-A

South Street & John Street, East South Street, at John Street, under the FDR Drive., Block 73, Lot(s) 2,8, Borough of **Manhattan, Community Board: 1**. Appeal for a variance to Appendix G, Section G304.1.2 of the NYC Building Code to allow for a portion of a structure to be located below a food zone. C2-8 district.

53-11-BZ

154 Madison Street, Southeast corner of Madison Street and Pike Street., Block 274, Lot(s) 24, Borough of **Manhattan, Community Board: 3**. Variance (§72-21) to allow an eight-story mixed use residential building with ground floor community facility. C8-4 district.

54-11-BZ

6010 Bay Parkway, West side of Bay Parkway between 60th Street and 61st Street., Block 5522, Lot(s) 36 & 42, Borough of **Brooklyn, Community Board: 12**. Special Permit (§73-44) to permit the reduction in required parking for an ambulatory diagnostic or treatment facility building. R6/C1-3 zoning district. R6/C1-3 district.

DOCKET

55-11-BZ

2914 Third Avenue, Through lot located approx. 51 ft. south of East 152nd Street, with approx. 45 ft. of frontage on Third Avenue and 75 ft. of frontage on Bergen Avenue., Block 2362, Lot(s) 13, Borough of **Bronx, Community Board: 1.**

Special Permit (§73-36) to allow the operation of a physical culture establishment. C4-4 zoning district. C4-4 district.

56-11-BZ

957 East 7th Street, East side of East 7th Street, approximately midblock between Avenue and Avenue I., Block 6510, Lot(s) 68, Borough of **Brooklyn, Community Board: 12.** Variance (§72-21) to allow the enlargement to an existing one-family semi-detached residence, contrary to bulk regulations. R2X district.

57-11-BZ

208 West 125th Street, Through lot with frontage on West 125th Street and West 124th Street located approximately 63' west of Adam Clayton Powell Boulevard., Block 193., Lot(s) 37, Borough of **Manhattan, Community Board: 10.**

Special Permit (§73-36) to allow the operation of a physical culture establishment. C6-3/C4-4D. C6-3/C4-4D district.

58-11-BZ

20-22 East 91st Street, South side of East 91st Street, 62.17 ft. westerly from the corner formed by the intersection of the southerly side of 91st. Street & the westerly side of Madison Avenue., Block 1502, Lot(s) 59 & 12, Borough of **Manhattan, Community Board: 08.** Variance (§72-21) for the construction of a proposed Connector within rear yard. R8B 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

MAY 17, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 17, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

156-03-BZ

APPLICANT – Steven M. Sinacori, Esq., of Akerman Senterfitt, for RKO Plaza LLC & Farrington Avenue Developers, LLC, owner.

SUBJECT – Application November 30, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a seventeen story mixed-use commercial / community facility / residential condominium building which expired on December 13, 2009. C2-2/R6 zoning district.

PREMISES AFFECTED – 135-35 Northern Boulevard, north side of Northern Boulevard, between Prince street and Farrington street, Block 4958, Lot 38 & 48, Borough of Queens.

COMMUNITY BOARD #7Q

101-05-BZ

APPLICANT –Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for 377 Greenwich LLC c/o Ira Drukler, owner.

SUBJECT – Application April 7, 2011 – Amendment to a previously granted Variance (ZR §72-21) for the construction of a 7 story hotel with penthouse (The Greenwich Hotel) which seeks to legalize the penthouse footprint and modify the penthouse façade. C6-2A/TMU(A-1) zoning district.

PREMISES AFFECTED – 377 Greenwich Street, east side of Greenwich Street on the corner formed by intersection of south of North Moore Street and east side of Greenwich Street, Block 187, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEALS CALENDAR

14-11-A

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Schron and Eli Shron, owners.

SUBJECT – Application February 2, 2011 – Appeal challenging a determination by the Department of Building interpretation that when cellar exceeds 49% of the total floor space of the residence it is not considered an accessory use as defined by ZR §12-10. R-2 Zoning district.

PREMISES AFFECTED – 1221 East 22th Street, between Avenues K and L, Block 7622, Lot 21, Borough of

Brooklyn.

COMMUNITY BOARD #14BK

94-10-A

APPLICANT – Borah, Goldstein, Altschuler, Nahins & Goidel, P.C., for Twenty-Seven-Twenty Four Realty Corporation, owner.

SUBJECT – Application May 26, 2010 – Appeal challenging the Department of Buildings determination that the signs located on the north and south walls of the subject building are not a continuance of a legal nonconforming use. C2-2 Zoning district.

PREMISES AFFECTED – 27-24 21st Street, west side of 21st Street south of Astoria Boulevard, Block 539, Lot 35, Borough of Queens.

COMMUNITY BOARD #1Q

MAY 17, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 17, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

3-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Schron and Eli Shron, owners.

SUBJECT – Application January 10, 2011 – Special Permit (§73-622) for the enlargement of a single family home contrary to floor area and open space (ZR §23-141) and less than the required rear yard (ZR §23-47). R-2 zoning district.

PREMISES AFFECTED – 1221 East 22nd Street, between Avenue K and Avenue L, Block 7622, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #14BK

4-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 1747 East 2nd Street, LLC, owner.

SUBJECT – Application January 10, 2011 – Variance (§72-21) to permit the construction of a three-story synagogue that is contrary to bulk regulations lot coverage (§24-11), floor area (§113-51), wall height and total height (§113-55), front yard (§113-542), side yards (§113-543), encroachment into required setback and sky exposure plane (§113-55), and parking (§25-18, §25-31 and §113-561). R5 zoning district.

PREMISES AFFECTED – 1747-1751 East 2nd Street, aka 389 Quentin Road, northeast corner of East 2nd Street and Quentin Road, Block 6634, Lot 49, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

CALENDAR

10-11-BZ & 11-11-BZ

APPLICANT – Rampulla Associates Architects, for Charles Cannizaro, owner.

SUBJECT – Application February 3, 2011 – Variance (§72-21) to allow two, single family homes contrary to front yard (ZR §23-45) and rear yard regulations (ZR §23-47). R3-1 zoning district.

PREMISES AFFECTED – 115, 121 Finely Avenue, north of Finely Avenue, 100' southwest of Marine Way, Block 4050, Lot 53, 56, 59, Borough of Staten Island.

COMMUNITY BOARD #2SI

19-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Brown and Yechiel Fastag, owners.

SUBJECT – Application February 24, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space §23-141; side yards §23-461 and less than the required rear yard §23-47. R-2 zoning district.

PREMISES AFFECTED – 1271 East 24th Street, east side of East 24th Street, between Avenue L and Avenue M, Block 7642, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, MAY 3, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

164-60-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Luciani Enrica Melchiore, owner; Steven Scott, Inc., lessee.

SUBJECT – Application December 7, 2010 – Extension of Term (§11-411) for an automotive service station (UG 16B) (*Sunoco*) with accessory uses which expired on April 10, 2010; Waiver of the Rules. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 100-20 Metropolitan Avenue, southeast corner of Metropolitan Avenue and 70th Road, Block 3895, Lot 32, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Steven Sulfaro.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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 the continued operation of an automotive service station, which expired on April 10, 2009; and

WHEREAS, a public hearing was held on this application on March 1, 2011, after due notice by publication in *The City Record*, with a continued hearing on March 29, 2011, and then to decision on May 3, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Queens, recommends approval of this application; and

WHEREAS, the site is located on the southeast corner of Metropolitan Avenue and 70th Road, within a C1-3 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 10, 1961 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with accessory uses, for a term of 15 years; and

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

WHEREAS, most recently, on June 8, 1999, the Board granted a ten year extension of term, which expired on April 10, 2009; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, at hearing, the Board raised concerns about the condition of the plantings on the site; and

WHEREAS, in response, the applicant submitted a revised site plan reflecting the replacement of the planting areas along the rear of the site and along the 70th Road frontage; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an 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 January 10, 1961, so that as amended this portion of the resolution shall read: “to extend the term for ten years from April 10, 2009, to expire on April 10, 2019; *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 7, 2010’–(3) sheets and ‘Received March 30, 2011’–(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on April 10, 2019;

THAT the above condition shall appear on the certificate of occupancy;

THAT all conditions from the prior resolution not specifically waived by the Board 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. 420259080)

Adopted by the Board of Standards and Appeals May 3, 2011.

516-75-BZ

APPLICANT – Tarter Krinsky & Drogin, LLP, for Vertical Projects LLC, owner; MP Sports Club Upper Eastside LLC, lessee.

SUBJECT – Application December 17, 2010 – Amendment of a bulk variance (§72-21) for a building occupied by a Physical Culture Establishment (*The Sports Club/LA*). The amendment proposes an increase in PCE floor area and a change operator; Extension of Term which expired on October 17, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on October 17, 2002; and Waiver of the Rules. C8-4 zoning district.

PREMISES AFFECTED – 330 East 61st Street, aka 328 East 61st Street, between First Avenue and ramp of Queensboro Bridge (NYS Route 25), Block 1435, Lots 16 & 37, Borough of Manhattan.

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COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Jonathan Grippo.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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 a previously granted special permit for a physical culture establishment (“PCE”), an extension of time to obtain a certificate of occupancy, and an amendment to reflect an increase in floor area at the site and the change in operator of the PCE; and

WHEREAS, a public hearing was held on this application on March 15, 2011 after due notice by publication in the *City Record*, with a continued hearing on April 5, 2011, and then to decision on May 3, 2011; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject premises is located on a through lot bounded by East 60th Street to the south and East 61st Street to the north, between First Avenue and Second Avenue, within a C8-4 zoning district; and

WHEREAS, the site is occupied by a five-story commercial building with a rooftop terrace; and

WHEREAS, the PCE occupies 101,646 sq. ft. of floor area on a portion of the first floor, the entire second through fifth floors, and the roof of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 5, 1975 when, under the subject calendar number, the Board granted a variance to permit the construction of a five-story building to be occupied by a tennis club with roof tennis facilities, which encroaches on the required rear yard and penetrates the sky exposure plane; and

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

WHEREAS, most recently, on October 17, 2000, the Board granted an amendment to reflect the addition of Lot 37 to the site, and to permit a change in use of a portion of the subject building to a PCE, for a term of ten years; a condition of the grant was that a new certificate of occupancy be obtained within two years; and

WHEREAS, the applicant now seeks to extend the term of the PCE use for an additional ten years, and to extend the time to obtain a certificate of occupancy; and

WHEREAS, the applicant also requests an amendment to permit an increase in the floor area of the PCE from 100,272 sq. ft. to 101,646 sq. ft.; and

WHEREAS, the applicant states that the addition of 1,374 sq. ft. of floor area at the second floor mezzanine and third floor is due to the conversion of previously “unoccupied” mechanical equipment areas to floor area-generating offices and storage areas; and

WHEREAS, the applicant also seeks an amendment to reflect the change of ownership and operation of the PCE since the prior grant; and

WHEREAS, the PCE is now operated as The Sports Club/LA; and

WHEREAS, the Board notes that the Department of Investigation has approved the change of ownership and operation of the PCE; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term, extension of time, 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, *reopens* and *amends* the resolution, as adopted on November 5, 1975, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from October 17, 2010, to expire on October 17, 2020, to extend the time to obtain a certificate of occupancy for one year, to expire on May 3, 2012, and to permit the noted increase in floor area of the PCE and the change in the operator of the PCE; *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 17, 2010’-(15) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 17, 2020;

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

THAT a new certificate of occupancy shall be obtained by May 3, 2012;

THAT all conditions from the 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) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, May 3, 2011.

406-82-BZ

APPLICANT – Eric Palatnik, P.C., for Adolf Clause & Theodore Thomas, owner; Hendel Products, lessee.

SUBJECT – Application February 7, 2011 – Extension of Time to obtain a Certificate of Occupancy for a Special Permit (§73-243) for an eating and drinking establishment (*McDonald's*) with accessory drive-thru, which expired on

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January 22, 2009; waiver of the rules. C1-3/R5 zoning district.

PREMISES AFFECTED – 2411 86th Street, northeast corner of 24th Avenue and 86th Street, Block 6859, Lot 1, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
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 obtain a certificate of occupancy, which expired on January 22, 2009; and

WHEREAS, a public hearing was held on this application on March 29, 2011 after due notice by publication in *The City Record*, and then to decision on May 3, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the east corner of 24th Avenue and 86th street, within a C1-3(R5) zoning district; and

WHEREAS, the site is operated as a McDonalds’s eating and drinking establishment; and

WHEREAS, on January 18, 1983, under the subject calendar number, the Board adopted a resolution granting a special permit for the installation of an accessory drive-through facility for an existing eating and drinking establishment; and

WHEREAS, the special permit was subsequently extended at various times and will expire on January 18, 2013; and

WHEREAS, however, a condition of the prior grant was that a new certificate of occupancy be obtained by January 22, 2009; and

WHEREAS, the applicant has not obtained a new certificate of occupancy; and

WHEREAS, the applicant currently seeks a one-year extension of time to obtain a new certificate of occupancy; and

WHEREAS, the Board directed the applicant to remove banner signs on the fence around the site; and

WHEREAS, in response, the applicant provided photographs which reflect that the banner signs have been removed; and

WHEREAS, based upon its review of the record, the Board finds that the proposed additional one year to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives its Rules of Practice and Procedure, reopens and amends the resolution, dated January 18, 1983, so that as

amended this portion of the resolution shall read: “to permit an extension of one year to obtain a certificate of occupancy, to expire on May 3, 2012; on condition that all use and operations shall substantially conform to BSA-approved plans associated with the prior grant; and on further condition:

THAT the grant shall expire on January 18, 2013;

THAT the above condition and all relevant conditions from prior grants shall appear on the certificate of occupancy; and

THAT a certificate of occupancy shall be obtained by May 3, 2012;

THAT all conditions from the prior resolution 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. 310120142)

Adopted by the Board of Standards and Appeals, May 3, 2011.

866-85-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Anne Marie Cicciu Incorporated, owner.

SUBJECT – Application October 19, 2010 – Extension of Term of a Variance (§72-21) for a UG8 open parking lot and storage of motor vehicles which expired on May 12, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on November 23, 2000; Waiver of the Rules.

R7-1 zoning district.

PREMISES AFFECTED – 2338 Cambreleng Avenue, east side of 2338 Cambreleng Avenue, 199.25’ south of intersection of Cambreleng Avenue and Crescent Avenue, Block 3089, Lot 22, Borough of 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
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 for a previously granted variance permitting an open parking lot, which expired on May 12, 2007, and an extension of time to obtain a Certificate of Occupancy, which expired on November 23, 2000; and

WHEREAS, a public hearing was held on this

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application on March 15, 2011, after due notice by publication in *The City Record*, with a continued hearing on April 5, 2011, and then to decision on May 3, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Cambreleng Avenue, south of Crescent Avenue, within an R7-1 zoning district; and

WHEREAS, the site is occupied by an open parking lot; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 12, 1987 when, under the subject calendar number, the Board granted a variance to permit open parking and storage of motor vehicles for a term of ten years, to expire on May 12, 1997; and

WHEREAS, on November 23, 1999, the Board extended the term for ten years from the date of the prior grant, to expire on May 12, 2007; and

WHEREAS, the applicant now seeks to extend the term of the variance for an additional ten years; and

WHEREAS, the applicant also notes that the site has in the past been erroneously referred to as “2336 Cambreleng Avenue” and that the subject address is the correct way to identify the site; and

WHEREAS, at hearing, the Board directed the applicant to provide striped parking spaces so that it complies with the approved limit of 14 spaces; and

WHEREAS, in response, the applicant provided photographs which reflect that the parking lot has been painted to reflect spaces for 14 cars; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and time to obtain a Certificate of Occupancy 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 12, 1987, 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 May 12, 2007, to expire on May 12, 2017, and to grant a term of one year from the date of this grant to obtain a certificate of occupancy by May 3, 2012, *on condition* that the use of the site shall substantially conform to the approved drawings, filed with this application marked ‘Received February 11, 2011’ - (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on May 12, 2017;

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 a new certificate of occupancy be obtained by May 3, 2012;

THAT 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. 2/1985)

Adopted by the Board of Standards and Appeals, May 3, 2011.

216-97-BZ

APPLICANT – Moshe M. Friedman, for King Carroll LLC, owner; Dr. Rosen M.D., lessee.

SUBJECT – Application December 28, 2010 – Amendment to a special permit (§73-125) to enlarge UG4 medical offices within the cellar of an existing four-story residential building. R-2 zoning district.

PREMISES AFFECTED – 1384 Carroll Street, aka 352 Kingston Avenue, south side of Carroll Street and Kingston Avenue, Block 1292, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #9BK

For Applicant: Tzvi Friedman

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an amendment to convert existing cellar storage space to medical office space associated with the existing medical office use; and

WHEREAS, a public hearing was held on this application on March 15, 2011, after due notice by publication in *The City Record*, with a continued hearing on April 5, 2011, and then to decision on May 3, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 9, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the northwest corner of Carroll Street and Kingston Avenue, in an R2 zoning district; and

WHEREAS, the site is occupied by a four-story residential building with accessory storage space (Use Group 2) and medical office space (Use Group 4) in the cellar; and

WHEREAS, the existing medical office space occupies 2,261.56 sq. ft. of floor space in the cellar of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 23, 1998 when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-125, to allow the use of a portion of the cellar of the

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existing building for medical office space; and

WHEREAS, the applicant proposes to increase the medical office space within the cellar from 2,261.56 sq. ft. to 3,389.56 sq. ft.; and

WHEREAS, the applicant notes that ZR § 73-125 has been eliminated from the ZR, but that the Board has jurisdiction to amend previously-granted special permits; and

WHEREAS, the applicant cites to ZR § 11-41 *et seq* which allows for an extension of an existing non-conforming use provided that the conditions of ZR § 11-412 are met, which includes a limit on any enlargement to 50 percent of the floor area occupied by the pre-existing non-conforming use; and

WHEREAS, the applicant notes that its proposed conversion of the existing cellar storage space to additional medical office space does not reflect an increase in zoning floor area (since cellar space is exempt from floor area calculations), will not affect the building envelope, and, at 1,128 sq. ft. of floor space, is less than 50 percent of the size of the existing medical office space; and

WHEREAS, the applicant asserts that the proposed conversion will not have a negative impact on the use or enjoyment of nearby sites and that no adverse effects nor any significant increase in traffic are anticipated; and

WHEREAS, the applicant submitted a traffic and parking analysis, which reflects that the majority of patients and staff will arrive by foot and that for those arriving by car, there is sufficient on-street parking within the study area to accommodate demand; and

WHEREAS, the applicant notes that the entrance to the medical center will remain on Kingston Avenue, a commercial thoroughfare; and

WHEREAS, the Board notes that ZR § 11-41 *et seq* apply only to actions prior to 1961, however, it finds that the principles that the applicant cites reflect that the proposal is within the spirit of ZR provisions that anticipate the expansion of non-conforming uses, which have been approved under an earlier zoning framework; and

WHEREAS, accordingly, based upon its review of the record, the Board finds the requested amendment to the previous grant 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 23, 1998, so that as amended this portion of the resolution shall read: “to permit the noted increase in cellar floor space occupied by medical office use, *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked ‘December 28, 2011’ - (2) sheets; and *on further condition*:

THAT the cellar floor space occupied by the medical office be limited to 3,389.56 sq. ft., as reflected 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;

THAT the Department of Buildings must ensure

compliance 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. 300672662)

Adopted by the Board of Standards and Appeals, May 3, 2011.

11-00-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for 601 Associates LLC, owner; Harbor Fitness Park Slope Incorporated, lessee.

SUBJECT – Application November 3, 2010 – Extension of Term of a Special Permit (§73-36) for a Physical Culture Establishment (*Harbor Fitness*) in the cellar and first floor of an existing mixed use building which expired on October 3, 2010; Amendment for increase in hours of operation. C4-3A/R6B zoning district.

PREMISES AFFECTED – 550 5th Avenue, northwest corner of 5th Avenue and 15th Street, Block 1041, Lot 43(1001), Borough of Bronx.

COMMUNITY BOARD #7BX

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

Adopted by the Board of Standards and Appeals, May 3, 2011.

276-02-BZ

APPLICANT – Eric Palatnik, P.C., for Elad Ryba, owner.

SUBJECT – Application September 13, 2010 – Extension of Time to Complete Construction and an Amendment to a previously approved Special Permit (§73-622) to an existing one family dwelling, contrary to lot coverage and floor area (§23-141) and side yard (§23-461). R3-1 zoning district.

PREMISES AFFECTED – 160 Norfolk Street, west side, 300’ north of Oriental Boulevard and south of Shore Boulevard, Block 8756, Lot 22, 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, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of time to complete construction and obtain a certificate of occupancy, and an amendment to a previously

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approved special permit for the enlargement of a single-family home; and

WHEREAS, a public hearing was held on this application on December 7, 2010, after due notice by publication in *The City Record*, with continued hearings on January 11, 2011, February 15, 2011, March 1, 2011 and March 29, 2011, and then to decision on May 3, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

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

WHEREAS, representatives of the Manhattan Beach Community Group provided written and oral testimony in opposition to this application (the "Opposition"), citing the following primary concerns: (1) the proposed FAR is excessive and out of context with the surrounding neighborhood; (2) the applicant is not retaining sufficient portions of the existing floors and foundations; (3) the current proposal is substantially different from what was approved in the Board's original grant and the applicant should be required to apply for a new special permit; and (4) there are inconsistencies in the proposed plans; and

WHEREAS, the subject site is located on the west side of Norfolk Street, between Oriental Boulevard and Shore Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 2,973 sq. ft., and is occupied by a single-family home with a floor area of approximately 1,320 sq. ft. (0.44 FAR); and

WHEREAS, the Board has exercised jurisdiction over the site since February 10, 2004 when, under the subject calendar number, the Board granted a special permit under ZR § 73-622, to allow an enlargement to an existing single-family home, which created non-compliances with regard to floor area ratio ("FAR"), open space ratio, lot coverage, side yards and rear yard; and

WHEREAS, specifically, the Board permitted the enlargement of the subject home with the following parameters: a floor area of 2,676 sq. ft. (0.9 FAR), a lot coverage of approximately 49 percent, a total height of 24'-7", a side yard with a width of 0'-7" along the northern lot line, a side yard with a width of 5'-9" along the southern lot line, and a rear yard with a depth of approximately 21'-4"; and

WHEREAS, the Board notes that the applicant never commenced construction pursuant to the prior grant; and

WHEREAS, the applicant now requests an extension of time to complete construction and obtain a certificate of occupancy, which expired on February 10, 2008; and

WHEREAS, the applicant also seeks an amendment to permit modifications to the plans previously approved by the Board; and

WHEREAS, although the subject application involves an amendment to a previous grant, the Board finds it appropriate to analyze the proposed home pursuant to the criteria of the special permit under ZR § 73-622, which was the subject of the original grant; and

WHEREAS, the Board notes that the site is within the

boundaries of a designated area in which the special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from the previously approved 2,676 sq. ft. (0.9 FAR) to 2,980 sq. ft. (1.0 FAR); the maximum permitted floor area is 1,487 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to maintain the existing footprint for the home, which represents a reduction in the lot coverage from what was previously approved by the Board, from approximately 49 percent to 44 percent (the maximum permitted lot coverage is 35 percent); and

WHEREAS, the applicant proposes to maintain the existing side yard with a width of 0'-7" along the northern lot line, and to reduce the width of the side yard along the southern lot line from the previously approved 5'-9" to 5'-1" (two side yards with minimum widths of 5'-0" and 8'-0" are required); and

WHEREAS, the applicant also proposes to maintain the existing rear yard with a depth of 28'-1", which represents an increase from the previously approved rear yard depth of approximately 21'-4" (a minimum rear yard of 30'-0" is required); and

WHEREAS, the applicant also proposes to increase the total height of the proposed home from the previously approved 24'-7" to 31'-11", which remains in compliance with the underlying zoning regulations; and

WHEREAS, the applicant initially proposed to amend the previously approved enlargement by increasing the floor area to 3,392 sq. ft. (1.14 FAR) and increasing the total height to 35'-0"; and

WHEREAS, at hearing, the Board raised concerns that the proposed FAR was out of context for the surrounding neighborhood, and noted that its previous approval was for a home with an FAR of 0.90; and

WHEREAS, in response, the applicant submitted examples of several homes in the vicinity of the site which purportedly established that there are homes in the surrounding neighborhood with FARs similar to the 1.14 FAR originally proposed by the applicant; and

WHEREAS, the Board found several errors and inaccuracies in the information submitted by the applicant, and the applicant failed to convince the Board that there are homes in the surrounding area with FAR's similar to that proposed by the applicant, either pre-existing or through Board approval; and

WHEREAS, accordingly, at the Board's direction the applicant revised its plans to provide a floor area of 2,980 sq. ft. (1.0 FAR) and a total height of 31'-11"; and

WHEREAS, the Opposition argues that the revised proposal with a reduced FAR of 1.0 is still excessive; and

WHEREAS, in response, the applicant submitted land use studies reflecting that there is at least one home on the subject block with an FAR of 0.99, and that there are many other homes in the surrounding area with FARs of 1.0; and

WHEREAS, as further evidence that the proposed home fits within the character of the surrounding neighborhood, the applicant notes that the proposed amendment provides a larger rear yard and a smaller footprint than what was previously

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approved, and the proposed front yard and height are in compliance with the underlying zoning regulations; and

WHEREAS, as to the Opposition's contention that the applicant is not retaining sufficient portions of the existing home, the Board notes that the applicant submitted revised drawings reflecting that 100 percent of the existing cellar walls and 75 percent of the existing first floor walls will be retained; and

WHEREAS, as to the Opposition's contention that the applicant should be required to apply for a new special permit, the Board notes that the Opposition has provided no evidence to support its claim that the subject application is not properly before the Board as an amendment to the previous grant; and

WHEREAS, as to the Opposition's claims with regard to inconsistencies and errors in the proposed plans, the Board notes that its approval is limited to the specific zoning relief provided by ZR § 73-622, pursuant to which the original application was granted, and that compliance with all other aspects of the Zoning Resolution and Construction Code is subject to review and approval by the Department of Buildings; and

WHEREAS, based upon its review of the record, 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, based upon the above, the Board finds that the requested extension of time to obtain a certificate of occupancy and the noted modifications 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 February 10, 2004, 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 a term of four years, to expire on May 3, 2015, and to permit the noted modifications to the BSA-approved plans; *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 12, 2011'-(16) sheets; and on further condition:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,980 sq. ft. (1.0 FAR); a maximum lot coverage of 44 percent; a total height of 31'-11"; a side yard with a minimum width of 0'-7" along the northern lot line; a side yard with a minimum width of 5'-1" along the southern lot line; and a rear yard with a minimum depth of 28'-1", as illustrated on the BSA-approved plans;

THAT substantial construction shall be completed and a certificate of occupancy shall be obtained by May 3, 2015;

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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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. 320205318)

Adopted by the Board of Standards and Appeals, May 3, 2011.

435-74-BZ

APPLICANT –Eric Palatnik, P.C., for J. B. Automotive Center of New York, Inc., owner.

SUBJECT – Application January 26, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of an automotive repair center which expired on January 14, 2011; waiver of the rules. R3-1 zoning district.

PREMISES AFFECTED – 552 Midland Avenue, southwest corner of Midland and Freeborn Street, Block 3804, Lot 18, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 24, 2011, at 10 A.M., for decision, hearing closed.

188-78-BZ

APPLICANT – Mark Verkhosky, for Anthony Beradi, owner; Spiro Ioannou, lessee.

SUBJECT – Application May 4, 2010 – Amendment (§11-412) to a Variance (§72-21) to add automobile body and sales (UG16) to an existing (UG16) automobile repair and laundry. R-5 zoning district.

PREMISES AFFECTED – 8102 New Utrecht Avenue, southwest corner of New Utrecht Avenue and 81st Street, Block 6313, Lot 31, Borough of Brooklyn.

APPEARANCES –

For Applicant: Ronny A. Livian.

ACTION OF THE BOARD – Laid over May 17, 2011, at 10 A.M., for adjourned hearing.

95-97-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 700 West 178th Street Associates, LLC, owner; TSI Forest

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Hills LLC d/b/a New York Sports Club, lessee.
SUBJECT – Application October 14, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on May 1, 2007; Waiver of the Rules. C4-5X zoning district.

PREMISES AFFECTED – 69-47 Austin Street, northwest corner of Austin Street and 70th Avenue, Block 3237, Lot 30, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 17, 2011, at 10 A.M., for decision, hearing closed.

289-99-BZ

APPLICANT – Vito J. Fossella, LPEC, for Frances Gomez, owner.

SUBJECT – Application January 22, 2010 – Extension of Term of a variance (§72-21) for a parking facility accessory to a permitted use (UG16 automotive repair and accessory sales) which expired on December 12, 2010. C8-1/R3-1 zoning district.

PREMISES AFFECTED – 265 Hull Avenue, northeast side of Hull Avenue, 100’ southeast of corner formed by the intersection of Hull Avenue and Hylan Boulevard, Block 3668, Lots 12, 13, 14, 27, 28 & 29, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

ACTION OF THE BOARD – Laid over to June 7, 2011, at 10 A.M., for continued hearing.

273-00-BZ

APPLICANT – Mitchell Ross, Esq., for 10 West Thirty Third Joint Venture, owner; Spa Sol, Incorporated, lessee.

SUBJECT – Application July 22, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Spa Sol*) which expires on February 13, 2011; Amendment to legalize interior layout/increase in number of treatment rooms. C6-4 zoning district.

PREMISES AFFECTED – 3 West 33rd Street, 1.07’ southwest of West 33rd Street and Fifth Avenue, Block 834, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over May 24, 2011, at 10 A.M., for adjourned hearing.

APPEALS CALENDAR

221-10-A

APPLICANT – Robert W. Cunningham, R.A., for Robert W. Cunningham, owner.

SUBJECT – Application December 1, 2010 – An appeal challenging a determination by Department of Buildings that owner authorization is needed from the adjacent property owner in order to perform construction at the site in accordance with Section 28-104.8.2 of the Administrative Code. R3-1 zoning district

PREMISES AFFECTED – 123 87th Street, north side of 87th Street and Ridge Boulevard, Block 6042, Lot 67, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES – None.

ACTION OF THE BOARD – Application denied.

THE VOTE TO GRANT –

Affirmative:.....1

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, the instant appeal comes before the Board in response to the determination of the First Deputy Commissioner of the Department of Buildings (“DOB”), dated November 24, 2010, issued in response to a request to reconsider an objection based on Administrative Code § 28-104.8.2 in relation to Alteration 1 Job Application No. 310089123 (“App. No. 310089123”), for the enlargement of a single-family home at the subject site (the “Final Determination”); and

WHEREAS, the Final Determination reads, in pertinent part:

Your request to remove the Objection citing Section 28-104.8.2 of the Administrative Code of the City of New York which states “Based on the decisions and orders issued in *Gershon v. Cunningham*, Index No. 26363/06, the court determined that the partially completed enlargement on the zoning lot encroaches onto the adjacent property at 127 87th Street, BK.” is hereby denied. Pursuant to Section 104.8.2 of the Administrative Code, a job application must contain a signed statement by the owner of a zoning lot stating that the applicant is authorized to make the job application. As indicated in the attached October 4, 2010 letter to your attorney, a review by the DOB and the NYC Law Department of a complaint by the adjacent property owner at 127 87th Street, BK and of the decisions and orders issued in the aforementioned civil litigation reveals that the court determined that the partially completed enlargement on your zoning lot, which is filed under this Job Application No. 310089123, encroaches onto the adjacent property. Since you have not received authorization by the owner of 127 87th Street, BK to perform construction on his

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zoning lot and since the court has determined that this construction encroaches onto his zoning lot, the Department can not remove this objection until either the court's findings are overturned or the encroachment is removed; and

WHEREAS a public hearing was held on this application on April 5, 2011 after due notice by publication in *The City Record*, and then to decision on May 3, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commission Hinkson, and Commissioner Montanez; and

WHEREAS, the instant appeal is filed by Robert Cunningham, owner of the subject home located at 123 87th Street (the "Appellant"); and

WHEREAS, DOB was represented by counsel in this proceeding; and

WHEREAS, the owner of a home located at 127 87th Street adjacent to the subject property to the east (hereinafter, the "Adjacent Owner" and the "Adjacent Property"), was represented by counsel in this proceeding; and

WHEREAS, the Appellant, DOB and counsel for the Adjacent Owner made submissions to the Board concerning the instant appeal; and

WHEREAS, State Senator Martin J. Golden submitted written testimony in opposition to the instant appeal; and

WHEREAS, several local residents provided written and oral testimony in opposition to the instant appeal; and

WHEREAS, the subject site is located on the north side of 87th Street between Colonial Road and Ridge Boulevard, in an R3-1 zoning district within the Special Bay Ridge District, and is occupied by a fully-detached, two-story, single-family home; and

WHEREAS, the subject home has a non-complying side yard of 0'-9" along the western lot line and a complying side yard of approximately 23'-8" along the eastern lot line; and

WHEREAS, the Appellant proposes to enlarge the existing single-family home by adding a horizontal extension up to the eastern lot line and demolishing a portion of the existing home in order to provide a side yard with a minimum width of 8'-0" along the western lot line; partial construction has been completed at the site, consisting of steel beams and concrete masonry walls abutting the Adjacent Property with a height of approximately 17'-0" (the "Completed Construction"); and

WHEREAS, the adjacent home is built to the common lot line; and

WHEREAS, this appeal concerns the authorization requirement in the Administrative Code ("AC"), at § 28-104.8.2, which DOB invoked when it denied the Appellant's request to approve App. No. 310089123 and permit construction at the site, based on DOB's determination that a court order found that the Completed Construction on the subject site encroached onto the Adjacent Property; and

WHEREAS, as clarified in a subsequent submission by DOB, in addition to evidence of the Adjacent Owner's consent, the recordation of zoning lot merger documents would also be required in order to reinstate the permit because the Completed

Construction encroaches onto the Adjacent Property, which is a separate zoning lot; and

PROCEDURAL HISTORY

WHEREAS, the Board notes that the Appellant has filed at least four job applications associated with the proposal (Job Application Nos. 310089123, 301362488, 301376767 and 320022747), but that the Board's review is limited to the Final Determination, which only concerns App. No. 310089123; and

WHEREAS, on February 5, 2008, the Appellant filed App. No. 310089123 to enlarge the existing home horizontally to the eastern lot line, thereby abutting the Adjacent Property, and to convert the existing single-family home into a two-family home; and

WHEREAS, on October 22, 2008, DOB issued a determination that the proposed enlargement to the detached single-family home created a semi-detached single-family home which did not comply with ZR § 23-49(a) (Special Provisions for Side Lot Line Walls), because it did not provide the required side yard with a minimum width of 8'-0" along the western lot line; the Appellant appealed DOB's October 22, 2008 determination to the Board; and

WHEREAS, on May 12, 2009, under BSA Cal. No. 292-08-A, the Board denied the appeal, finding that: (1) ZR § 23-49 requires the provision of a minimum 8'-0" side yard for a semi-detached building; and (2) the existing non-complying 0'-9" side yard along the western lot line does not does not qualify as a pre-existing non-compliance that may remain, since the enlargement converts a formerly detached building into a semi-detached building, thereby increasing the degree of non-compliance; and

WHEREAS, subsequent to the Board's decision, the Appellant submitted revised plans to DOB and met with DOB staff on numerous occasions in an attempt to obtain approval for the proposed enlargement by purportedly demonstrating compliance with the Construction Code, the Zoning Resolution, and all other applicable rules and regulations; and

WHEREAS, the Board notes that in order to cure the side yard non-compliance which was the subject of the appeal under BSA Cal. No. 292-08-A, the Appellant proposes to demolish a portion of the existing home to provide a side yard with a minimum width of 8'-0" along the western lot line; and

WHEREAS, on January 8, 2009, as the result of civil litigation commenced in New York State Supreme Court by the Adjacent Owner against the Appellant in Gershon v. Cunningham (Index No. 26363/06), Judge Leon Ruchelsman granted a preliminary injunction ordering that all work at the site cease immediately (the "Preliminary Injunction"); and

WHEREAS, the case was subsequently assigned to a Judicial Hearing Officer ("JHO") on May 19, 2009, for a determination on issues concerning encroachment and violations of zoning regulations and the Building Code; and

WHEREAS, on August 26, 2009, the JHO determined that the Completed Construction at the site violates zoning rules and regulations, and that the Completed Construction

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encroaches onto the Adjacent Property (the “JHO Decision”); and

WHEREAS, on September 29, 2009, Judge Ruchelsman issued a Decision and Order confirming the JHO Decision in full (the “September 29, 2009 Decision”); and

WHEREAS, on June 9, 2010, Judge Ruchelsman issued another Decision and Order denying the Appellant’s motion “seeking to set aside the conclusions of JHO Lodato or to otherwise vacate that decision or the court’s acceptance of the decision,” and granting the Adjacent Owner’s motion seeking an order requiring the removal of the wall at the Appellant’s expense (the “June 9, 2010 Decision”); and

WHEREAS, on September 1, 2010, DOB received a complaint letter from the Adjacent Owner stating that the New York State Supreme Court had issued the Preliminary Injunction prohibiting the Appellant from performing work at the site, that the court had ruled that the Completed Construction at the site encroaches onto the Adjacent Property, and providing the relevant court decisions; and

WHEREAS, based on its review of the court decisions, DOB issued an objection citing AC § 28-104.8.2, and stating that “Based on the decisions and orders issued in Gershon v. Cunningham, Index No. 26363/06, the court determined that the partially completed enlargement on the zoning lot encroaches onto the adjacent property at 127 87th Street, BK;” and

WHEREAS, additionally, on October 5, 2010, DOB sent a letter to the Appellant’s representative, stating that:

The Department of Buildings (the “Department”) and the New York City Law Department have conducted a review of the decisions and orders issued by the court in *Gershon v. Cunningham*, the civil litigation commenced against your client, Robert Cunningham, by Mr. Cunningham’s neighbor, Matthew Gershon, in Supreme Court, Kings County (Index No. 26363/06). The review of the decisions and orders, specifically the August 26, 2009 decision of Judicial Hearing Officer Dominic J. Lodato, confirmed in full by Justice Leon Ruchelsman on September 29, 2009, reveals that the court determined that the partially completed enlargement on your zoning lot encroaches onto Mr. Gershon’s property. Therefore, in light of the court’s findings, the Department can not approve plans for the enlargement of your client’s existing building until either the court’s findings are overturned or the encroachment is removed; and

WHEREAS, subsequently, DOB issued the Final Determination on November 24, 2010, which forms the basis of this appeal; and

ISSUES PRESENTED

WHEREAS, DOB contends that based on the decisions in Gershon v. Cunningham, the New York State Supreme Court has determined that the Completed Construction encroaches onto the Adjacent Property, and therefore DOB cannot approve plans under App. No.

310089123 until either: (1) the court’s ruling is overturned; (2) the encroachment is removed; or (3) the Appellant obtains consent from the Adjacent Owner in accordance with AC § 28-104.8.2, and effectuates a zoning lot merger between the subject site and the Adjacent Property since, based on the court decisions, the Completed Construction is located on the Adjacent Property, which is a separate zoning lot; and

WHEREAS, the Appellant’s primary argument is that DOB misinterpreted the court’s decisions, and that DOB’s objection to App. No. 310089123 is misplaced because the court has not ruled that the Completed Construction encroaches onto the Adjacent Property; and

WHEREAS, during the course of the hearing process, the Appellant raised several supplementary arguments, addressed in more detail below, which were not part of the initial appeal filed by the Appellant and which the Board finds are outside the scope of the Final Determination and therefore not part of the subject appeal; and

THE PROVISIONS OF THE BUILDING CODE RELEVANT TO THIS APPEAL

WHEREAS, the relevant sections of the Administrative Code state in pertinent part:

§ 28-104.8.2 Owner statement. The application shall contain a signed statement by the owner, cooperative owners’ corporation, or condominium owners’ association stating that the applicant is authorized to make the application and, if applicable, acknowledging that construction documents will be accepted with less than full examination by the department based on the professional certification of the applicant. Such statement shall list the owner’s full name and address, as well as the names of the principal officers, partners or other principals if a corporation, partnership or other entity. Principal officers of a corporation shall be deemed to include the president, vice presidents, secretary and treasurer; and

THE APPELLANT’S POSITION

WHEREAS, the Appellant contends that App. No. 310089123 should be approved because the court has not ruled that the Completed Construction encroaches onto the Adjacent Property; and

WHEREAS, the Appellant argues that there is no court order specifying that the Completed Construction encroaches onto the Adjacent Property; and

WHEREAS, specifically, the Appellant contends that the JHO Decision had no effect until and unless it was properly confirmed by the actual judge of record, Judge Ruchelsman; and

WHEREAS, the Appellant further contends that the September 29, 2009 Decision, in which Judge Ruchelsman stated that “[t]he decision of JHO Lodato is hereby confirmed in full” was without effect because any part of that decision which concerned the alleged encroachment was implicitly reversed by the language of the June 9, 2010 Decision, which stated that “the court does not address the encroachment issues since even if no encroachment exists, a

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factual question to be sure, the conclusion reached that the wall must be removed is not altered in any way;" and

WHEREAS the Appellant argues that the following conclusions can be drawn from the language of the June 9, 2010 Decision: (1) it is possible that no encroachment exists; (2) whether or not there is an encroachment is a factual question; and (3) the court did not make a decision as to whether or not there is an encroachment; and

WHEREAS, the Appellant further argues that by stating in the June 9, 2010 Decision that "the court does not address the encroachment issues," Judge Ruchelsman intended to clarify that his September 29, 2009 Decision was not meant to be taken as a ruling that there was an encroachment; and

THE DEPARTMENT OF BUILDINGS' POSITION

WHEREAS, DOB represents that the only remaining objection which needs to be resolved before App. No. 310089123 can be approved is the objection concerning AC § 28-104.8.2, which is the subject of this appeal;¹ and

WHEREAS, DOB argues that the Appellant has misinterpreted the relevant decisions in Gershon v. Cunningham regarding the existence of an encroachment; and

WHEREAS, DOB states that the Department itself has made no finding, nor does it have the authority to make a finding, as to whether an encroachment exists; and

WHEREAS, DOB represents that, however, where it has received a complaint from an adjacent property owner that work under proposed plans encroaches onto the adjacent property without that adjoining property owner's consent and the complainant produces a court ruling that an encroachment exists, DOB cannot approve such plans without the consent of the owner of the adjacent property; and

WHEREAS, DOB argues that the JHO Decision clearly concludes that an encroachment exists, as the JHO states that "it is the decision of this court that the defendant's existing structure violates the aforementioned zoning rules and regulations. Furthermore, I find that the structure encroaches onto the plaintiff's property;" and

WHEREAS, DOB notes that the JHO decision was then "confirmed in full" in the September 29, 2009 Decision by Judge Ruchelsman; and

WHEREAS, DOB contends that the Appellant's

¹ However, DOB notes that in order for App. No. 310089123 to comply with the side yard requirements of the ZR, the existing one-family home at the site must be partially demolished. The Appellant has filed Alteration Type 2 Application No. 320022747 to demolish a portion of the existing building and provide the required 8'-0" side yard per ZR § 23-461(a). Therefore, DOB states that while it may approve App. No. 310089123 once all objections are cured and the plans comply with the Construction Code, the ZR, and other applicable rules and regulations, it will not issue a permit for App. No. 310089123 until the demolition under Alteration Type 2 Job Application No. 320022747 is complete and signed-off.

reliance on the portion of the June 9, 2010 Decision which states that "the court does not address the encroachment issues," is misguided because it ignores the court's ultimate holding that "in conclusion, the defendant's motion seeking to set aside the conclusions of JHO Lodato or to otherwise vacate that decision or the court's acceptance of the decision is denied;" and

WHEREAS, DOB therefore concludes that the fact that the court denied the Appellant's motion to set aside the conclusions of the JHO Decision or to vacate the court's acceptance of that decision, reflects that the June 9, 2010 Decision adopted the determination made in the JHO Decision, as confirmed in full by the September 29, 2009 Decision, that the Completed Construction encroaches onto the Adjacent Property; and

WHEREAS, accordingly, DOB states that based on the court's finding that the Completed Construction encroaches on the Adjacent Property, DOB has properly issued an objection and cannot approve plans for the enlargement of the subject home until either (1) the court's findings are overturned, (2) the encroachment is removed, or (3) the Appellant provides evidence of the Adjacent Owner's consent by agreement between the parties, in conjunction with the recordation of zoning lot merger documents since, based on the court decisions, the encroachment is located on a separate zoning lot; and

THE ADJACENT OWNER'S POSITION

WHEREAS, the Adjacent Owner agrees with DOB that the decisions in Gershon v. Cunningham concluded that the Completed Construction built by the Appellant encroaches onto the Adjacent Property, and that the Appellant has not obtained consent and permission of the Adjacent Owner to proceed with construction, as required by AC § 28-104.8.2; and

WHEREAS, the Adjacent Owner states that a stop work order issued by DOB on or about December 20, 2007 is still in effect, as is the Preliminary Injunction against further work issued on January 8, 2009; and

WHEREAS, the Adjacent Owner argues that the Completed Construction also poses a safety threat to the Adjacent Property, as evidenced by DOB's issuance of an Emergency Declaration on March 16, 2011, authorizing the City to demolish the vertical walls of the portion of the Completed Construction abutting the Adjacent Property to a height of approximately six feet, in order to make the site safe; and

CONCLUSION

WHEREAS, the Board supports DOB's denial of App. No. 310089123 for the following primary reasons: (1) the Board accepts DOB's interpretation of the court decisions; and (2) DOB's interpretation of the court decisions forms a sufficient basis to require that the Appellant obtain authorization from the Adjacent Owner pursuant to AC §28-104.8.2; and

WHEREAS, the Board agrees with DOB that the court decisions in Gershon v. Cunningham held that the Completed Construction encroaches onto the Adjacent Property; and

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WHEREAS, specifically, based on the relevant decisions in Gershon v. Cunningham regarding the existence of an encroachment onto the Adjacent Property, the Board finds that: (1) following its issuance of the Preliminary Injunction stopping work on the proposed enlargement, the court assigned the case to a JHO for a determination on issues concerning encroachment and violations of zoning regulations and building code; (2) the JHO Decision found, *inter alia*, that the Completed Construction encroaches onto the Adjacent Property; (3) the September 29, 2009 Decision confirmed the JHO Decision in full, including the determination that an encroachment exists; and (4) the June 9, 2010 Decision denied the Appellant's motion to set aside the JHO Decision or vacate the court's acceptance of the decision, thereby leaving intact the JHO Decision, which ruled that an encroachment exists, and the September 29, 2009 Decision, which confirmed the JHO Decision in full; and

WHEREAS, the Board finds the language in the JHO Decision concerning the existence of an encroachment onto the Adjacent Property to be clear and unambiguous, and agrees with DOB that by confirming the JHO Decision in full in the September 29, 2009 Decision, and subsequently denying the Appellant's motion to set aside the JHO Decision or vacate its acceptance of that decision, the June 9, 2010 Decision adopted the JHO's determination that an encroachment exists; and

WHEREAS, the Board finds that by interpreting the portion of the June 9, 2010 Decision which states that "the court does not address the encroachment issues" as an intention to implicitly reverse any part of the September 29, 2009 Decision which concerned the alleged encroachment, the Appellant reads an intent into the June 9, 2010 Decision which is not supported by the clear language of the court's holding; and

WHEREAS, the Board further finds that, based on the court decisions ruling that the Completed Construction encroaches onto the Adjacent Property, DOB properly issued the subject objection based on AC § 28-104.8.2; and

WHEREAS, the Board has not reviewed the proposed plans associated with App. No. 310089123 for zoning or Building Code compliance and, thus, does not take a position as to whether the proposal or any amendment to it would otherwise comply with relevant regulations; and

WHEREAS, the Board further notes that, while the Appellant may seek to have the court's decision regarding the encroachment overturned by appealing the June 9, 2010 Decision, as of the date of the Board's decision in the subject appeal, that ruling is still in effect; and

WHEREAS, accordingly, the Board agrees with DOB's interpretation that the court decisions in Gershon v. Cunningham held that the Completed Construction encroaches onto the Adjacent Property, and the Board accepts DOB's policy and reasoning for withholding approvals in the subject case in the absence of authorization from the Adjacent Owner; and

WHEREAS, as noted above, during the course of the hearing process, the Appellant raised additional arguments

which were not part of the initial appeal filed by the Appellant and which the Board finds are outside of the scope of the Final Determination and therefore not part of the subject appeal; and

WHEREAS, specifically, the Appellant made the following supplementary arguments: (1) the survey provided by the Adjacent Owner is incorrect, and the Appellant submitted a separate survey along with photographs and additional documentation in support of its contention that the Completed Construction does not encroach upon the Adjacent Property; (2) even if the Adjacent Owner's survey is accurate and the Completed Construction does encroach onto the Adjacent Property, the encroachment is *de minimis* and should not serve as the basis for a denial of the Appellant's application; (3) the Appellant has removed the portion of the Completed Construction that allegedly encroached upon the Adjacent Property; and (4) the Board should reinstate Alteration Type 2 Permit No. 301376767 (which was initially issued on September 27, 2006 to permit the enlargement of the subject home based on professionally-certified plans), due to wrongdoing by DOB; and

WHEREAS, as to the Appellant's contention that the Completed Construction does not encroach onto the Adjacent Property, the Board notes that the decisions in Gershon v. Cunningham found that an encroachment does exist on the Adjacent Property based on a review of surveys and other evidence; and

WHEREAS, the Board relies on the determination made by the court as to the existence of an encroachment, and finds that a review of the competing surveys is not properly before the Board; and

WHEREAS, the Board notes that the subject matter of this appeal does not entail a *de novo* review of whether the Completed Construction encroaches onto the Adjacent Property, or the extent of any such encroachment, rather, the appeal concerns a challenge to DOB's objection under AC § 28-104.8.2 based on its interpretation that the court decisions in Gershon v. Cunningham found that the Completed Construction encroaches onto the Adjacent Property; thus, the Board has not considered the surveys or other evidence submitted by the Appellant or the Adjacent Owner regarding the actual location of the Completed Construction, or whether any encroachment onto the Adjacent Property is *de minimis* in nature; and

WHEREAS, as to the Appellant's argument that any encroachment onto the Adjacent Property has been removed, the Board notes that in the absence of a statement from DOB acknowledging that the encroachment has been removed and the objection under AC § 28-104.8.2 has been cured, the issue that forms the basis for the subject appeal remains before the Board; and

WHEREAS, as to the Appellant's request that the Board reinstate Permit No. 301376767, the Board notes that the Appellant made the same request approximately two years ago in the prior appeal under BSA Cal. No. 292-08-A, and the Board rejected the Appellant's request at that time because the final determination in that case did not concern

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Permit No. 301376767 and the Appellant had not provided a timely-issued final determination regarding that permit; and

WHEREAS, DOB records indicate that Permit No. 301376767 was revoked on or about January 18, 2008; and

WHEREAS, the Board notes that nothing has transpired in the two years since the appeal under BSA Cal. No. 292-08-A to change the Board's position regarding the Appellant's request for the reinstatement of Permit No. 301376767, as the subject Final Determination similarly does not concern Permit No. 301376767, and the Appellant's request remains untimely and cannot be acted on by the Board.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated November 24, 2010, is hereby denied.

Adopted by the Board of Standards and Appeals, May 3, 2011.

17-05-A

APPLICANT – Sheldon Lobel, P.C., for GRA V LLC, owner.

SUBJECT – Application February 15, 2011 – Application to reopen pursuant to a court remand for a determination of whether the property owner has established a common law vested right to continue construction under the prior R6 zoning district. R4A zoning district

PREMISES AFFECTED – 3329 Giles Place, west side of Giles Place between Canon Place and Fort Independence Street, Block 3258, Lots 5 & 7, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 7, 2011, at 10 A.M., for adjourned hearing.

195-10-BZY

APPLICANT – Eric Palatnik, P.C., for Michael Batalia, owner.

SUBJECT – Application October 26, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior M1-3D zoning. M1-2/R5B zoning district.

PREMISES AFFECTED – 38-28 27th Street, between 38th and 39th Avenue, Block 387, Lot 31, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 7, 2011, at 10 A.M., for adjourned hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING TUESDAY AFTERNOON, MAY 3, 2011 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

187-07-BZ

APPLICANT – Dennis D. Dell'Angelo, for Michael Modatsos, owner.

SUBJECT – Application August 1, 2010 – Variance (§72-21) to permit accessory parking for an existing eating and drinking establishment, contrary to use regulations (§22-00). R3X zoning district.

PREMISES AFFECTED – 4677 Hylan Boulevard, North side of Hylan Boulevard 175.03 feet west of Arden Avenue. Block 5408, Lot 43, Borough of Staten Island.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Marc Dell'Angelo.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated February 8, 2011, acting on Department of Buildings Application No. 500516710, reads in pertinent part:

“ZR 22-00. Proposed enlargement of existing non-conforming use (eating and drinking place, Use Group 6) in R3X zoning district contrary to Zoning Resolution, BSA approval is required...

ZR 107-483(b). Proposed perimeter landscaped area screening parking lot along adjoining street is less than 7 feet in width contrary to Zoning Resolution;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site located in an R3X zoning district within the Special South Richmond Development District, an increase in the size of the zoning lot for an existing eating and drinking establishment (Use Group 6), which does not conform to district use regulations, and planting areas that do not comply with minimum width requirements, contrary to ZR §§ 22-00 and 107-483(b); and

WHEREAS, a public hearing was held on this application on January 25, 2011, after due notice by publication in *The City Record*, with continued hearings on March 1, 2011 and March 29, 2011, and then to decision on May 3, 2011; and

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WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Staten Island, recommends approval of this application; and

WHEREAS, an adjacent neighbor provided testimony objecting to the location and maintenance of the refuse bins and grease container at the site and the pickup schedule for garbage collection from the site; and

WHEREAS, the subject site is located on the north side of Hylan Boulevard, between Harold Avenue and Arden Avenue, in an R3X zoning district within the Special South Richmond Development District; and

WHEREAS, Lot 43 currently has approximately 225 feet of frontage on Hylan Boulevard, an average depth of approximately 51 feet, and a total lot area of 11,498 sq. ft.; and

WHEREAS, Lot 44 has 25 feet of frontage on Hylan Boulevard, a depth of approximately 50 feet, and a lot area of 1,235 sq. ft.; and

WHEREAS, the applicant seeks to merge Lots 43 and 44 into a single zoning lot (Tentative Lot 43), which would have 250 feet of frontage on Hylan Boulevard, an average depth of 51 feet, and a total lot area of 12,732 sq. ft.; and

WHEREAS, the site is currently occupied by an eating and drinking establishment (Use Group 6); and

WHEREAS, the Board has exercised jurisdiction over the Lot 43 portion of the site since 1973 when, under BSA Cal. No. 130-73-BZ, the Board granted a variance to permit the enlargement of a pre-existing non-conforming eating and drinking establishment, which increased the degree of non-conformity; and

WHEREAS, on April 29, 1997, under BSA Cal. No. 63-96-BZ, the Board granted a variance to permit the further enlargement and structural alteration of the eating and drinking establishment; a condition of the grant limited the term to ten years, which expired on April 29, 2007; and

WHEREAS, the applicant states that, since the time of the most recent grant, the owner has acquired the adjacent lot to the west (Lot 44), and now seeks to merge the newly acquired lot with the subject zoning lot; and

WHEREAS, the applicant originally proposed to enlarge the existing zoning lot as well as to enlarge the existing eating and drinking establishment building by 581 sq. ft., but later revised its proposal to eliminate the requested enlargement of the eating and drinking establishment building; and

WHEREAS, accordingly, the applicant proposes to increase the size of the zoning lot by incorporating Lot 44 into the site; the additional lot area will be used to reconfigure and enlarge the existing parking lot; and

WHEREAS, the applicant also proposes to provide planting strips varying in width from 2'-6" to 4'-0" in front of the parking areas along Hylan Boulevard, which is contrary to the requirement that parking areas be screened from all adjoining streets by a landscaped area at least 7'-0" in width; and

WHEREAS, because an increase in the degree of the existing non-conforming commercial use is not permitted in the

R3X zoning district, and because relief from the minimum width of the planting areas is required, the applicant seeks a variance for the site; 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 development: (1) the history of development of the site; and (2) the shallow depth of the site; and

WHEREAS, the applicant notes that the eating and drinking establishment on the site was a pre-existing non-conforming use that has been the subject of two prior variance applications before the Board to allow the enlargement of the non-conforming use on the site; and

WHEREAS, the prior variances granted by the Board found that the unique conditions on the site, including the history of development as a legal non-conforming use, the non-complying building constructed with no basement and inadequate storage space, the irregular shape of the zoning lot with a long frontage on Hylan Boulevard, a heavily-trafficked commercial thoroughfare, and a narrow irregular depth created practical difficulties and unnecessary hardship in developing the site as a conforming use; and

WHEREAS, the applicant states that the same conditions that formed the basis of the prior grants are equally applicable to the subject application, as the applicant merely seeks to enlarge the zoning lot by incorporating the 25-ft. by 50-ft. parcel immediately to the west of the zoning lot; and

WHEREAS, the applicant notes that the increased lot area will only be used to reconfigure the parking lot and improve circulation for the site; no increase in the size or operation of the eating and drinking establishment is proposed; and

WHEREAS, as to the shallow depth of the site, the applicant states that Lot 44 has a depth of only 50 feet, which precludes the construction of a conforming single-family home on the site; and

WHEREAS, specifically, the applicant states that due to the shallow depth and overall substandard size of Lot 44, a conforming use is not viable, as a single-family home on that lot would have exterior dimensions of approximately 15 feet by 19 feet, a maximum of 738 sq. ft. of floor area, and small floor plates constrained by interior stairwells and circulation space; and

WHEREAS, in support of its claim that the resulting 738 sq. ft. home on Lot 44 would not be viable, the applicant submitted data for the 17 existing homes on the subject block, which reflects that the average floor area for the homes is 2,008 sq. ft., and all but one of the homes has a floor area greater than 1,460 sq. ft.; and

WHEREAS, the applicant represents that the shallow depth of the site also results in the inability to provide planting strips in front of the parking areas along Hylan Boulevard with widths greater than 2'-6" to 4'-0"; and

WHEREAS, the applicant states that providing a complying landscaped area with a width of 7'-0" in front of the parking areas along Hylan Boulevard would compromise the parking arrangement and safety on the site; and

WHEREAS, the Board finds that the aforementioned

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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 Board notes that feasibility studies reflecting that conforming development of the site would not provide a reasonable return were submitted in support of the previous grants under BSA Cal. Nos. 130-73-BZ and 63-96-BZ; and

WHEREAS, the Board relies on the prior (b) findings for the significant portion of the proposed zoning lot that was the subject of the previous grants; and

WHEREAS, because Lot 44 can only support a single-family home, the Board finds that a separate feasibility study solely for the addition of Lot 44 into the zoning lot is unnecessary; and

WHEREAS, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home on Lot 44; 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 enlargement of the existing parking area 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 mix of commercial and residential uses; and

WHEREAS, the applicant states that the use of Lot 44 will merely be as an extension of the existing parking lot located on the site, and that planting areas and trees will be added to the existing landscaping provided around the perimeter of the parking lot to provide a buffer for the surrounding residential uses; and

WHEREAS, at hearing, the Board directed the applicant to address the adjacent neighbor's concerns regarding garbage collection and the location of refuse bins and grease containers at the site; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the refuse bins and grease containers have been relocated away from the adjacent residential neighbor, and submitted a letter from a carting company stating that trash pickup will occur before 10:30 p.m.; 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 site's unique physical conditions; and

WHEREAS, as noted above, the applicant originally proposed to both enlarge the zoning lot by incorporating Lot 44 into the site and to enlarge the existing eating and drinking establishment on the site by 581 sq. ft., but subsequently eliminated its request to enlarge the eating and drinking establishment building, thereby limiting the proposal to an enlargement of the zoning lot; and

WHEREAS, 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 617.12 and 617.4; 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 II determination 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 located in an R3X zoning district within the Special South Richmond Development District, an increase in the size of the zoning lot for an existing eating and drinking establishment (Use Group 6), which does not conform to district use regulations, and planting areas that do not comply with minimum width requirements, contrary to ZR §§ 22-00 and 107-483(b); *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 14, 2011"- Two (2) sheets and "Received March 14, 2011"- Two (2) sheets and *on further condition*:

THAT the term of this grant shall expire on May 3, 2021;

THAT landscaping shall be provided and maintained in accordance with the BSA-approved plans;

THAT all lighting shall be directed downward and away from the adjacent residential uses;

THAT the location of the refuse bins and grease container 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, May 3, 2011.

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309-09-BZ

CEQR #10-BSA-031K

APPLICANT – Harold Weinberg, P.E., for Ralph Stroffolino, owner.

SUBJECT – Application November 20, 2009 – Variance (§72-21) to allow a mixed use building, contrary to lot coverage (§23-145), side yard (§35-541) and height (§35-542) regulations. R6A/C2-3 zoning district.

PREMISES AFFECTED – 2173 65th Street, between Bay Parkway and 21st Avenue, Block 5550, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Harold Weinberg, Frank Sellitto.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 27, 2011, which supersedes an earlier decision related to another iteration of the plans, acting on Department of Buildings Application No. 302330029, reads in pertinent part:

The proposed erection of a residential building in Use Group 2 in an R5, R6A and C2-3 zoning district:

1. Creates non-compliance with respect to the required side yard along the residential side lot line and is contrary to Section 23-51 ZR; and

WHEREAS, this is an application under ZR § 72-21, to permit on a site partially within an R5 zoning district and partially within a C2-3 (R6A) zoning district, the proposed construction of a four-story (three levels and a basement) eight-unit multiple dwelling that does not provide a required side yard, contrary to ZR § 23-51; and

WHEREAS, a public hearing was held on this application on October 5, 2010, after due notice by publication in *The City Record*, with continued hearings on November 16, 2010, January 11, 2011 and March 15, 2011, and then to decision on May 3, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of an earlier iteration of the proposal that included commercial use, on the condition that the building not be occupied by a dry cleaning use; and

WHEREAS, an adjacent neighbor, individually and as represented by counsel, provided oral and written testimony in opposition to the proposal, citing concerns about: (1) damage caused to the adjacent property due to construction on the subject site; (2) whether the site conditions are unique and/or were created by the property owner; (3) the conclusions of the financial analysis; (4) the impact of the side yard waiver on the

character of the neighborhood; and (5) whether there had been sufficient opportunity to review the case file and provide additional submissions; and

WHEREAS, the site is located on the north side of 65th Street, between Bay Parkway and 21st Avenue; and

WHEREAS, the site has a width of 24 feet, a depth of 100 feet, and a total lot area of approximately 2,400 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a four-story (three levels and a basement) eight-unit multiple dwelling at the site; and

WHEREAS, the proposed building will have the following complying parameters: 6,240 sq. ft. of floor area (2.6 FAR); a lot coverage of 65 percent; a rear yard with a depth of 35'-0"; and a wall height and total height of 34'-8"; and

WHEREAS, however, the applicant proposes to not provide any side yards (one side yard, with a minimum width of 8'-0" is required along the western lot line); and

WHEREAS, the applicant initially proposed to construct a five-story (including cellar) mixed-use residential/commercial building with 7,210 sq. ft. of floor area (3.0 FAR), 69 percent lot coverage (65 percent is the maximum permitted lot coverage), and a height of 50 feet (35 feet is the maximum permitted height); and

WHEREAS, at the Board's direction, the applicant revised the plans to reflect the elimination of the commercial use, a reduction in the FAR, a reduction to the building height, and an increase in the depth of the rear yard, which eliminated the need for waivers to lot coverage and building height; and

WHEREAS, the applicant states 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: the narrowness of the subject site and the presence of a zoning district boundary line between an R5 district at the western portion of the site and a C2-3 (R6A) at the eastern portion of the site; and

WHEREAS, as to the narrow width of the site, the applicant states that if the required side yard with a width of eight feet were provided, the building would have an exterior width of only 16'-0" which would result in an interior width of approximately 14'-0" and floor plates that narrow to accommodate interior circulation space; and

WHEREAS, accordingly, the applicant represents that the side yard waiver is necessary to create a building of a reasonable width; and

WHEREAS, as to the zoning district boundary line, the 2,400 sq. ft. of lot area is predominantly located within the C2-3 (R6-A) zoning district (1,500 sq. ft. of lot area) at the east side of the site and the remaining lot area (900 sq. ft.) is within the R5 district;

WHEREAS, the Board notes that under ZR § 77-11, the C2-3 (R6A) zoning district regulations can apply to the entire site since more than 50 percent of the site is located within the C2-3 (R6A) zoning district and no portion of the site is greater

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than 25 feet from the zoning district boundary line; and

WHEREAS, accordingly, all of the C2-3 (R6A) bulk provisions can be applied to the site; and

WHEREAS, however, because the adjacent site to the west is located within an R5 zoning district and the subject site is located within an underlying R6A zoning district, ZR § 23-51 (Special Provisions for Yards Adjacent to R1 through R5 Districts) requires that there be a side yard with a minimum width of eight feet along the western lot line; and

WHEREAS, additionally, the building height must be limited to 35 feet pursuant to ZR § 23-693 (Special Provisions Applying Adjacent to R1 through R6B Districts) since it is adjacent to a site within an R5 zoning district, even though the C2-3 (R6A) zoning district regulations would allow for a greater height; and

WHEREAS, the Board notes that the building envelope that would accommodate the floor area available and building form (a multiple dwelling) under C2-3 (R6A) zoning regulations is narrow and with a reduced height (per the ZR §§ 23-51 and 23-693 restrictions) which results in a building that cannot accommodate the available 3.0 FAR; and

WHEREAS, the as-of-right building envelope with an exterior width of 16 feet and a height of 35 feet could only accommodate three stories and a total floor area of 3,840 sq. ft. (1.6 FAR), including commercial use at the first floor and two apartments above; and

WHEREAS, further, the height limit at ZR § 23-693, with the required side yard, limits the total floor area of the site to approximately half (1.6 FAR) of what would be permitted (3.0 FAR) if the site were not within 25 feet of the zoning district boundary line; and

WHEREAS, the applicant asserts that a building with a width of 16 feet is too narrow to feasibly accommodate a multiple dwelling, which is permitted as of right pursuant to R6A zoning regulations and, if not for the district boundary line, the width of the building could be 24 feet without any side yards; and

WHEREAS, in support of its assertion that a home with a width of 16 feet is not feasible, the applicant's survey reflects that 14 lots in the surrounding area (on 64th Street, 65th Street, and Bay Parkway) have widths of 24 to 25 feet, and buildings on all such sites were a minimum of 20 feet in width; another site has a width of 75 feet and is occupied by a building with a width of 75 feet; and

WHEREAS, as to uniqueness, the applicant notes that the lot width of 24 feet alone is not unique, but a vacant site, with a width of 24 feet, divided by a zoning district boundary line is unique within the surrounding area; and

WHEREAS, in support of the claim that the combination of site conditions is unique, the applicant surveyed the 17 other sites along the zoning district boundary (from 62nd Street to 68th Street) that would be similarly affected by such regulations; and

WHEREAS, the survey reflects that seven of the 17 sites are of similar size and width, but that the subject site is the only vacant site; and

WHEREAS, the survey also reflects that of the 17 sites, 14 are developed with homes and three, including the subject

site, are vacant sites, but that the other two vacant sites are large enough to accommodate a side yard; and

WHEREAS, the survey reflects that the subject site is the only site that is vacant, as narrow, and affected by the zoning district boundary line; 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 side yard regulations; and

WHEREAS, the Board has determined that because of the subject site'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 provided a financial analysis for (1) a three-story mixed-use commercial/residential building with ground floor commercial, two residential units, and 1.6 FAR; (2) a three-story residential building with three units and 1.6 FAR; (3) a five-story mixed-use commercial/residential building at 3.0 FAR, a height of 50 feet, and with 69 percent lot coverage; (4) several lesser variance scenarios including a three-story building (including cellar) and a scenario with a side yard with a width of 4'-0"; and (5) the current proposal for an eight-unit residential building with a height of 34'-8" and 65 percent lot coverage; and

WHEREAS, the study concluded that the as-of-right and lesser variance scenarios would not result in a reasonable return, but that the proposal would realize 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 zoning will provide a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant submitted a radius diagram reflecting that the surrounding neighborhood is characterized by a mix of uses including single-family homes, multiple dwellings, community facilities, and commercial uses and that there are larger buildings, including several five-story multiple dwellings, at the corners and within the C2-3 (R6A) and other adjacent higher density zoning districts; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development and that it complies with all relevant bulk regulations other than side yards; and

WHEREAS, specifically, the applicant notes that the proposed home complies with the R6A zoning district regulations for FAR, open space, and lot coverage and complies with the R5 regulations for height and rear yard; and

WHEREAS, the applicant's analysis reflects that there is not any context for side yards with widths of 8'-0" in the surrounding area as many sites are occupied with semi-detached homes with side yards with widths of 4'-0"; and

WHEREAS, the Board notes that the building that formerly occupied the site was attached to the adjacent building to the west and did not provide any side yard along the portion

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of the common lot line it occupied; and

WHEREAS, the Board notes that sites located within the R6A zoning district but at a distance greater than 25 feet from the zoning district boundary line would not have to provide the side yard with a width of 8'-0" and could construct to a height significantly greater than the 34'-8" proposed; and

WHEREAS, the Board notes that the adjacent building to the east, within the C2-3 (R6A) zoning district is a multiple dwelling, which does not provide a side yard and rises to a height of seven stories and 74 feet and, thus provides a transition between the large building to the east and the single-family home to the west; and

WHEREAS, therefore, 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, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's narrow width and presence of the zoning district boundary line; 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 site conditions; and

WHEREAS, as noted above, the applicant initially proposed a building with 7,210 sq. ft. of floor area (3.0 FAR), 69 percent lot coverage (65 percent is the maximum permitted lot coverage), and a height of 50 feet (35 feet is the maximum permitted height); and

WHEREAS, during the course of the hearing process, the applicant revised the plans at the Board's direction to reduce the FAR, lot coverage, and height, which ultimately eliminated the non-complying height and lot coverage; and

WHEREAS, the Board finds that this proposal, which complies with all zoning regulations except for side yards is the minimum necessary to afford the owner relief; and

WHEREAS, as to the opposition's assertion that the applicant has not provided complete responses to the Board's questions, the Board notes that it is satisfied with the applicant's submissions and has concluded that the record reflects sufficient documentation for it to act on the variance application; and

WHEREAS, the Board also notes that the application was filed in November 2009 and that there have been three public hearings on the matter, with the first in November 2010; accordingly, the Board concludes that all interested parties have had sufficient opportunity to review the case file and provide written or oral testimony on the matter and, thus, the Board is not premature in moving to decision; and

WHEREAS, the Board has reviewed and considered the opposition's written and oral testimony; and

WHEREAS, the Board notes that (1) any concerns about damage to the adjacent home should be raised in an appropriate forum and are not properly before the Board; (2) the applicant submitted evidence that reflects that the site conditions meet the uniqueness finding under ZR § 72-21(a) and that the financial analysis reflects a nexus between the hardship at the site and the potential return on investment; and (3) as noted above, the Board finds that the side yard waiver is the

minimum relief necessary and that it will not disrupt the neighborhood character; and

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

WHEREAS, the project is classified as an Unlisted action pursuant to 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. 10BSA031K, dated November 18, 2009; 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 site partially within an R5 zoning district and partially within a C2-3 (R6A) zoning district, the proposed construction of a four-story (three levels and a basement) eight-unit multiple dwelling that does not provide a required side yard, contrary to ZR § 23-51; *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 29, 2011"— twelve (12) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum of 6,240 sq. ft. of floor area (2.6 FAR); a lot coverage of 65 percent; a rear yard with a minimum depth of 35'-0"; and a wall height and total height of 34'-8"; as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed building shall be subject to DOB review and approval;

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;

THAT significant construction shall proceed in accordance with ZR § 72-23;

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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)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 3, 2011.

127-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Aleksandr Goldshmidt and Inna Goldshmidt, owners.

SUBJECT – Application July 12, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space, lot coverage (§23-141), exceeds the maximum perimeter wall height (§23-631) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 45 Coleridge Street, east side of Coleridge Street, between Shore Boulevard and Hampton Avenue, Block 8729, Lot 65, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 10, 2010, acting on Department of Buildings Application No. 320148416, reads in pertinent part:

Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio.

Proposed plans are contrary to ZR 23-141 in that the proposed open space is less than the minimum required open space.

Proposed plans are contrary to ZR 23-141 in that the proposed lot coverage exceeds the maximum permitted lot coverage.

Proposed plans are contrary to ZR 23-631 in that the proposed perimeter wall height exceeds the maximum permitted perimeter wall height.

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard; 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 home, which does not comply with the zoning requirements for floor area, open space, lot coverage, 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 11, 2011, after due notice by publication in *The City Record*, with continued hearings on February 8, 2011, March 8, 2011 and March 29, 2011, and then to decision on May 3, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

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

WHEREAS, the subject site is located on the east side of Coleridge Street between Shore Boulevard and Hampton Avenue, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a single-family home with a floor area of 2,921 sq. ft. (0.49 FAR); 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 2,921 sq. ft. (0.49 FAR) to 5,943 sq. ft. (0.99 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 61 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 38 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide a rear yard with a depth of approximately 22'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant proposes to provide a perimeter wall height of approximately 21'-6 1/4" (a maximum perimeter wall height of 21'-0" is permitted); and

WHEREAS, the Board notes that the special permit under ZR § 73-622 allows a perimeter wall height to exceed the permitted height in an R3-1 zoning district, provided that the perimeter wall height is equal to or less than the perimeter wall height of an adjacent single- or two-family detached or semi-detached residence with an existing non-complying perimeter wall facing the street; and

WHEREAS, in support of the requested waiver for perimeter wall height, the applicant provided a survey establishing the height of the adjacent building; and

WHEREAS, the Board notes that the adjacent single family home at 53 Coleridge Street has a perimeter wall height of 21'-6 1/4"; and

WHEREAS, at hearing, the Board directed the applicant to establish the adjacent home's perimeter wall height and to revise its plans so as not to exceed its height; and

WHEREAS, the applicant represents that the perimeter wall of the proposed home, as revised, therefore falls within the scope of the special permit; and

WHEREAS, the Board has determined that the applicant has submitted sufficient information to establish that applicant may match the pre-existing perimeter wall of

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the adjacent home, which exceeds a height of 21'-0"; and
WHEREAS, based upon its review of the record, 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 home, which does not comply with the zoning requirements for floor area, open space, lot coverage, 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 April 21, 2011"-(14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of approximately 5,943 sq. ft. (0.9 FAR); a minimum open space of 61 percent; a maximum lot coverage of 38 percent; a rear yard with a minimum depth of approximately 22'-0"; and a maximum perimeter wall height of approximately 21'-6 1/4", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 3, 2011.

134-10-BZ

CEQR #11-BSA-009K

APPLICANT – Stuart Beckerman, for Passiv House Xperimental LLC, owner.

SUBJECT – Application July 30, 2010 – Variance (§72-21) to allow a residential building, contrary to floor area (§43-12), height (§43-43), and use (§42-10) regulations. M1-1 zoning district.

PREMISES AFFECTED – 107 Union Street, north side of Union Street, between Van Brunt and Columbia Streets, Block 335, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Neil Weisbard.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 26, 2010, acting on Department of Buildings Application No. 310153473, reads in pertinent part:

“Proposed (2) family dwelling (UG 2) in an M1-1 zoning district is contrary to Section 42-10 of the NYC ZR and must be referred to the BSA

Proposed FA is contrary to Section 43-12 of the NYC ZR and must be referred to the BSA

Proposed FAR is contrary to Section 43-12 of the NYC ZR and must be referred to the BSA

Proposed Front Wall Height is contrary to Section 43-43 of the NYC ZR and must be referred to the BSA

Proposed Initial Setback Distance is contrary to Section 43-43 of the NYC ZR and must be referred to the BSA

Proposed Sky Exposure Plane is contrary to Section 43-43 of the ZR and must be referred to the BSA;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, a four-story residential building with two dwelling units and one on-site parking space, contrary to ZR §§ 42-10, 43-12 and 43-43; and

WHEREAS, a public hearing was held on this application on October 26, 2010 after due notice by publication in the *City Record*, with continued hearings on December 7, 2010, January 11, 2011 and February 8, 2011, and then to decision on May 3, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application, subject to the following conditions: (1) the width of the curb cut be reduced to 12 feet; (2) the applicant consider modifying the design of

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the building façade to make it more harmonious with the surrounding neighborhood; and (3) the applicant reconsider the use of window louvers for the building; and

WHEREAS, the site is located on the north side of Union Street, between Van Brunt Street and Columbia Street, within an M1-1 zoning district; and

WHEREAS, the site has a width of 23 feet, a depth of 100 feet, and a lot area of 2,300 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a four-story two-family residential building with a floor area of 4,574 sq. ft. (the maximum permitted floor area is 2,286 sq. ft.), an FAR of 2.0 (the maximum permitted FAR is 1.0), a total height of 45'-6", a front wall height of 37'-0" (the maximum permitted front wall height is 30'-0"), an initial front setback of 15'-0" (a minimum initial front setback distance of 20'-0" is required), encroachment into the sky exposure plane, and one on-site parking space; and

WHEREAS, the applicant initially proposed to construct a four-story residential building with a total height of 52'-4" and two parking spaces; and

WHEREAS, in response to concerns raised by the Board, the applicant reduced the total height of the building by approximately seven feet, and eliminated one of the on-site parking spaces; and

WHEREAS, because residential use is not permitted in the subject M1-1 zoning district, and because relief from bulk requirements of the M1-1 district is necessary, the applicant requests the subject variance; and

WHEREAS, the applicant represents that the following is a unique physical condition which creates unnecessary hardship in developing the site in conformance with applicable regulations: the site is a vacant lot with a narrow width and no opportunity for assemblage with adjoining lots; and

WHEREAS, the applicant represents that the subject zoning lot is a vacant pre-existing lot with a width of 23'-0", which cannot feasibly accommodate a modern conforming use; and

WHEREAS, the applicant states that the narrow lot width would result in inefficient, narrow floor plates that would severely limit potential manufacturing or commercial uses on the site; and

WHEREAS, the applicant states that there are only two other lots in the surrounding area with widths of less than 25 feet which are occupied by buildings containing a conforming use; and

WHEREAS, the applicant represents that there are so few conforming uses on narrow lots because the limited width of such lots does not provide sufficient space for a loading dock or floor plates which are necessary for manufacturing or commercial uses; and

WHEREAS, as further evidence that the subject lot is not conducive to development of a conforming manufacturing or commercial building, the applicant submitted letters from real estate brokers reflecting that the owner has attempted to market the site for a conforming use since November 2008 but has received no offers; and

WHEREAS, the applicant represents that the subject site

is also unique because it is the only vacant lot in the surrounding area with no opportunity for assemblage with adjoining zoning lots; and

WHEREAS, the applicant states that all of the lots immediately adjacent to the subject site are improved with existing buildings and under separate ownership; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that of the 13 vacant lots less than 25 feet in width in the surrounding area, the subject site is the only vacant lot which does not adjoin another vacant lot, and therefore has no opportunity to merge with an adjoining lot to create a larger zoning lot that is more viable for conforming uses; and

WHEREAS, the Board finds that the narrow width of the vacant lot is a unique physical condition which creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) an as-of-right industrial building; (2) an as-of-right commercial office building; (3) a four-story, two-family residential building with a 2.0 FAR, a rear yard with a depth of 43 feet, and no parking spaces; (4) a three-story, two-family residential building with a 1.99 FAR, a rear yard with a depth of 30 feet, and no parking spaces; (5) a three-story, two-family residential building with a 1.99 FAR, a rear yard with a depth of 30 feet, and one parking space in a garage; and (6) the proposed four-story residential building with a 2.0 FAR, a rear yard with a depth of 43 feet, and one parking space in a garage; and

WHEREAS, the study concluded that only the proposed residential building 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 condition, 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 area immediately to the east of the site is located in a C2-4 (R6A) zoning district, and the areas one block to the south and southeast of the site are located in R6B zoning districts; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which reflects that the adjacent buildings to the east, south and north of the site all contain residential uses; and

WHEREAS, the applicant states that the proposed building complies with all bulk regulations of the adjacent R6A and R6B zoning districts, except for lot coverage; and

WHEREAS, the applicant further states that the total height of the building was reduced by approximately seven

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feet, and the proposed building is contextual with the surrounding area; and

WHEREAS, specifically, the applicant submitted a site line drawing which reflects that (1) since it is setback, only a small portion of the fourth floor of the proposed building will be visible from the street, (2) the base wall of the proposed building will align with the street wall of the adjacent building to the east, and (3) the street wall of the proposed building will be lower than the majority of the base walls of the buildings on the south side of Union Street, and the small portion of the fourth floor parapet which is visible from the street will appear lower than the majority of the base walls of the buildings on the south side of Union Street; and

WHEREAS, in response to the Community Board's request, the applicant agreed to reduce the width of the existing curb cut on the site from 22 feet to 12 feet; and

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes residential buildings adjacent to the site, across the street, and elsewhere on the subject block; 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 site's historic lot dimensions; and

WHEREAS, as noted above, during the course of the hearing process, the applicant revised the plans to reduce the total height from 52'-4" to 45'-6" and eliminated one of the garage parking spaces from its proposal, in response to concerns raised by the Board; 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 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. 11-BSA-009K dated May 2, 2011; 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 Department of

Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis has reviewed the project for potential hazardous materials and air quality impacts; and

WHEREAS, DEP accepts the March 2011 Remedial Action Plan and the Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted for its review and approval upon completion of the proposed project; and

WHEREAS, a site survey and permits search was conducted for the active industrial/manufacturing facilities for the area within a 400-ft. radius of the proposed project; and

WHEREAS, one active industrial facility (auto body shop) was identified; and

WHEREAS, based on the air quality screening analysis conducted for the auto body shop, DEP determined that significant impacts from industrial/manufacturing uses on the proposed project are not anticipated; 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 residential building with two dwelling units and one on-site parking space, contrary to ZR §§ 42-10, 43-12 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 December 21, 2010" – six (6) sheets; and *on further condition*:

THAT the following are the bulk parameters of the building: a floor area of 4,574 sq. ft. (2.0 FAR); a total height of 45'-6"; a maximum front wall height of 37'-0"; and one parking space, as indicated on the BSA-approved plans;

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor shall obtain from DEP a Notice to Proceed;

THAT prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain from DEP a Notice of Satisfaction;

THAT substantial construction shall be completed in accordance with ZR § 72-23;

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

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 plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 3, 2011.

156-10-BZ thru 164-10-BZ CEQR #10-DCP-029K

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for City of New York c/o Housing Preservation Development (HPD), owner.

SUBJECT – Application August 26, 2010 – Variance (§72-21) to allow residential buildings, contrary to rear yard (§23-47) and minimum distance between windows and lot lines (§23-861) regulations. M1-2/R6A zoning district.

PREMISES AFFECTED – 1204, 1208, 1214, 1220, 1226, 1232, 1264, 1270, 1276 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue, Block 5295, Lots 4, 104, 105, 106, 107, 108, 111, 112, 113, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Brooklyn Borough Commissioner, dated December 1, 2010 and January 10, 2011, acting on Department of Buildings Application Nos. 320190324, 320190333, 320190342, 320190351, 320190360, 320190379, 320190388, 320190404, and 320190413, read, in pertinent part:

Proposed four-story, four-family dwelling in an (MX) M1-2/R6A zoning district does not provide the required rear yard (23-47 ZR).

[and/or]

Proposed four-story, four-family dwelling in an (MX) M1-2/R6A zoning district does not provide the required distance between a legally required window and a lot line (23-861 ZR); and

WHEREAS, this is an application under ZR § 72-21, to permit, within an (MX) M1-2/R6A zoning district, the proposed construction of nine four-story four-family residential buildings that do not provide the required distance between a legally required window and a lot line, contrary to ZR § 23-861; and five of the nine buildings also do not provide the required rear yard, contrary to ZR § 23-47; and

WHEREAS, a companion variance application, filed under BSA Cal. Nos. 165 through 172-10-BZ, for Block 5300, Lots 9, 109-113, and 115-116 was heard concurrently and

decided on the same date; and

WHEREAS, a public hearing was held on this application on March 1, 2011 after due notice by publication in *The City Record*, with a continued hearing on March 29, 2011, and then to decision on May 3, 2011; and

WHEREAS, this application is brought on behalf the City of New York and will be developed under the auspices of the New York City Department of Housing Preservation and Development (HPD) (the “applicant”), which will restrict the use to affordable housing under HPD’s New Foundations Program; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the south side of 37th Street, between 12th Avenue and 13th Avenue, and the applicant proposed to subdivide the existing lot into eight individual zoning lots; six will be developed with a total of nine four-family buildings (nine tax lots) and two lots will be developed with off-street parking facilities accessory to existing community facilities located behind the site on 38th Street and not included in the proposed residential request; and

WHEREAS, the site has a width of 700 ft., a depth of 50 ft., and a lot area of 35,000 sq. ft., and is currently within an (MX) M1-2/R6A zoning district (the site was rezoned as part of the Culver El rezoning on October 27, 2010 from an M2-1 zoning district); and

WHEREAS, the site is located within a former railroad right-of-way known as the Culver El, which was formerly occupied by an elevated railroad line, which was demolished in 1985, and a ground level railroad; and

WHEREAS, the applicant states that because the site is located within a former railroad right-of-way, it was required to seek a special approval from the City Planning Commission pursuant to ZR § 74-681, which it has done; and

WHEREAS, additionally, the applicant states that HPD obtained a designation of an Urban Development Action Area Project (UDAAP) and Disposition of city-owned property to permit the disposition of the site and to permit development of the proposed affordable housing; and

WHEREAS, the applicant proposes to construct a total of 17 four-story four-family buildings and a total of 68 affordable housing units across the subject block and the companion Block 5300;

WHEREAS, of the nine subject buildings, each of the three single buildings will have 6,543 sq. ft. of floor area and each of the three double buildings will have 13,040 sq. ft.; all non-corner buildings propose a rear yard with a depth of 10 feet and one side yard with a width of 9’-6””; all buildings include off-street parking for 50 percent of the proposed residential units; and

WHEREAS, the buildings will have a complying wall height of 40’-0””, and a total height of 47’-9””, at the peak of the roof; and

WHEREAS, the applicant proposes to provide a rear

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yard/minimum distance to the rear lot line and open areas of between 9'-6" and 15'-8" in between the buildings and rear yards with depths/distance from required windows to lot line of 10'-0" (rear yards and distance from required window to lot line with a minimum depth of 30'-0" are required); and

WHEREAS, the applicant notes that although the buildings do not provide the minimum distance requirement, the open areas exceed the side yards required pursuant to ZR § 23-561; 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 history of the site as a railroad right-of-way; (2) the shallow depth; and (3) the programmatic needs of HPD's housing initiative; and

WHEREAS, as to the history of the site, the applicant states that the site was occupied by the elevated railroad line (BMT Culver Shuttle transit line) and the ground level South Brooklyn Railroad, both of which stopped service in the 1970's; the elevated train infrastructure occupied the site until its demolition in 1985; and

WHEREAS, the applicant states that after the Metropolitan Transit Authority surrendered its interest in the site, the City has leased and/or sold portions of the site for uses including affordable residential development and accessory parking for surrounding institutions and businesses; and

WHEREAS, the applicant states that in recent years, the City announced an initiative to stimulate development of the site with affordable housing, which is in great demand in the surrounding Borough Park neighborhood; and

WHEREAS, the applicant notes that the rezoning of the subject site and portions of the surrounding area and other associated actions are a culmination of several years of effort from the Department of City Planning, HPD, elected officials and local organizations to make a productive use of the abandoned railroad right-of way; and

WHEREAS, as to the site's depth, the applicant notes that the site's unusual length and depth of 50 feet may have been sufficient for the railroad which did not require a standard block depth for its infrastructure, but that nearly all sites in the area have depths ranging from 80 feet to 150 feet, with the majority having depths of 80 to 100 feet; and

WHEREAS, the applicant proposes to provide a rear yard and a distance from wall to lot line with a depth of 10 feet along the rear lot line in order to provide a building depth of 40 feet and open areas with widths of between 9'-6" and 15'-8" between the buildings and side lot lines; and

WHEREAS, the applicant notes that, although the buildings do not meet the minimum distance between required window and lot line requirement of 30 feet, the proposed open area exceeds the side yards (0 ft. or a minimum of 8 ft., if provided) required pursuant to ZR § 23-651; and

WHEREAS, the applicant submitted as-of-right plans which reflect that in order to construct complying buildings which satisfy HPD's programmatic need of accommodating the maximum available floor area, the buildings would be six stories in height with depths of only 20 feet, which would result in inefficient floorplates and buildings that would not

satisfy HPD's needs and also not be able to accommodate off-street parking; and

WHEREAS, further, the applicant notes that the as-of-right buildings with interior space required for required exits, elevators, and circulation space would render the buildings extraordinarily expensive and impractical to construct; and

WHEREAS, the applicant also notes that ZR § 23-52 (Special Provisions for Shallow Interior Lots) provides that on a lot that is 50 ft. in depth, a rear yard of ten feet is permitted; and

WHEREAS, however, the applicant notes that as a result of the subject site being subdivided into multiple zoning lots (as required by HPD's programmatic needs), after December 15, 1961, the site does not meet the condition precedent required for the rear yard reduction; and

WHEREAS, the applicant notes that the post-1961 creation of the individual zoning lots is not the cause for the shallow lot condition, which is associated with the unique history and usage of the subject site as a railroad right-of-way that has been abandoned; and

WHEREAS, the applicant asserts that maintaining the site as a single zoning lot would result in the requirement to comply with ZR § 23-711 for providing a minimum distance of between 30 and 50 feet between buildings which would drastically limit the amount of development on the site; and

WHEREAS, additionally, the applicant notes that the minimum distance between required window and lot line regulations would not apply if the proposed buildings were limited to a maximum of three stories – three units and 32 ft. in height; and

WHEREAS, the applicant asserts that such a height limit would result in a loss of 25 percent of the development and not allow HPD to satisfy its programmatic need and it would still be contrary to the rear yard requirement of 30 feet; and

WHEREAS, the applicant represents that the as-of-right plan would also require that the lowest floor would be a basement, not at grade, and that it would require installation of an ADA-accessible entry ramp at the basement floor level, requiring that the first floor be set back; and

WHEREAS, the applicant notes that the proposed design reflects one unit per floor (which is well within the density limitations) and, thus, each unit will include frontage on 37th Street, which has a width of 60 feet, and there will not be any units that only have exposure to the rear yard; and

WHEREAS, as to the uniqueness of the site conditions, the applicant notes that the railroad right-of-way has affected only a narrow strip along five city blocks in the area and that the two sites seeking variances are the last that have not been the subject of other discretionary actions to allow for their development; and

WHEREAS, as to HPD's programmatic need, the applicant states that the Department of City Planning and HPD have executed a series of land use actions to facilitate the development of the subject site with a series of homes under HPD's affordable housing initiatives and that the proposal was subject to extensive review by HPD's Division of Architecture, Construction, and Engineering to insure compliance with HPD's standards as to habitability and site plan design; and

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WHEREAS, accordingly, the applicant represents that the proposed site plan meets HPD's standards for buildings of sufficient size and density that are feasible to construct; and

WHEREAS, the applicant represents that the proposed design complies with HPD's programmatic and quality of life requirements; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in light of HPD'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 the site is currently owned by the City and proposed for development with affordable housing by a non-profit entity to be selected by HPD in furtherance of its 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 uses adjacent to the proposed rear yards are a mix of manufacturing, community facility, and residential uses as well as vacant sites; and

WHEREAS, the applicant asserts that the only residential uses abutting the portions of the site associated with the waivers, are located adjacent to proposed corner lots for which no rear yard waivers are sought; and

WHEREAS, the applicant notes that the distance between these existing residential/mixed use buildings and the proposed dwelling units is ten feet which is greater than the required side yards; and

WHEREAS, the applicant states that the proposed development has been reviewed by the Department of City Planning, which was the applicant for the rezoning, text change, and special permits, as well as by HPD, which is the applicant for the UDAAP and will select the non-profit developer for the project, pursuant to which the buildings will be constructed; and

WHEREAS, the applicant cites to the City's Uniform Land Use Review Procedure (ULURP) application, which says that "the project area consists of underutilized property that tends to impair or arrest the sound development of the surrounding community, with or without tangible physical blight. Incentives are needed in order to induce the correction of these substandard, insanitary and blighting conditions. The project activities would protect and promote health and safety and would encourage sound growth and development;" and

WHEREAS, the applicant also cites to the Department of City Planning's special permit application for the construction within the railroad right-of-way in which it states that (1) the streets providing access to the site are adequate to handle traffic generated from the proposed use of the site; (2) the bulk and density do not affect the character of the surrounding area; and (3) the proposed and existing uses do not adversely affect each other; 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 due to the unique site conditions including the site's former use as a railroad right-of-way; and

WHEREAS, the Board finds that this proposal, which complies with all zoning regulations except required rear yards and minimum distance between required windows and lot lines 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 Department of City Planning, as Lead Agency, 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. 10DCP029K, dated May 10, 2010; 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 adopts the CEQR determination of the Department of City Planning and makes the required findings under ZR § 72-21, to permit, within an (MX) M1-2/R6A zoning district, the proposed construction of nine four-story four-family residential buildings that do not provide the required distance between a legally required window and a lot line, contrary to ZR § 23-861; and five of the nine buildings also do not provide the required rear yard, contrary to ZR § 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 "April 29, 2011"- (17) 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 parameters of the proposed buildings shall be as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed buildings shall be subject to DOB review and approval;

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;

THAT significant construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance 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 3, 2011.

165-10-BZ thru 172-10-BZ

CEQR #10-DCP-029K

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for City of New York c/o Housing Preservation Development (HPD), owner.

SUBJECT – Application August 26, 2010 – Variance (§72-21) to allow residential buildings, contrary to rear yard (§23-47) and minimum distance between windows and lot lines (§23-861) regulations. M1-2/R6A zoning district.

PREMISES AFFECTED – 1304, 1310, 1316, 1322, 1328, 1334, 1362, 1368 37th Street, South side of 37th Street between 12th Avenue and 14th Avenue, Block 5300, Lots 9, 109, 110, 111, 112, 113, 115, 116, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Brooklyn Borough Commissioner, dated December 1, 2010 and January 10, 2011, acting on Department of Buildings Application Nos. 320190280, 320190119, 320190093, 320190100, 320190299, 320190397, 320190306, and 320190315, read, in pertinent part:

Proposed four-story, four-family dwelling in an (MX) M1-2/R6A zoning district does not provide the required rear yard (23-47 ZR).

[and/or]

Proposed four-story, four-family dwelling in an (MX) M1-2/R6A zoning district does not provide the required distance between a legally required window and a lot line (23-861 ZR); and

WHEREAS, this is an application under ZR § 72-21, to permit, within an (MX) M1-2/R6A zoning district, the proposed construction of eight four-story four-family residential buildings that do not provide the required distance between a legally required window and a lot line, contrary to

ZR § 23-861; and four of the eight buildings also do not provide the required rear yard, contrary to ZR § 23-47; and

WHEREAS, a companion variance application, filed under BSA Cal. Nos. 156 through 164-10-BZ, for Block 5295, Lots 4, 104-108, 111-113 was heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on March 1, 2011 after due notice by publication in *The City Record*, with a continued hearing on March 29, 2011, and then to decision on May 3, 2011; and

WHEREAS, this application is brought on behalf the City of New York and will be developed under the auspices of the New York City Department of Housing Preservation and Development (HPD) (the “applicant”), which will restrict the use to affordable housing under HPD’s New Foundations Program; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the south side of 37th Street, between 13th Avenue and 14th Avenue, and the applicant proposed to subdivide the existing lot into six individual zoning lots; five will be developed with a total of eight four-family buildings (eight tax lots) and one lot will be developed with off-street parking facilities accessory to existing community facilities located behind the site on 38th Street and not included in the proposed residential request; and

WHEREAS, the site has a width of 604.19 ft., a depth of 50 ft., and a lot area of 31,358.5 sq. ft., and is currently within an (MX) M1-2/R6A zoning district (the site was rezoned as part of the Culver El rezoning on October 27, 2010 from an M2-1 zoning district); and

WHEREAS, the site is located within a former railroad right-of-way known as the Culver El, which was formerly occupied by an elevated railroad line, which was demolished in 1985, and a ground level railroad; and

WHEREAS, the applicant states that because the site is located within a former railroad right-of-way, it was required to seek a special approval from the City Planning Commission pursuant to ZR § 74-681, which it has done; and

WHEREAS, additionally, the applicant states that HPD obtained a designation of an Urban Development Action Area Project (UDAAP) and Disposition of city-owned property to permit the disposition of the site and to permit development of the proposed affordable housing; and

WHEREAS, the applicant proposes to construct a total of 17 four-story four-family buildings and a total of 68 affordable housing units across the subject block and the companion Block 5295;

WHEREAS, of the eight subject buildings, each of the three single buildings will have 6,453 sq. ft. of floor area and each of the three double buildings will have between 12,746 sq. ft. and 14,168 sq. ft.; all non-corner buildings propose a rear yard with a depth of 10 feet and one side yard with a width of 9’-6”;; all buildings include off-street parking for 50 percent of

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the proposed residential units; and

WHEREAS, the buildings will have a complying wall height of 40'-0", and a total height of 47'-9", at the peak of the roof; and

WHEREAS, the applicant proposes to provide a rear yard/minimum distance to the rear lot line and open areas of between 9'-6" and 15'-8" in between the buildings and rear yards with depths/distance from required windows to lot line of 10'-0" (rear yards and distance from required window to lot line with a minimum depth of 30'-0" are required); and

WHEREAS, the applicant notes that although the buildings do not provide the minimum distance requirement, the open areas exceed the side yards required pursuant to ZR § 23-561; 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 history of the site as a railroad right-of-way; (2) the shallow depth; and (3) the programmatic needs of HPD's housing initiative; and

WHEREAS, as to the history of the site, the applicant states that the site was occupied by the elevated railroad line (BMT Culver Shuttle transit line) and the ground level South Brooklyn Railroad, both of which stopped service in the 1970's; the elevated train infrastructure occupied the site until its demolition in 1985; and

WHEREAS, the applicant states that after the Metropolitan Transit Authority surrendered its interest in the site, the City has leased and/or sold portions of the site for uses including affordable residential development and accessory parking for surrounding institutions and businesses; and

WHEREAS, the applicant states that in recent years, the City announced an initiative to stimulate development of the site with affordable housing, which is in great demand in the surrounding Borough Park neighborhood; and

WHEREAS, the applicant notes that the rezoning of the subject site and portions of the surrounding area and other associated actions are a culmination of several years of effort from the Department of City Planning, HPD, elected officials and local organizations to make a productive use of the abandoned railroad right-of way; and

WHEREAS, as to the site's depth, the applicant notes that the site's unusual length and depth of 50 feet may have been sufficient for the railroad which did not require a standard block depth for its infrastructure, but that nearly all sites in the area have depths ranging from 80 feet to 150 feet, with the majority having depths of 80 to 100 feet; and

WHEREAS, the applicant proposes to provide a rear yard and a distance from wall to lot line with a depth of 10 feet along the rear lot line in order to provide a building depth of 40 feet and open areas with widths of between 9'-6" and 15'-8" between the buildings and side lot lines; and

WHEREAS, the applicant notes that, although the buildings do not meet the minimum distance between required window and lot line requirement of 30 feet, the proposed open area exceeds the side yards (0 ft. or a minimum of 8 ft., if provided) required pursuant to ZR § 23-651; and

WHEREAS, the applicant submitted as-of-right plans

which reflect that in order to construct complying buildings which satisfy HPD's programmatic need of accommodating the maximum available floor area, the buildings would be six stories in height with depths of only 20 feet, which would result in inefficient floorplates and buildings that would not satisfy HPD's needs and also not be able to accommodate off-street parking; and

WHEREAS, further, the applicant notes that the as-of-right buildings with interior space required for required exits, elevators, and circulation space would render the buildings extraordinarily expensive and impractical to construct; and

WHEREAS, the applicant also notes that ZR § 23-52 (Special Provisions for Shallow Interior Lots) provides that on a lot that is 50 ft. in depth, a rear yard of ten feet is permitted; and

WHEREAS, however, the applicant notes that as a result of the subject site being subdivided into multiple zoning lots (as required by HPD's programmatic needs), after December 15, 1961, the site does not meet the condition precedent required for the rear yard reduction; and

WHEREAS, the applicant notes that the post-1961 creation of the individual zoning lots is not the cause for the shallow lot condition, which is associated with the unique history and usage of the subject site as a railroad right-of-way that has been abandoned; and

WHEREAS, the applicant asserts that maintaining the site as a single zoning lot would result in the requirement to comply with ZR § 23-711 for providing a minimum distance of between 30 and 50 feet between buildings which would drastically limit the amount of development on the site; and

WHEREAS, additionally, the applicant notes that the minimum distance between required window and lot line regulations would not apply if the proposed buildings were limited to a maximum of three stories – three units and 32 ft. in height; and

WHEREAS, the applicant asserts that such a height limit would result in a loss of 25 percent of the development and not allow HPD to satisfy its programmatic need and it would still be contrary to the rear yard requirement of 30 feet; and

WHEREAS, the applicant represents that the as-of-right plan would also require that the lowest floor would be a basement, not at grade, and that it would require installation of an ADA-accessible entry ramp at the basement floor level, requiring that the first floor be set back; and

WHEREAS, the applicant notes that the proposed design reflects one unit per floor (which is well within the density limitations) and, thus, each unit will include frontage on 37th Street, which has a width of 60 feet, and there will not be any units that only have exposure to the rear yard; and

WHEREAS, as to the uniqueness of the site conditions, the applicant notes that the railroad right-of-way has affected only a narrow strip along five city blocks in the area and that the two sites seeking variances are the last that have not been the subject of other discretionary actions to allow for their development; and

WHEREAS, as to HPD's programmatic need, the applicant states that the Department of City Planning and HPD have executed a series of land use actions to facilitate the

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development of the subject site with a series of homes under HPD's affordable housing initiatives and that the proposal was subject to extensive review by HPD's Division of Architecture, Construction, and Engineering to insure compliance with HPD's standards as to habitability and site plan design; and

WHEREAS, accordingly, the applicant represents that the proposed site plan meets HPD's standards for buildings of sufficient size and density that are feasible to construct; and

WHEREAS, the applicant represents that the proposed design complies with HPD's programmatic and quality of life requirements; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in light of HPD'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 the site is currently owned by the City and proposed for development with affordable housing by a non-profit entity to be selected by HPD in furtherance of its 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 uses adjacent to the proposed rear yards are a mix of manufacturing, community facility, and residential uses as well as vacant sites; and

WHEREAS, the applicant asserts that the only residential uses abutting the portions of the site associated with the waivers, are located adjacent to proposed corner lots for which no rear yard waivers are sought; and

WHEREAS, the applicant notes that the distance between these existing residential/mixed use buildings and the proposed dwelling units is ten feet which is greater than the required side yards; and

WHEREAS, the applicant states that the proposed development has been reviewed by the Department of City Planning, which was the applicant for the rezoning, text change, and special permits, as well as by HPD, which is the applicant for the UDAAP and will select the non-profit developer for the project, pursuant to which the buildings will be constructed; and

WHEREAS, the applicant cites to the City's Uniform Land Use Review Procedure (ULURP) application, which says that "the project area consists of underutilized property that tends to impair or arrest the sound development of the surrounding community, with or without tangible physical blight. Incentives are needed in order to induce the correction of these substandard, insanitary and blighting conditions. The project activities would protect and promote health and safety and would encourage sound growth and development;" and

WHEREAS, the applicant also cites to the Department of City Planning's special permit application for the construction within the railroad right-of-way in which it states that (1) the streets providing access to the site are adequate to handle traffic generated from the proposed use of the site; (2) the bulk and density do not affect the character of the surrounding area; and

(3) the proposed and existing uses do not adversely affect each other; 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 due to the unique site conditions including the site's former use as a railroad right-of-way; and

WHEREAS, the Board finds that this proposal, which complies with all zoning regulations except required rear yards and minimum distance between required windows and lot lines 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 Department of City Planning, as Lead Agency, 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. 10DCP029K, dated May 10, 2010; 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 adopts the CEQR determination of the Department of City Planning and makes the required findings under ZR § 72-21, to permit, within an (MX) M1-2/R6A zoning district, the proposed construction of eight four-story four-family residential buildings that do not provide the required distance between a legally required window and a lot line, contrary to ZR § 23-861; and four of the eight buildings also do not provide the required rear yard, contrary to ZR § 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 "April 29, 2011"– (15) 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 parameters of the proposed buildings shall be

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as per the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed buildings shall be subject to DOB review and 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;

THAT significant construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance 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 3, 2011.

7-11-BZ

CEQR #11-BSA-054M

APPLICANT – Sheldon Lobel, P.C., for NRP LLC II, owners; Dyckman Fitness Group, LLC, lessee.

SUBJECT – Application January 26, 2011 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Planet Fitness*). C4-4 zoning district.

PREMISES AFFECTED – 177 Dyckman Street, southeast corner of the intersection of Dyckman Street and Vermilyea Avenue, Block 2224, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #12M

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, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Manhattan Borough Commissioner, dated January 4, 2011, acting on Department of Buildings Application No. 120565842, reads in pertinent part:

“Proposed change of use to physical culture establishment is contrary to ZR 32-10 and must be referred to the BSA for approval pursuant to ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C4-4 zoning district, the legalization of a physical culture establishment (PCE) at the cellar, first and second floors of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 29, 2011, after due notice by publication in *The City Record*, and then to decision on May 3, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Dyckman Street and Vermilyea Avenue, within a C4-4 zoning district; and

WHEREAS, the site is occupied by a two-story commercial building; and

WHEREAS, the PCE occupies the cellar, a portion of the first floor, and the entire second floor of the subject building, with a total floor area of 14,486 sq. ft.; and

WHEREAS, the PCE is operated as Planet Fitness; and

WHEREAS, the proposed hours of operation for the PCE are: 24 hours a day from Monday at 12:00 a.m. through Friday at 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; 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 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 Board notes that the PCE has been in operation since May 2008, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between May 2008 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; 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. 11BSA054M, dated January 21, 2011; and

WHEREAS, the EAS documents 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;

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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 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, on a site located within a C4-4 zoning district, the legalization of a physical culture establishment at the cellar, first and second floors of a two-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 15, 2011"- (5) sheets and *on further condition*:

THAT the term of this grant shall expire on May 1, 2018;

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 all massages shall be performed by New York State licensed massage therapists;

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

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);

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 3, 2011.

201-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for For Our Children, Inc., owner.

SUBJECT – Application August 1, 2008 – Variance (§72-21) to allow a one story commercial building (UG 6); contrary to use regulations (§22-00). R3X zoning district. PREMISES AFFECTED – 40-38 216th Street, between 215th

Place and 216th Street, 200' south of 40th Avenue, Block 6290, Lot 70, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to June 7, 2011, at 1:30 P.M., for adjourned hearing.

24-09-BZ

APPLICANT – Sheldon Lobel, PC, for Meadows Park Rehabilitation and Health Care Center, LLC, owners.

SUBJECT – Application February 12, 2009 – Variance to allow the enlargement of a community facility (*Meadow Park Rehabilitation and Health Care Center*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), height (§24-521) and rear yard (§24-382) regulations. R3-2 district. PREMISES AFFECTED – 78-10 164th Street, Located on the western side of 164th Street between 78th Avenue and 78th Road, Block 6851, Lot 9, 11, 12, 23, 24, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to June 7, 2011, at 1:30 P.M., for adjourned hearing.

45-10-BZ

APPLICANT – Sheldon Lobel, PC, for Leemilt's Petroleum, Incorporated, owner.

SUBJECT – Application April 5, 2010 – Special Permit (§11-411 and §11-412) for the reinstatement of a Variance for the continued operation of a gasoline service station (*Getty*) which expired on June 23, 1986; Amendment to increase the size of the auto laundry; Extension of Time to obtain a Certificate of Occupancy. C1-4/R7-1 zoning district.

PREMISES AFFECTED – 1413-1429 Edward L. Grant Highway, southwest corner of Plimpton Avenue and Edward L. Grant Highway, Block 2521, Lot 15, Borough of Bronx.

COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to May 24, 2011, at 1:30 P.M., for adjourned hearing.

61-10-BZ

APPLICANT – James Chin & Associates, LLC, for Norman Wong, owner.

SUBJECT – Application April 26, 2010 – Variance (§72-21) to legalize an existing building contrary to height (§23-692), lot coverage (§23-245), rear yard (§23-532) and floor area (§23-145) regulations. R7-2/C1-5 zoning district.

PREMISES AFFECTED – 183 East Broadway, 43.5' frontage on Henry Street and 26.1 frontage on East Broadway, Block 284, Lot 19, Borough of Manhattan.

MINUTES

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Patrick Jones and James Chin.

ACTION OF THE BOARD – Laid over to June 21, 2011, at 1:30 P.M. for continued hearing.

119-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Samson and Rivka Molinsky, owners.

SUBJECT – Application June 28, 2010 – Variance (§72-21) to allow legalization of an enlargement of a residential building, contrary to front yard (§23-45) and height (§23-631) regulations. R2X zoning district.

PREMISES AFFECTED – 787 Cornaga Avenue, southwest corner of Cornaga Avenue and Mador Court, Block 15571, Lot 133, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to June 14, 2011, at 1:30 P.M., for adjourned hearing.

196-10-BZ

APPLICANT – James Chin & Associates, LLC, for Turtle Bay Inn, LLC., owner.

SUBJECT – Application October 25, 2010 – Variance (§72-21) to allow ground floor commercial use in an existing residential building, contrary to use regulations (§22-00). R8B zoning district.

PREMISES AFFECTED – 234 East 53rd Street, mid-block parcel located on the south side of 53rd Street, between 2nd and 3rd Avenue, Block 1326, Lot 34, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: James Chin.

ACTION OF THE BOARD – Laid over to June 7, 2011, at 1:30 P.M., for adjourned hearing.

13-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, Miriam Loeb and Chaim Loeb, owner.

SUBJECT – Application February 3, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space (§23-141); side yard (§23-461 and 23-48); and rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1040 East 26th Street, west side of East 26th Street, between Avenue J and Avenue K, Block 7607, Lot 66, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 24, 2011, at 1:30 P.M., for decision, hearing closed.

16-11-BZ

APPLICANT – Eric Palatnik, P.C., for Judah Rosenweig, owner.

SUBJECT – Application February 14, 2011 - Special Permit (§73-621) for the enlargement of an existing two story with attic single family home contrary to floor area and open space §23-141(a). R1-2 zoning district.

PREMISES AFFECTED – 181-30 Aberdeen Road, between Surrey and Tyron Place, Block 7224, Lot 34, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 7, 2011, at 1:30 P.M., for decision, hearing closed.

20-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 30 West 18th Associates Association, LLC, owner; Just Calm Down II, Inc., lessee.

SUBJECT – Application February 28, 2011 – Special Permit (§73-36) to allow the proposed physical culture establishment (*Just Calm Down*). C6-4A zoning district.

PREMISES AFFECTED – 30 West 18th Street, south side of West 18th Street, Block 819, Lot 59, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 24, 2011, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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May 18, 2011

DIRECTORY

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Tuesday, May 10, 2011**

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307-81-BZ	50 East 69 th Street, Manhattan
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145-99-BZ	286 Spring Street, Manhattan
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9-11-BZ	2129A-39A White Plains Road, Bronx
25-11-BZ	760 Parkside Avenue, Brooklyn

DOCKET

New Case Filed Up to May 10, 2011

59-11-BZ

439 Port Richmond Avenue, Southwest corner of Port Richmond Avenue and Homestead Avenue., Block 1048, Lot(s) 9, Borough of **Staten Island, Community Board: 01**. Special Permit (§73-44) to permit the reduction in required parking for an ambulatory diagnostic facility building. C8-1 zoning district. C8-1 district.

60-11-BZ

1214 East 29th Street, West side of East 29th Street, approximately 100 ft. south of Avenue L, Block 7646, Lot(s) 52, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of existing single family home, contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district. R2 district.

61-11-A

134 9th Avenue, West 18th and West 19th Street., Block 742, Lot(s) 4, Borough of **Manhattan, Community Board: 04**. Application seeking to modify Certificate of Occupancy, to permit the issuance of an order by the Fire Department to require additional fire protection for residents on upper floors of building in the form of an automatic sprinkler system. C2-5, R-8 district.

62-11-A

103 Beach 217th Street, East side of Beach 217th Street 40' south of Breezy Point Boulevard., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. An appeal challenging a New York City Fire Department determination that requires a sprinkler system be provided for a building which is located on a 38' wide street per Section FC 503.8.2. R4 Zoning District . R4 district.

63-11-A

115 Beach 216th Street, East side of Beach 216th Street 280' south of Breezy Point Boulevard., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. An appeal challenging a New York City Fire Department determination that requires a sprinkler system be provided for a building which is located on a 38' wide street per FC Section 503.8.2. R4 Zoning District . R4 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

MAY 24, 2011, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 24, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

161-06-BZ

APPLICANT – Eric Palatnik, P.C., for Webster Affordable Solutions, owner.

SUBJECT – Application April 25, 2011 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the construction of two eight-story mixed-use residential/commercial/community facility buildings which expires on September 11, 2011. C8-2 zoning district.

PREMISES AFFECTED – 3349 Webster Avenue, Webster Avenue, south of Gun Hill Road, Block 3355, Lot 121, Borough of Bronx.

COMMUNITY BOARD #7BX

316-06-BZ

APPLICANT – Jesse Masyr, Esq., Watchel & Masyr, LLP, for New York Botanical Garden, owner.

SUBJECT – Application April 29, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a six story accessory garage (UG4) with 825 parking spaces on six stories, on one cellar level and the roof level which expired on April 10, 2011. R7D/C2-1 zoning district.

PREMISES AFFECTED – 2960 Webster Avenue, between Bedford Park Boulevard and Botanical Square South, Block 3274, Lot 1 & 4, Borough of Bronx.

COMMUNITY BOARD #7BX

221-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Chris Xu, owner.

SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the development of a transient hotel, contrary to district use regulations. M2-1 zoning district.

PREMISES AFFECTED – 34-08 Collins Place, north side of Collins Place, 34th Avenue, College Point and 35th Avenue, Block 4945, Lot 34, Borough of Queens.

COMMUNITY BOARD #7Q

44-11-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Incorporated, owner; Paul Atanasio, lessee.

SUBJECT – Application April 13, 2011 – Proposed reconstruction and enlargement of an existing single family dwelling, contrary to General City Law Section 35, Article 3. R4 Zoning District.

PREMISES AFFECTED – 74 Tioga Walk, west side of Tioga Walk 332.6' north of Breezy Point Boulevard. Block 16350, Lot p/o 400. Borough of Queens.

COMMUNITY BOARD #14Q

45-11-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Incorporated, owner; Kathleen & Joseph Buckley, lessee.

SUBJECT – Application April 13, 2011 – Proposed reconstruction and enlargement of an existing single family home, contrary to General City Law Section 36, Article 3 and the proposed upgrade of the private disposal system located partially within the bed of the Service Road is contrary to Department of Buildings Policy. R4 Zoning district.

PREMISES AFFECTED – 29 Kildare Walk, east side of Kildare Walk 223" south of Oceanside Avenue. Block 16350, Lot p/o 400. Borough of Queens.

COMMUNITY BOARD #14Q

46-11-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Incorporated, owner; Joanne & Louis Isidora, lessee.

SUBJECT – Application April 13, 2011 – Proposed reconstruction of an existing single family home, contrary to General City Law Section 36, Article 3 and the proposed upgrade on the existing non-complying private disposal system in the bed of the service road contrary to Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 57 Bedford Avenue, east side of Bedford Avenue 174 feet north of 12th Avenue. Block 16350, Lot p/o 300. Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

MAY 24, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 24, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

230-10-BZ

APPLICANT – Eric Palatnik, P.C., for Leonid Fishman, owner.

SUBJECT – Application December 17, 2010 – Special Permit (§73-622) for the enlargement of a single family home contrary to open space, lot coverage and floor area §ZR 23-141(b) and perimeter wall height §23-631(b). R3-1 zoning district.

PREMISES AFFECTED – 177 Kensington Street, Oriental Boulevard and Kensington Street, Block 8754, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #15BK

23-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 484 Fulton Owner, LLC, owner; 490 Fulton Street Fitness Group, LLC, lessee.

SUBJECT – Application March 3, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C5-4 (DB) zoning district.

PREMISES AFFECTED – 490 Fulton Street, west side of Bond Street, between Fulton Street and Livingston Street, Block 159, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

26-11-BZ

APPLICANT – Francis R. Angelino, Esq., for West Gramercy Associates, LLC, owner; SoulCycle East 18th Street, LLC, owner.

SUBJECT – Application March 11, 2011 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*SoulCycle*). M1-5 zoning district.

PREMISES AFFECTED – 12 East 18th Street, south side of Fifth Avenue and Broadway, Block 846, Lot 67, Borough of Manhattan.

COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 10, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

964-87-BZ

APPLICANT – Sheldon Lobel, P.C., for Leemilt’s Petroleum Incorporated, owner.

SUBJECT – Application October 18, 2010 – Extension of Term for the continued operation of (UG16) Gasoline Service Station (*Getty*) which expired on February 6, 2010; Extension of Time to obtain a Certificate of Occupancy which expired on January 15, 2003; Amendment to the hours of operation and Waiver of the Rules. C1-3/R6 zoning district.

PREMISES AFFECTED – 780-798 Burke Avenue, southwest corner of Burke and Barnes Avenue, Block 4571, Lot 28, Borough of Bronx.

COMMUNITY BOARD #12BX

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, an extension of term for the continued operation of a gasoline service station (Use Group 16), which expired on February 6, 2010, an extension of time to obtain a certificate of occupancy, which expired on January 15, 2003, an amendment to permit a change in the hours of operation for the gasoline service station, and an amendment to legalize the use of excess spaces at the site for monthly parking; and

WHEREAS, a public hearing was held on this application on February 1, 2011 after due notice by publication in *The City Record*, with continued hearings on March 15, 2011 and April 12, 2011, and then to decision on May 10, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Bronx, recommends approval of this application; and

WHEREAS, the site is located on the southwest corner of Burke Avenue and Barnes Avenue, partially within a C1-3 (R6) zoning district and partially within an R6 zoning district;

and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 22, 1957 when, under BSA Cal. No. 52-57-BZ, the Board granted a variance to permit the construction of a gasoline service station with accessory uses for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times, until its expiration on October 22, 1982; and

WHEREAS, on February 6, 1990, under the subject calendar number, the Board re-established the variance pursuant to ZR § 11-411 to legalize the existing gasoline service station with accessory uses and parking for more than five automobiles, for a term of ten years; and

WHEREAS, most recently, on January 15, 2002, the Board granted a ten-year extension of the term of the variance, which expired on February 6, 2010; a condition of the grant was that a new certificate of occupancy be obtained by January 15, 2003; and

WHEREAS, the applicant now requests an additional extension of the term, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, the applicant also seeks an amendment to change the hours of operation for the gasoline service station; and

WHEREAS, the applicant notes that the previously-approved hours of operation for the site are: Monday through Saturday, from 6:00 a.m. to 12:00 a.m.; and Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant proposes to increase the hours of operation for the gasoline sales on the site to 24 hours per day, seven days per week, and to decrease the hours of operation for the repair use on the site to Monday through Friday, from 8:00 a.m. to 6:00 p.m., Saturday, from 8:00 a.m. to 3:00 p.m., and closed on Sunday; and

WHEREAS, the applicant also requests an amendment to legalize the change in use of the rear portion of the gasoline service station (Use Group 16) to monthly parking (Use Group 8); and

WHEREAS, the applicant states that the subject gasoline service station has 20 on-site parking spaces available; 12 spaces are available behind the service station building at the rear of the site, and eight spaces are available along the site’s western lot line; and

WHEREAS, the applicant states that the operator currently uses ten spaces (the eight spaces along the west side of the site and two of the spaces at the rear of the site) for cars awaiting service, and rents the other ten spaces at the rear portion of the lot on a monthly basis; and

WHEREAS, the applicant represents that the site does not require more than ten spaces for cars awaiting service, given the number of vehicles the gasoline service station services on a typical day; and

WHEREAS, the applicant represents that the proposed change in use for the rear portion of the zoning lot will not adversely affect the surrounding community because the

MINUTES

proposed use is similar to the parking of motor vehicles awaiting service that is currently permitted under the subject variance; and

WHEREAS, the applicant further represents that renting the ten excess spaces for monthly parking will not adversely affect the surrounding community because the spaces are rented to members of the neighborhood, they are not offered on a transient basis, and there are no signs on the site advertising the monthly parking spaces; and

WHEREAS, additionally, the applicant states that privacy slats will be installed in the site's perimeter fence and landscaping will be provided in order to screen the adjacent residential uses; 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 which would be permitted under ZR § 52-35; and

WHEREAS, at hearing, the Board questioned whether the site was in compliance with the conditions from the previous grant; and

WHEREAS, in response, the applicant submitted a chart reflecting the site's compliance with relevant conditions from previous Board grants; and

WHEREAS, at hearing, the Board questioned whether the signage at the site was in compliance with underlying district regulations, and directed the applicant to provide lighting for the parking spaces located at the rear portion of the zoning lot; and

WHEREAS, in response, the applicant submitted photographs showing the removal of one of the hanging signs above the overhead repair bay doors and submitted revised plans reflecting that the site complies with C1 district signage regulations; and

WHEREAS, the revised plans submitted by the applicant also reflect the installation of three floodlights on the exterior of the service station building to light the rear portion of the site for the users of the monthly parking spaces; and

WHEREAS, based upon the above, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-413, and the requested extension of term, extension of time, 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, *reopens*, and *amends* the resolution, dated February 6, 1990, so that as amended this portion of the resolution shall read: "to extend the term for ten years from February 6, 2010, to expire on February 6, 2020; to grant an extension of time to obtain a certificate of occupancy to May 10, 2012, and to permit the noted use change and amendment to the hours of operation; *on condition* that the use and operation of the site shall substantially conform to the approved drawings, filed with this application and marked 'Received March 30, 2011- (5) sheets; and *on further condition*:

THAT the term of the grant shall expire on February 6, 2020;

THAT a maximum of ten parking spaces on the site shall be made available for rent, and such parking spaces shall be rented on a monthly basis only;

THAT the hours of operation for gasoline sales on the site shall be 24 hours per day, seven days per week, and the hours of operation for the repair use on the site shall be Monday through Friday, from 8:00 a.m. to 6:00 p.m., Saturday, from 8:00 a.m. to 3:00 p.m., and closed on Sundays;

THAT all signage shall comply with C1 zoning district sign regulations;

THAT all lighting shall be directed downward and away from adjacent residential uses;

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

THAT a certificate of occupancy shall be obtained by May 10, 2012;

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

THAT the Department of Buildings must ensure compliance 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. 220077976)

Adopted by the Board of Standards and Appeals, May 10, 2011.

427-05-BZ

APPLICANT – Eric Palatnik, P.C., for Linwood Holdings, LLC, owner.

SUBJECT – Application February 28, 2011 – Extension of Time to complete construction for a Special Permit (§73-44) to permit a retail, community facility and office development with less than the required parking which expired on March 20, 2011. C4-2 zoning district.

PREMISES AFFECTED – 133-47 39th Avenue, between Price Street and College Point Boulevard, Block 4972, Lot 59, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction for a prior Board grant that permitted a decrease in required off-street accessory parking spaces for an nine-story (including penthouse) mixed-use building; and

WHEREAS, a public hearing was held on this application on April 5, 2011, after due notice by publication

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in *The City Record*, and then to decision on May 10, 2011; and

WHEREAS, the site is located on the north side of 39th Avenue between Prince Street and College Point Boulevard, within a C4-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 20, 2007 when, under the subject calendar number, the Board granted a special permit under ZR § 73-44 to permit a decrease in the required off-street accessory parking spaces for a nine-story (including penthouse) mixed-use retail/community facility/office building from 112 spaces to 76 spaces; and

WHEREAS, substantial construction was to be completed by March 20, 2011, in accordance with ZR § 73-70; and

WHEREAS, the applicant represents that construction has been delayed due to financing issues; and

WHEREAS, thus, the applicant requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction 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, dated March 20, 2007, so that as amended this portion of the resolution shall read: “to grant an extension of time to complete construction for a term of four years, to expire on May 10, 2015; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT substantial construction shall be completed by May 10, 2015;

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

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 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. 402032885)

Adopted by the Board of Standards and Appeals May 10, 2011.

1069-27-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 6702 New Utrecht Avenue LLC by Frank Momando, owner.

SUBJECT – Application February 23, 2011– Extension of Term (§11-411) of for the continued operation of an automatic automobile laundry, simonizing room and offices which expired on March 6, 201; Extension of Time to obtain a Certificate of Occupancy. C1-2/R5 zoning district.

PREMISES AFFECTED – 6702-6724 New Utrecht Avenue, bounded by New Utrecht Avenue, 15th Avenue and Ovington Avenue/68th Street, Block 5565, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to June 7, 2011, at 10 A.M., for continued hearing.

677-53-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for James Marchetti, owner.

SUBJECT – Application April 22, 2010 – Extension of Term (§11-411) of a Variance for the operation of a UG16 Auto Body Repair Shop (*Carriage House*) with incidental painting and spraying which expired on March 24, 2007; Extension of Time to Obtain a Certificate of Occupancy which expired on January 13, 1999; Amendment (§11-412) to enlarge the building; Waiver of the Rules. R4/C2-2 zoning district.

PREMISES AFFECTED – 61-26/30 Fresh Meadow Lane, west side of Fresh Meadow Lane, 289’ northerly of the intersection with 65th Avenue, Block 6901, Lot 48, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 14, 2011, at 10 A.M., for adjourned hearing.

307-81-BZ

APPLICANT – Francis R. Angelino, Esquire, for 50 East 69th Street Corporation, owner.

SUBJECT – Application March 14, 2011 – Extension of Term of a variance (§72-21) which permitted a five-story medical office (UG 6) and owner occupied penthouse apartment (UG 2), scheduled to expire on September 15, 2011. R8B (LH-1A) zoning district.

PREMISES AFFECTED – 50 East 69th Street, South side between Madison and Park Avenues. Block 1383, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Francis R. Angelino and Marcia E. Gowen.
THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 7, 2011, at 10 A.M., for decision, hearing closed.

MINUTES

65-90-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Street Retail Incorporated, owner; Meadows Spa, lessee.

SUBJECT – Application March 1, 2011 – Extension of Term of a Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Meadows Spa*) which expired on January 29, 2011; Amendment to relocate establishment from first floor to the cellar. C4-1/PC zoning district.

PREMISES AFFECTED – 61-19 190th Street, Northeast corner formed by the intersection of 190th Street and 64th Avenue. Block 7117, Lot 4, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Sandy Anagnostou.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 7, 2011, at 10 A.M., for decision, hearing closed.

145-99-BZ

APPLICANT – Bryan Cave LLP/Frank E. Chaney, Esq., for Hudson Spring Partners, LLP, owners.

SUBJECT – Application March 24, 2011 – Application to request a re-hearing, pursuant to Board Rules Section 1-10(e), of a variance application for residential conversion of a six-story commercial building, previously denied on March 14, 2000. M1-6 zoning district.

PREMISES AFFECTED – 286 Spring Street, southeast corner of Spring Street and Hudson Street, Block 579, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Frank Chaney.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 24, 2011, at 10 A.M., for decision, hearing closed.

111-01-BZ

APPLICANT – Eric Palatnik, P.C. for Barge Realty, Incorporated, owner; Wendy's International, lessee.

SUBJECT – Application February 23, 2011 – Extension of term of a previously granted Special Permit (§73-243) for an accessory drive-thru facility at an eating and drinking establishment (*Wendy's*) which expired February 1, 2011; Amendment for minor modification to previous conditions on the site. C1-2 (R5) zoning district.

PREMISES AFFECTED – 9001 Ditmas Avenue, Corner of Ditmas Avenue and Remsen Avenue. Block 8108, Lot 6.

Borough of Brooklyn.

COMMUNITY BOARD #17BK

APPEARANCES –

For Applicant: Eric Palatnik and Ike Natabago.

ACTION OF THE BOARD – Laid over to June 14, 2011, at 10 A.M., for continued hearing.

290-06-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Rusabo 368 LLC, owner; Great Jones Lafayette LLC, lessee.

SUBJECT – Application April 20, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a six-story, eight-unit residential building with ground floor retail which expired on April 17, 2011. M1-5B zoning district.

PREMISES AFFECTED – 372 Lafayette Street aka 11 Great Jones Street, block bounded by Lafayette, Great Jones and Bond Streets and Shinbone Alley, Block 530, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jim Power.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 24, 2011, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

222-10-A

APPLICANT – Laleh Hawa, for Yaelle Yoran – Wastin, owner.

SUBJECT – Application December 6, 2010 – Appeal challenging the Department of Buildings' revocation of a permit for a parking space and curb cut. R6B zoning district

PREMISES AFFECTED – 97 Saint Marks Avenue, 392' west of Saint Marks Avenue and Carlton Avenue, Block 1143, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES – None.

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, this appeal comes before the Board in response to a determination, dated November 8, 2010, signed by the First Deputy Commissioner and the Assistant Commissioner to Technical Affairs and Code Development

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with respect to DOB Application No. 310214292 (the “Final Determination”); and

WHEREAS, the Final Determination states, in pertinent part:

The request to uphold the approval of one off street parking space as part of an alteration type 1 application is hereby denied

The Alt-1 application refers to an enlargement and the conversion of a portion of the building into a garage. The application was filed 10-16-2008, approved on 1-6-2009 and first permitted 2-26-2009.

This building and its sidewalk are located in a historic district designated on 6-23-2009.

However, the permit for the curb cut (application number 320055765) was issued by the Department on 9-21-2009, which is after the date of landmark designation, on 6-23-2009. Such permit was issued in error by the Department because of the lack of Landmarks Commission approval, as required by AC 25-321, and was therefore revoked on 11-6-2009.

The alteration type 1 application proposes a garage, but as a result of the revocation of the curb cut permit, there cannot be vehicular access to such garage. Therefore the alteration type 1 must be amended to remove the garage.

Further, on 4/14/10, the provision of ZR 25-633, which prior to that date permitted the subject building to be provided with a curb cut, was replaced with ZR 25-631(e)(4), which in this R6B district prohibits any curb cut on this zoning lot. Therefore, regardless of the above stated issues relating to the curb cut permit and Landmarks approvals, pursuant to ZR 11-31(c)(3) and ZR 11-332, a curb cut at the subject premises is prohibited. Project failed to vest as “other construction” per ZR 11-31(c)(3); and

WHEREAS, subsequently, on April 4, 2011, DOB issued a letter stating it revoked the permit associated with the enlargement of the home and conversion of the basement to a garage (the “Garage Permit”); and

WHEREAS, the letter states that the permit associated with Application No. 310214292 (the Garage Permit) is revoked and all work must be stopped at the site; and

WHEREAS, throughout the hearing process at the Board, the Appellant cited to other DOB actions and communications and sought to enter the following into the appeal: (1) the November 6, 2009 curb cut permit (the “Curb Cut Permit”) revocation, (2) the November 11, 2010 denial of a request to rescind the September 24, 2009 letter of intent to revoke the Garage Permit, and (3) the order to stop work contained in the September 24, 2009 letter of intent to revoke the Garage Permit; and

WHEREAS, DOB asserted that the September 24, 2009 letter of intent to revoke the Garage Permit was superseded by a new letter of intent to revoke the Garage Permit dated March 14, 2011, with the exception that the stop work order remained in effect; thus, the question of whether DOB properly denied the request to rescind the September 24, 2009 letter is no longer relevant; and

WHEREAS, DOB also states that the November 11, 2010 decision to deny a request to rescind a letter of intent to revoke a permit is not a final determination; and

WHEREAS, DOB also states that the September 24, 2009 letter and the March 14, 2011 letter, which superseded it, were rendered moot by the April 4, 2011 revocation of the permit; and

WHEREAS, the Board has determined that the Appellant’s initial concerns: the revocation of the Curb Cut Permit and the stop work order associated with the Garage Permit are addressed through the November 8, 2010 Final Determination and, ultimately, the April 4, 2011 revocation of the Garage Permit and accepts both as final determinations from DOB appropriately before the Board within the context of the subject appeal; and

WHEREAS, accordingly, the matters that are before the Board within the appeal are (1) whether DOB appropriately revoked the Curb Cut Permit and (2) whether DOB appropriately revoked the Garage Permit; and

WHEREAS, the Board notes that the Appellant filed a companion common law vested rights application under BSA Cal. No. 225-10-A, which the Appellant has not pursued; and

WHEREAS, a public hearing was held on this appeal on March 15, 2011, after due notice by publication in *The City Record*, with a continued hearing on April 12, 2011, and then to decision on May 10, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, City Council Member Letitia James and City Council Member Brad Lander provided written testimony in opposition to the appeal; and

WHEREAS, the Landmarks Preservation Commission provided written testimony in opposition to the appeal; and

WHEREAS, the Historic Districts Council, the Prospect Heights Neighborhood Development Council, the Prospect Place of Brooklyn Block Association, the Prospect Heights Action Commission, and individual community members provided written and oral testimony in opposition to the appeal and

WHEREAS, DOB and the Appellant have been represented by counsel throughout this appeal; and

WHEREAS, the site is located on the west side of Saint Marks Avenue, 392 feet west of Carlton Avenue within an R6B zoning district within the Prospect Heights Historic District; and

WHEREAS, the site is occupied by a four-story attached townhouse, built to both side lot lines; and

WHEREAS, the Appellant’s proposal reflects the enlargement of the home at the rear, the conversion of a portion of the basement into a garage, and a curb cut and car ramp at the front of the home; and

WHEREAS, the two permits at issue are an Alteration Type 1 permit (the Garage Permit) for the construction and conversion of the home and an Alteration Type 3 permit (the Curb Cut Permit) for the installation of the curb cut; and

Procedural History

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WHEREAS, on October 17, 2008, the Appellant obtained a Pre-Consideration from DOB, which states that a curb cut would be permitted at the site, pursuant to ZR § 25-633 because the proposal does not reflect a residential development (which, at that time, was understood to mean a new building); and

WHEREAS, on February 26, 2009, DOB issued the Garage Permit to allow *inter alia* for the enlargement and conversion of a portion of the home to a garage; and

WHEREAS, on June 23, 2009, the Landmarks Preservation Commission (LPC) designated the site to be within the Prospect Heights Historic District under LPC jurisdiction; and

WHEREAS, on September 21, 2009, DOB issued the Curb Cut Permit; and

WHEREAS, on September 24, 2009, DOB issued an Intent to Revoke (the Garage Permit) Letter and a Stop Work Order with a Notice of Objections; the notice of objections which formed the basis for the letter stated that the permit was issued without LPC approval after landmark designation; and

WHEREAS, on September 29, 2009, DOB issued an Intent to Revoke (the Curb Cut Permit) Letter and a Stop Work Order with a Notice of Objections; the objections which formed the basis for the letter include: (1) approval from LPC is required for the curb cut prior to DOB approval (citing to DOB memos and procedure notices), (2) submit the mark-up plan that accompanied the reconsideration of October 17, 2008 to view the parking arrangements, since the PW-1 and the drawings are showing one parking space, and (3) per ZR § 25-621(a)(3) – access to such parking space located only within a building shall be provided only through the side lot ribbon or through the rear yard and that the curb cut location should be amended accordingly; and

WHEREAS, on November 6, 2009, DOB revoked the Curb Cut Permit and issued a stop work order on the site; and

WHEREAS, on April 14, 2010, the City amended ZR § 25-633 (Prohibition of curb cuts in certain districts) which restricts curb cuts and replaced it with ZR § 25-631(e)(4) (Location and width of curb cuts in certain districts) states that a curb cut is not permitted on a site with a building streetwall of less than 40 feet; and

WHEREAS, on November 8, 2010, DOB issued the Final Determination; and

WHEREAS, on March 14, 2011, DOB issued a new letter of intent to revoke (the Garage Permit) with a Notice of Objections which states that pursuant to ZR § 25-621(a)(3)1 (Location of parking spaces in certain districts) access to accessory off-street parking space in the garage is not demonstrated due to lack of a lawful curb cut permit; and

WHEREAS, on April 4, 2011, DOB issued a letter of revocation, which revoked the Garage Permit; and

1 DOB notes that ZR § 25-621(a)(3) (Location of parking spaces in certain districts), effective April 30, 2008, was in effect on September 25, 2009 at the time the Garage Permit was issued. The section was amended and the parking restriction was recodified elsewhere in the ZR on February 2, 2011, but only the cited pre-amendment text is relevant.

Relevant Statutory Provisions

AC § 25-305(b)(1) Landmarks Preservation and Historic Districts - Regulation of construction, reconstruction, alterations and demolition

Except in the case of any improvement mentioned in subdivision a of section 25-318 of this chapter and except in the case of a city-aided project, 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.

* * *

ZR § 25-621(a)(3) Location of parking spaces in certain districts

R4B R5B R6B R7B R8B

In the districts indicated, *accessory* off-street parking spaces shall be located only within a *building*, or in any open area on the *zoning lot* which is not between the *street line* and the *street wall* of the *building* or its prolongation. Access to such parking spaces shall be provided only through the *side lot ribbon* or through the *rear yard*; and

The Appellant's Position

WHEREAS, the Appellant asserts that the Curb Cut Permit and the Garage Permit were improperly revoked because LPC approval is not required for the Curb Cut Permit and the proposal associated with the Garage Permit complies with all relevant ZR provisions; and

WHEREAS, the Appellant asserts that DOB improperly revoked the Curb Cut Permit on November 6, 2009 for lack of authorization by LPC in accordance with AC § 25-305(b)(1) because the Curb Cut Permit is ancillary to the Garage Permit, which was issued on February 26, 2009, prior to the LPC designation; and

WHEREAS, the Appellant asserts that the Curb Cut Permit is not subject to LPC approval since it is necessary in order to provide access to the proposed garage and thus was necessarily contemplated at the time of the Garage Permit's issuance; and

WHEREAS, the Appellant asserts that the date of the issuance of the Garage Permit, prior to LPC designation, is controlling and the date of the Curb Cut Permit's issuance is irrelevant; and

WHEREAS, the Appellant asserts that DOB and DOT permits needed to be secured for the curb cut were only needed to be able to complete the construction pursuant to the permit that was already secured (the Garage Permit); and

WHEREAS, the Appellant asserts that DOB and DOT issued the Curb Cut Permit in September 2009 with knowledge of the LPC designation; and

WHEREAS, the Appellant asserts that DOB cannot

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revoke the Garage Permit which was subject to DOB review and issued prior to the LPC designation on the basis that the Curb Cut Permit was not obtained prior to LPC designation; and

WHEREAS, additionally, the Appellant asserts that the Curb Cut Permit is lawful because it does not contravene ZR § 25-633 (Prohibition of curb cuts in certain districts); and

WHEREAS, as to the Garage Permit, the Appellant asserts that neither ZR § 25-631(e)(4) (Location and width of curb cuts in certain districts) (adopted April 14, 2010) nor the prior relevant section: ZR § 25-633 (Prohibition of curb cuts in certain districts) applies to the proposal since, it argues, both of those sections apply only to new construction and not to alterations, pursuant to the general purpose clause of ZR § 25-01; and

WHEREAS, the Appellant also asserts that the general purpose clause of ZR § 25-01 has not been modified and concludes that because the general purpose clause states that the parking regulations “are adopted in order to provide needed space off the streets for parking in connection with new residences,” none of the Article 2 Chapter 5 provisions of the ZR in effect at the time of the permit’s issuance or as amended apply to the subject proposal to alter an existing home; and

WHEREAS, in the alternate, the Appellant asserts that since DOB states that non-compliance with ZR § 25-633 is not the basis for the revocation of the Curb Cut Permit, that there is a concession that the Appellant is not subject to ZR § 25-633 (or ZR § 25-631(e)(4), as amended); and

WHEREAS, the Appellant also cites to an October 17, 2008 Reconsideration from DOB which accepts that the curb cut complies with ZR § 25-633 because the proposal does not reflect a *residential development*, as defined at that time; the application of the curb cut restriction has since been redefined; and

The Department of Buildings’ Position

WHEREAS, as to the LPC approval, DOB asserts that AC § 25-305(b)(1) states that DOB shall not approve an application or issue a permit in a historic district until LPC issues an authorization of such work; and

WHEREAS, DOB states that LPC approval is required prior to the issuance of any permit after the June 23, 2009 historic designation of the area surrounding the site and that since the Curb Cut Permit was issued on September 21, 2009, its issuance was erroneous and DOB properly revoked it on November 6, 2009; and

WHEREAS, DOB asserts that the Appellant fails to cite any authority in AC § 25-321 or elsewhere that provides that an approval and permit are exempt from LPC review if the work is deemed to be ancillary to a permit issued prior to the historic designation; and

WHEREAS, DOB asserts that AC § 25-321 states that Chapter 3 of Title 25 is inapplicable to the construction, reconstruction, alteration or demolition of any improvement in a historic district where the permit for the performance of such work was issued by DOB prior to the effective date of the historic district designation; and

WHEREAS, DOB states that it could not approve or issue a permit in connection with the application for the Curb

Cut Permit without LPC authorization, regardless of whether the Garage Permit was issued prior to the historic designation; and

WHEREAS, DOB states that it agrees with the Appellant that the Garage Permit was issued prior to the historic designation and that it does not need to be authorized by LPC, but that the lawfulness of the Garage Permit became defective when the Curb Cut Permit was revoked; and

WHEREAS, DOB asserts that the notice of objections attached to the September 29, 2009 letter of intent to revoke the Curb Cut Permit did not cite ZR § 25-633 as the basis for revocation; and

WHEREAS, as to the Garage Permit, DOB cites to ZR § 25-621(a)(3), which states that access to all accessory off-street parking spaces on zoning lots with residential buildings located in the R6B zoning district where no more than two accessory parking spaces are required shall be provided through the side lot ribbon or through the rear yard; and

WHEREAS, DOB asserts that in order to establish compliance with this provision, the Appellant must demonstrate access to off-street parking spaces over a side lot ribbon or rear yard from the street by means of a lawful curb cut; and

WHEREAS, DOB concludes that in the absence of a lawful curb cut permit, ZR § 25-621(a)(3) is not satisfied and it was proper for DOB to state in the CCD1 denial “as a result of the revocation of the curb cut permit, there cannot be vehicular access to the garage . . . [t]herefore, the [Garage Permit] must be amended to remove the garage”; and

WHEREAS, DOB notes that the intent to revoke must remain pending for the statutory period of 15 days, pursuant to AC § 28-105.10.1 to allow the owner an opportunity to demonstrate that the permit should not be revoked; and

WHEREAS, DOB asserts that there was not a final determination regarding the order to stop work since the owner did not request rescission of the order to stop work in the CCD1 request nor did the DOB’s CCD1 denial make a reference to the order to stop work; and

WHEREAS, further, DOB states that even if the Board were to consider the order to stop work under the Garage Permit an appealable final determination, DOB states that the order was properly issued pursuant to AC § 28-207.2 to prevent work in violation of laws enforced by DOB; and

WHEREAS, additionally, DOB states that no certificate of occupancy can be issued for the garage use without lawful vehicular access to the garage from the street; and

WHEREAS, DOB states that when a certificate of occupancy cannot be issued in connection with a permit and revocation of the permit is pending, it is prudent to prevent the commencement of work to avoid the creation of an unlawful condition or irreparable harm; and

Conclusion

WHEREAS, as to the question of whether DOB appropriately revoked the Curb Cut Permit in the absence of LPC approval, the Board determines that DOB was correct; and

WHEREAS, the Board finds that the language of AC § 25-305(b)(1), which states that LPC approval is required for a

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proposal on a site within LPC jurisdiction prior to DOB's issuance of a permit, is clear and unambiguous; and

WHEREAS, the Board notes that the AC does not identify a distinction between primary and ancillary permits and does not provide a provision that states that if two permits are associated and one is issued prior to LPC designation, then the second one is also deemed to be issued prior to LPC designation, by association; and

WHEREAS, as to the revocation of the Garage Permit, the Board disagrees with the Appellant's assertion that ZR § 25-01 (Accessory Off-Street Parking and Loading Regulations: General Purposes) only applies to new residences; and

WHEREAS, specifically, the Board notes that, the General Purpose clause states that the provisions were adopted not just "to provide needed space off the streets for parking in connection with new residences" (as the Appellant notes) but also "to reduce traffic congestion resulting from the use of streets as places for storage of automobiles, to protect the residential character of neighborhoods, to provide a higher standard of residential development with the City, and thus to promote and protect public health, safety and general welfare;" and

WHEREAS, the Board acknowledges that the ZR has been amended since the issuance of the Garage Permit and the term "residential development," as found in the earlier version of the provisions, has been determined to mean new construction, however, the Board finds that the General Purpose clause at ZR § 25-01 is (and was) quite broad, and, as noted, includes a list of goals for the parking regulations that do not limit it to new construction under any interpretation; and

WHEREAS, the Board recognizes that individual provisions, including ZR § 25-633, have been clarified since the time of the issuance of the Garage Permit to reflect distinctions between new construction and alterations, but that the relevant language of ZR § 25-01 was not also changed; and

WHEREAS, the Board notes that the interpretation and the application of ZR § 25-633 (as adopted August 12, 2004) and as amended at ZR § 25-631(e)(4) (as adopted April 14, 2010) is not the subject of this appeal because DOB states that ZR § 25-621(a)(3), which was in effect at the time of the issuance of the Garage Permit, is the basis for its revocation of the Garage Permit; and

WHEREAS, the Board has determined that DOB's revocation of the Garage Permit was proper once it determined that it would be impossible for the proposed plans to comply with ZR § 25-621(a)(3)'s requirement for access to the proposed parking space within the garage and the Appellant failed to provide revised plans reflecting complying conditions; and

WHEREAS, the Board agrees with DOB that it should not be required to keep a permit active when there is an impossibility that the proposed plans will lead to the issuance of a CO and the property owner rejects DOB's request that the plans be modified to reflect a condition that is compliant with zoning; and

WHEREAS, the Board does not agree with the Appellant's statement that DOB concedes that the site is not subject to ZR § 25-631(e)(4); the Board finds that DOB states

that ZR § 25-633 was not the basis for its revocation of the Curb Cut Permit, but DOB does identify non-compliance with ZR § 25-631(e)(4) and a failure to vest under the prior ZR § 25-633 in the Final Determination; and

WHEREAS, based on the above, the Board disagrees with the Appellant's assertion that the Curb Cut Permit should be reinstated because it complies with AC § 25-305(b)(1) and that the Garage Permit complies with all relevant ZR provisions, including ZR § 25-621(a)(3); and

WHEREAS, accordingly, the Board finds that DOB appropriately revoked the Curb Cut Permit and the Garage Permit; and

Therefore it is Resolved that the instant appeal, seeking a reversal of Final Determinations, dated November 8, 2010 and April 4, 2011, determining that *inter alia* LPC approval must be obtained prior to the issuance of the Curb Cut Permit and that the Garage Permit does not comply with zoning, is hereby denied.

Adopted by the Board of Standards and Appeals, May 10, 2011.

137-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Richard & Jane O'Brien, lessees.

SUBJECT – Application August 3, 2010 – Reconstruction and enlargement of an existing single-family home not fronting on a mapped street, contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 103 Beach 217th Street, 40' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

ACTION OF THE BOARD – Laid over to June 21, 2011, at 10 A.M., for adjourned hearing.

185-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Raymond & Regina Walsh, lessees.

SUBJECT – Application September 24, 2010 – Proposed construction not fronting on a mapped street, contrary to General City Law Section 36 within an R4 zoning district.

PREMISES AFFECTED – 115 Beach 216th Street, east side Beach 216th south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

ACTION OF THE BOARD – Laid over to June 21, 2011, at 10 A.M., for adjourned hearing.

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200-10-A, 203-10-A thru 205-10-A

APPLICANT – Sheldon Lobel, P.C., for Williams Davies, LLC, owner.

SUBJECT – Application October 29, 2010 – Appeal seeking a common law vested right to continue construction commenced under the prior R5 zoning district. R4-1 zoning district

PREMISES AFFECTED – 1359, 1361, 1365 & 1367 Davies Road, southeast corner of Davies Road and Caffrey Avenue, Block 15622, Lots 15, 14, 13, 12, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to June 7, 2011, at 10 A.M., for adjourned hearing.

202-10-BZY

APPLICANT – Law Offices of Marvin B. Mitzner, for Long Island City Partners, LLC, owner.

SUBJECT – Application October 29, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior M1-3D zoning district. M1-2/R5D zoning district.

PREMISES AFFECTED – 29-11 39th Avenue, north side of 39th Avenue between 29th and 30th Street, Block 384, Lots 31 and 32, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Ian Rasmussen.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 7, 2011, at 10 A.M., for decision, hearing closed.

228-10-BZY

APPLICANT – Akerman Senterfitt, for 180 Lidlow Development, LLC, owner.

SUBJECT – Application December 15, 2010 – Extension of time (§11-332) to complete construction under the prior C6-1 zoning district regulations. C4-4A zoning district.

PREMISES AFFECTED – 180 Ludlow Street, east side of Ludlow Street, 125' south of Houston Street, Block 412, Lots 48-50, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Calvin Wong.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to May 24, 2011, at 10 A.M., for decision, hearing closed.

229-10-BZY

APPLICANT – Akerman Senterfitt, for 163 Orchard Street, LLC, owner.

SUBJECT – Application December 17, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior C6-1 zoning district. C4-4A zoning district.

PREMISES AFFECTED – 163 Orchard Street, Orchard and Houston Streets, between Sytanton and Rivington Street, Block 416, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Calvin Wong.

For Opposition: Aaron Sosrick.

ACTION OF THE BOARD – Laid over to June 21, 2011, at 10 A.M., for adjourned hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING TUESDAY AFTERNOON, MAY 10, 2011 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

189-09-BZ

CEQR #09-BSA-118R

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace, west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

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, Commissioner Hinkson and

MINUTES

Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated March 31, 2011, acting on Department of Buildings Application No. 510035301 reads, in pertinent part:

“Existing conforming building use is not permitted to change to a non-conforming building use since it will create new non-conformance with respect to the building use. ZR 42-00, 41-13, 11-112;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an M3-1 zoning district, the legalization and enlargement of a four-story and basement mosque (Use Group 4), contrary to ZR §§ 42-00, 41-13 and 11-112; and

WHEREAS, a companion application to permit the legalization of the subject building in the bed of a mapped street pursuant to Section 35 of the General City Law, filed under BSA Cal. No. 190-09-A, was heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on May 11, 2010, after due notice by publication in *The City Record*, with continued hearings on July 13, 2010, August 24, 2010, December 7, 2010, February 15, 2001, and April 5, 2011 and then to decision on May 10, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application; and

WHEREAS, this application is being brought on behalf of the Noor Al-Islam Society, a non-profit religious entity (the “Mosque”); and

WHEREAS, the subject site is located on the north side of Richmond Terrace, west of Harbor Road, within an M3-1 zoning district; and

WHEREAS, the site has approximately 116 feet of frontage on Richmond Terrace, a depth ranging between 75 feet and 80 feet, and a lot area of 12,555 sq. ft.; and

WHEREAS, the Board notes that the Department of Buildings (“DOB”) originally issued an additional objection for non-compliance with the floor area ratio (“FAR”) under ZR § 43-12, and raised concerns regarding the validity of the subject zoning lot, which had a lot area of 9,197sq. ft. at the time the application was initially filed; and

WHEREAS, in response, the applicant submitted a subdivision plan approved on January 28, 2011, which reflects that Lot 5 was increased in size from its previous lot area of 9,197 sq. ft. to the current lot area of 12,555 sq. ft. by incorporating a portion of adjacent Lot 20 into the subject zoning lot; as a result of the addition of approximately 3,358 sq. ft. of lot area to the site, the FAR of the subject building is now in compliance with the underlying zoning regulations; and

WHEREAS, accordingly, DOB amended its objection sheet by removing the objection related to FAR non-compliance under ZR § 43-12; and

WHEREAS, the subject site is currently occupied by a four-story and basement mosque with a floor area of 23,616.5 sq. ft., which the applicant proposes to legalize; and

WHEREAS, the applicant also proposes to enlarge the rear of the building by approximately 322 sq. ft., to accommodate a new vestibule, elevator, machine room and loading platform; and

WHEREAS, the proposed building provides for a four-story and basement mosque with the following parameters: a floor area of 23,938.6 sq. ft. (1.91 FAR); a total height of 56’-6”; a side yard with a width of 17’-10” along the western lot line; a side yard with a width of 13’-7” along the eastern lot line; a rear yard with a depth of 34’-4”; and seven on-site parking spaces; and

WHEREAS, the applicant submitted an easement executed between the Mosque and the owner of adjacent Lot 20, which reflects that the Mosque also has permission to use the 43 parking spaces located on Lot 20; and

WHEREAS, the applicant states that the subject building was formerly used as an administrative building serving the surrounding ship building complex, but that the Mosque has occupied the site for approximately ten years; and

WHEREAS, the proposal provides for the following uses: (1) a kitchen, open area and storage room in the basement; (2) a women’s prayer area and accessory study on the first floor; (3) a men’s prayer area on the second floor; (4) eight classrooms on the third floor; and (5) four classrooms and two accessory dwelling units on the fourth floor for the Mosque’s imam and caretaker; and

WHEREAS, community facility use is not permitted in the subject M3-1 zoning district, thus a use variance is required; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Mosque which necessitate the requested variance: (1) to be located in close proximity to the Mosque’s congregants; (2) to accommodate its growing congregation; and (3) to provide adequate space for classrooms; and

WHEREAS, the applicant represents that it is necessary to locate the Mosque at this site because the subject building is located in the center of the Muslim community on Staten Island, and because the subject building is large enough to accommodate the programmatic needs of the Mosque without having to undergo extensive renovations; and

WHEREAS, the applicant submitted a member list as evidence that the Mosque’s congregants live close to the subject site; and

WHEREAS, the applicant represents that the size of the building is also necessary to provide prayer areas large enough to accommodate the 400-500 worshippers who attend prayers on Fridays; and

WHEREAS, the applicant further represents that, in addition to Friday prayer service, the Mosque requires sufficient classroom space to accommodate the approximately 200 students that attend Sunday religious and cultural services, as well as Tuesday and Thursday Quran readings for approximately 15 students; and

WHEREAS, the Board acknowledges that the Mosque,

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as a religious institution, is entitled to significant deference under the 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, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Mosque 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 Mosque 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 subject building does not alter the essential character of the neighborhood, does not substantially impair the appropriate use or development of adjacent property, and is not detrimental to the public welfare; and

WHEREAS, the applicant states that the surrounding area is characterized by a mix of commercial, residential, and community facility uses; and

WHEREAS, the applicant notes that although the subject site is located within an M3-1 zoning district, residential use is permitted directly across the street from the site along Richmond Terrace; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that, while the site is surrounded by a commercial ship building complex on the north side of Richmond Terrace, directly across Richmond Terrace to the south are two churches, as well as a number of residential buildings; and

WHEREAS, the applicant represents that the existence of the nearby churches, located at 3036 and 3058 Richmond Terrace, respectively, demonstrates that the use of the subject building as a mosque fits within the character of the surrounding community; and

WHEREAS, the applicant notes that the Mosque has operated at the site for approximately ten years; and

WHEREAS, as to the traffic impact of the Mosque, the applicant states that many congregants arrive to the Mosque on foot, and therefore legalization of the Mosque will not have a significant impact on traffic; and

WHEREAS, the applicant represents that, because many congregants walk to the Mosque, the seven on-site parking spaces, in addition to the 43 parking spaces on adjacent Lot 20 which are available for use by the Mosque, are sufficient to accommodate the parking needs of the Mosque; and

WHEREAS, accordingly, 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, nor will it be detrimental to the public welfare;

and

WHEREAS, the applicant states that the hardship was not self-created but is the result of the site's unique physical 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 Board finds the requested waivers to be the minimum necessary to afford the Mosque the relief needed both to 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 a Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") 09BSA118R, dated May 3, 2011; 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 Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP reviewed the August 2010 Phase II Investigation Report and requested that a Construction Health and Safety Plan (CHASP) be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP reviewed and accepted the January 2011 CHASP; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; 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 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 § 72-21 and grants a variance, to permit, on a site within an M3-1 zoning

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district, the legalization and enlargement of a four-story and basement mosque, which is contrary to ZR §§ 42-00, 41-13 and 11-112, *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 22, 2011" – (13) sheets; and *on further condition*:

THAT the building parameters shall be: a floor area of 23,938.6 sq. ft. (1.91 FAR); a total height of 56'-6"; a side yard with a width of 17'-10" along the western lot line; a side yard with a width of 13'-7" along the eastern lot line; a rear yard with a depth of 34'-4"; and seven on-site parking spaces, as indicated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4);

THAT no commercial catering shall take place onsite;

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor shall obtain from DEP a Notice to Proceed;

THAT prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain from DEP a Notice of Satisfaction;

THAT substantial construction be completed in accordance with ZR § 72-21;

THAT 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 10, 2011.

190-09-A

APPLICANT – Eric Palatnik, P.C., for Mohamed Adam, owner; Noor Al-Islam Society, lessee.

SUBJECT – Application June 10, 2009 – Variance (§72-21) and waiver to the General City Law Section 35 to permit the legalization of an existing mosque and Sunday school (*Nor Al-Islam Society*), contrary to use and maximum floor area ratio (§§42-00 and 43-12) and construction with the bed of a mapped street. M3-1 zoning district.

PREMISES AFFECTED – 3067 Richmond Terrace, north side of Richmond Terrace west of Harbor Road, Block 1208, Lot 5, Borough of Staten Island.

COMMUNITY BOARD #1SI

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated March 31, 2011, acting on Department of Buildings Application No. 510035301, reads in pertinent part:

"About more than 90% of the building footprint lies within the bed of a mapped street. Alteration to the building is made to change entire building use and bulk, to establish new use is contrary to BC 26-225 and GCL 35, not acceptable;" and

WHEREAS, this is an application for the legalization of an existing four-story and basement building constructed partially within the bed of a mapped street, contrary to General City Law § 35; and

WHEREAS, a companion application for a variance to permit the legalization and enlargement of the subject building, which is occupied by a mosque, filed under BSA Cal. No. 189-09-A, was heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on May 11, 2010, after due notice by publication in *The City Record*, with continued hearings on July 13, 2010, August 24, 2010, December 7, 2010, February 15, 2001, and April 5, 2011 and then to decision on May 10, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Staten Island, recommends approval of this application; and

WHEREAS, by letter dated February 25, 2010, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated July 7, 2009, the Department of Environmental Protection ("DEP") states that there is an existing 24-inch diameter interceptor sewer, an existing 5'-7" by 3'-0" and 4'-3½" by 4'-1" diameter combined sewer and an existing 20-inch diameter city water main in Richmond Terrace between Mersereau Avenue and Lockman Avenue, and that the latest drainage plan, No. PRD-1C, sheet 3 of 4, calls for a future 11'-6" by 5'-0" diameter storm sewer and a 15-inch diameter sanitary sewer in Richmond Terrace between Mersereau Avenue and Lockman Avenue; and

WHEREAS, DEP requested that the applicant submit a survey/plan showing the following: (1) the total width of the mapped street, Richmond Terrace and the width of the widening (both sides) between Mersereau Avenue and Lockman Avenue; (2) the distances between the lot line and the existing 24-inch diameter interceptor, 5'-7" by 3'-0" and 4'-3½" by 4'-1" combined sewer and the existing 20-inch diameter city water main; and (3) the site plan with dimensions

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and lot numbers as per the latest tax map and submit a tentative lot sheet, if applicable; and

WHEREAS, in response, the applicant submitted a revised site plan to DEP which shows 100 feet of total width of Richmond Terrace and 50 feet of the widening portion of the street, with the remaining 50 feet of the street available for the installation, maintenance and/or reconstruction of the existing 24-inch interceptor sewer, 5'-7" by 3'0" and 4'-3½" by 4'-1" combined sewer, and the 20-inch diameter City water main and for the future 11'-6" by 5'-0" storm sewer, the ten-inch diameter and the 15-inch diameter sanitary sewers in Richmond Terrace between Andros Avenue and Lockman Avenue; and

WHEREAS, by letter dated September 9, 2010, DEP states that it has reviewed the revised site plan and has no objections; and

WHEREAS, by letter dated September 21, 2010, the Department of Transportation ("DOT") states that it has reviewed the subject proposal and has no objections; and

WHEREAS, DOT states that the applicant's property is not included in the agency's Capital Improvement Program; and

WHEREAS, accordingly, the Board has determined that 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 March 31, 2011, acting on Department of Buildings Application No. 510035301 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 any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 22, 2011" – (13) 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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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 10, 2011.

304-09-BZ

APPLICANT – Stuart A. Klein, Esq. for Junius-Glenmore Development, LLC, owner; Women in Need, Inc., lessee.
SUBJECT – Application November 4, 2009 – Variance (§72-21) to allow the erection of a ten-story, mixed-use community facility (*Women In Need*) and commercial

building, contrary to floor area (§42-00, 43-12 and 43-122), height and sky exposure plane (§43-43), and parking (§44-21). M1-4 zoning district.

PREMISES AFFECTED – 75-121 Junius Street, Junius Street, bounded by Glenmore Avenue and Liberty Avenue, Block 3696, Lot 1, 10, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Jay Goldstein.

ACTION OF THE BOARD – Laid over to June 7, 2011, at 1:30 P.M., for deferred decision.

95-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Raymond Kohanbash, owner.

SUBJECT – Application May 27, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461 and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2216 Quentin Road, south side of Quentin Road between East 22nd Street and East 23rd Street, Block 6805, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to June 7, 2011, at 1:30 P.M., for adjourned hearing.

118-10-BZ

APPLICANT – Eric Palatnik, P.C., for Arkady Nabatov, owner.

SUBJECT – Application June 28, 2010 – Reinstatement (§11-411 & §11-413) of an approval permitting the operation of an automotive service station (UG 16B), with accessory uses, which expired on December 9, 2003; amendment to legalize a change in use from automotive service station to automotive repair, auto sales and hand car washing. R4 zoning district.

PREMISES AFFECTED – 2102/24 Avenue Z, aka 2609/15 East 21st Street. Block 7441, Lot 371. Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik and Serge Mozer.

For Opposition: Katherine D'Ambrosi.

ACTION OF THE BOARD – Laid over to June 7, 2011, at 1:30 P.M., for continued hearing.

128-10-BZ

APPLICANT – Eric Palatnik, P.C., for Merhay Yagaduyev, owner; Jewish Center of Kew Gardens Hill Inc., lessee.

SUBJECT – Application July 13, 2010 – Variance (§72-21) to permit proposed synagogue, religious school and Rabbi's residence (*Jewish Center of Kew Gardens*) contrary to floor area and lot coverage (§24-11), height, setback and sky

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exposure plane (§24-521), front yard (§24-34), side yards (§24-35), side setback (§24-551), and minimum distance between windows (§24-672 and §23-863). R4 zoning district.

PREMISES AFFECTED – 147-58 77th Road, 150th Street and 77th Road, Block 6688, Lot 31, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 14, 2011, at 1:30 P.M., for adjourned continued.

177-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLC, for Cee Jay Real Estate Development, owner.

SUBJECT – Application September 9, 2010 – Variance (§72-21) for the construction of a detached three-story single family home, contrary to open space (§23-141); front yard (§23-45) and side yard (§23-461). R3A zoning district.

PREMISES AFFECTED – 8 Orange Avenue, south west corner of Decker Avenue and Orange Avenue, Block 1061, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Todd Dale.

For Opposition: Jeannine Borkowski, John Donnaruma and Elaine Walters.

ACTION OF THE BOARD – Laid over to June 7, 2011, at 1:30 P.M., for continued hearing.

2-11-BZ

APPLICANT – Cozen O’Connor, for 117 Seventh Avenue South Property Company, LP, owner.

SUBJECT – Application January 4, 2011 – Variance (§72-21) to allow for a residential and community facility enlargement to an existing commercial building, contrary to setback (§33-432) and open space regulations (§23-14). C4-5 zoning district.

PREMISES AFFECTED – 117 Seventh Avenue South, southeast corner of Seventh Avenue South and West 10th Street, Block 610, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Paul J. Proulx, Jack Freeman, Howard Hornstein.

ACTION OF THE BOARD – Laid over to July 12, 2011, at 1:30 P.M., for continued hearing.

9-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Riverdale Equities, LTD, owner; White Plains Road Fitness Group, LLC, lessee.

SUBJECT – Application January 31, 2011 – Special Permit (§73-36) to permit the operation of the proposed physical culture establishment (*Planet Fitness*). C4-4 zoning district.

PREMISES AFFECTED – 2129A-39A White Plains Road, a/k/a 2129-39 White Plains Road, a/k/a 626-636 Lydig Avenue, southeast corner of the intersection of White Plains Road and Lydig Avenue, Block 4286, Lot 35, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Josh Rinesmith and Marilyn Sopher.

For Opposition: Bronx Community Board 11, Joe Bobace, Edith Blitzer and Elaine Feder.

ACTION OF THE BOARD – Laid over to May 24, 2011, at 1:30 P.M., for continued hearing.

25-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Health Science Center at Brooklyn Foundation, Incorporated, owner; Downstate Technology Center, Incorporated, lessee.

SUBJECT – Application March 9, 2011 – Variance (§72-21) to permit the enlargement of an existing medical research facility (*Downstate Advanced Biotechnology Incubator*), contrary to floor area (§43-10), height and setback (§43-20), required parking (§43-21), parking space dimensions (§44-42) and off street loading bay (§44-52) regulations. M1-1 zoning district.

PREMISES AFFECTED – 760 Parkside Avenue, South side of Parkside Avenue, mid-block between New York Avenue and Nostrand Avenue. Block 4828, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Richard Lobel and Dr. Eva Cramer.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 14, 2011, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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May 25, 2011

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Tuesday, May 17, 2011**

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95-97-BZ 69-47 Austin Street, Queens
156-03-BZ 135-35 Northern Boulevard, Queens
101-05-BZ 377 Greenwich Street, Manhattan
94-10-A 27-24 21st Street, Queens
96-10-A & 97-10-A 673 & 675 Hunter Avenue, Staten Island
14-11-A 1221 East 22nd Street, Brooklyn

Afternoon Calendar351

Affecting Calendar Numbers:

90-10-BZ 58-06 Springfield Boulevard, Queens
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227-09-BZ 100-14 Roosevelt Avenue, Queens
197-10-BZ thru 59, 63 & 67 Fillmore Street, Staten Island
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227-10-BZ 204-12 Northern Boulevard, Queens
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4-11-BZ 1747-1751 East 2nd Street, aka 389 Quentin Road, Brooklyn
10-11-BZ & 115, 121 Finely Avenue, Staten Island
 11-11-BZ
19-11-BZ 1271 East 24th Street, Brooklyn

Correction356

Affecting Calendar Numbers:

127-10-BZ 45 Coleridge Street, Brooklyn

DOCKET

New Case Filed Up to May 17, 2011

64-11-BZ

32-28 49th Street, Between Northern Boulevard & New Town Road., Block 734, Lot(s) 47, Borough of **Staten Island, Community Board: 01**. Special Permit (73-36) to allow the operation of a physical cultural establishment. C8-1 district.

65-11-BZ

1750 East Gun Hill Road, Large zoning lot with frontage on East Gun Hill Road, Gunther Avenue and Bergen Avenue., Block 4494, Lot(s) 1, Borough of **Bronx, Community Board: 11**. Special Permit (§73-36) to allow the operation of a physical culture establishment in portion of an existing one-story building. The premises is located in a C2-1/R3-2 zoning district. The proposal is contrary to Section 32-31. C2-1/R3-2 district.

66-11-BZ

172-220 Third Street, Block bounded by 3rd Street, 3rd Avenue, 4th Street Basin and Gowanus Canal., Block 978, Lot(s) 1,7,16,19,23,30,32, Borough of **Brooklyn, Community Board: 06**. Variance (§72-21) to permit a food store (UG6), contrary to use regulations. M2-1 zoning district. M2-1 district.

67-11-BZ

1430 East 29th Street, West side of 29th Street between Avenue N and Kings Highway., Block 7682, Lot(s) 60, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of existing single family home contrary to floor area and open space (§23-141) side yard and (§23-47) rear yard. R2 district.

68-11-BZ

1636 East 23rd Street, West side of East 23rd Street between Avenue P and Quentin Road., Block 6785, Lot(s) 20, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for enlargement of existing single family home, contrary to floor area and open space (§23-141); rear yard (§23-47) and side yard (§23-461). R3-2 zoning district. R3-2 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 7, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 7, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

502-60-BZ

APPLICANT – Patrick O' Connell P.E. for Raymond Edwards, owner; Angel R. Hernandez, lessee.
SUBJECT – Application February 23, 2011 – Extension of Term (§11-411) of a previously approved variance permitting the use of a parking lot (UG 8) for the parking and storage of more than five (5) motor vehicles which expired on January 20, 2011. C2-4/R7-2 zoning district.
PREMISES AFFECTED – 4452 Broadway, Broadway & Fairview Avenue. Block 2170, Lot 62 & 400. Borough of Manhattan.

COMMUNITY BOARD #12M

739-76-BZ

APPLICANT – Eric Palatnik, P.C. for Cord Meyer Development, LLC, owner; Peter Pan Games of Bayside; lessee.
SUBJECT – Application April 19, 2011 – Extension of Term of a previously granted Special Permit (§73-35) for the continued operation of an Amusement arcade (Peter Pan Games) which expired on April 10, 2011. C4-1 zoning district.
PREMISES AFFECTED – 212-95 26th Avenue, 26th Avenue and Bell Boulevard. Block 5900, Lot 2. Borough of Queens.

COMMUNITY BOARD #7Q

586-87-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Frasca Real Estate Incorporated, owner; 65th Street Auto Service Center, Incorporated, lessee.
SUBJECT – Application April 5, 2011 – Extension of Term (§11-411) for the continued operation of an existing gasoline service station (Emporium) with lubritorium, auto repairs and the sale of new/used cars which expired on July 12, 2008; waiver of the rules. R5B/C2-3 zoning district.
PREMISES AFFECTED – 1302/12 65th Street, southeast corner of intersection of 65th Street and 13th Avenue, Block 5754, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #10BX

APPEALS CALENDAR

176-10-A

APPLICANT – Sheldon Lobel, P.C., for LIV Realty LLC, owner.
SUBJECT – Application September 8, 2010 – Proposed construction of a residential building not fronting a mapped street contrary to General City Law Section 36. R6 Zoning District.
PREMISES AFFECTED – 62 Brighton 2nd Place, east side, Block 8662, Lot 155, Borough of Brooklyn.
COMMUNITY BOARD #13BK

JUNE 7, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 7, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

230-09-BZ

APPLICANT – Peter Hirshman, for Mr. Filipp T Tortora, owner.
SUBJECT – Application July 20, 2009 – Variance (§72-21) for the construction of a three story, three family residence on a vacant undersized lot contrary to front yard regulations (§23-45). R-5 zoning district.
PREMISES AFFECTED – 1700 White Plains Road, northeast corner of White Plains and Van Nest Avenue, Block 4033, Lot 31, Borough of Bronx.
COMMUNITY BOARD #11BX

194-10-BZ

APPLICANT – Eric Palatnik, P.C., for Revekka Kreposterman, owner.
SUBJECT – Application October 26, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area §23-141. R3-1 zoning district.
PREMISES AFFECTED – 175 Exeter Street, north of Oriental Avenue, Block 8737, Lot 17, Borough of Brooklyn.
COMMUNITY BOARD #15BK

21-11-BZ

APPLICANT – Eric Palatnik, P.C., for 1810-12 Voorhies Avenue, LLC, owner.
SUBJECT – Application February 28, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory or diagnostic treatment facility. C1-2/R4 zoning district.

CALENDAR

PREMISES AFFECTED – 1810 Voorhies Avenue, south side of Voorhies Avenue, between East 19th Street and Sheepshead Bay Road, Block 8772, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

24-11-BZ

APPLICANT – Jay A. Segal, Esq., Greenberg Traurig, LLP, for LaSalle New York City, Inc., owner; WCL Academy of New York LLC, lessee.

SUBJECT – Application March 8, 2011 – Variance (§72-21) to permit the construction of an elevator and vestibule in the courtyard of the R8B portion of a school building (*WCL Academy*) which is contrary to, FAR (§24-11) lot coverage (§24-11) and permitted obstruction requirements (§24-51).

PREMISES AFFECTED – 44-50 East 2nd Street, north side of East 2nd Street, between First and Second Avenues, Block 444, Lot 59, Borough of Manhattan.

COMMUNITY BOARD #3M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 17, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

188-78-BZ

APPLICANT – Mark Verkhosky, for Anthony Beradi, owner; Spiro Ioannou, lessee.

SUBJECT – Application May 4, 2010 – Amendment (§11-412) to a Variance (§72-21) to add automobile body and sales (UG16) to an existing (UG16) automobile repair and laundry. R-5 zoning district.

PREMISES AFFECTED – 8102 New Utrecht Avenue, southwest corner of New Utrecht Avenue and 81st Street, Block 6313, Lot 31, Borough of Brooklyn.

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, May 17, 2011.

95-97-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 700 West 178th Street Associates, LLC, owner; TSI Forest Hills LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 14, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on May 1, 2007; Waiver of the Rules. C4-5X zoning district.

PREMISES AFFECTED – 69-47 Austin Street, northwest corner of Austin Street and 70th Avenue, Block 3237, Lot 30, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to June 7, 2011, at 10 A.M., for deferred decision.

156-03-BZ

APPLICANT – Steven M. Sinacori, Esq., of Akerman Senterfitt, for RKO Plaza LLC & Farrington Avenue Developers, LLC, owner.

SUBJECT – Application November 30, 2009 – Amendment to a variance (§72-21) for a proposed 17-story mixed-use

development. The amendment seeks to increase the number of dwelling units from 200 to 357, accessory parking from 229 spaces to 360 spaces, and the amount of retail space. C2-2/R6 zoning district.

PREMISES AFFECTED – 135-35 Northern Boulevard, north side of Northern Boulevard, between Prince Street and Farrington Street, Block 4958, Lot 38 & 48, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Howard Goldman, Jack Freeman, Jay Valgora and Susan Cannoll.

ACTION OF THE BOARD – Laid over to June 14, 2011, at 10 A.M., for continued hearing.

101-05-BZ

APPLICANT – Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for 377 Greenwich LLC c/o Ira Drukler, owner.

SUBJECT – Application April 7, 2011 – Amendment to a Variance (§72-21) for a seven-story hotel with penthouse (*The Greenwich Hotel*). The amendment seeks to legalize the penthouse footprint and modify the penthouse façade. C6-2A/Tribeca Mixed Use (A-1) zoning district.

PREMISES AFFECTED – 377 Greenwich Street, east side of Greenwich Street on the corner formed by intersection of south of North Moore Street and east side of Greenwich Street, Block 187, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Shelly Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 7, 2011, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

94-10-A

APPLICANT – Borah, Goldstein, Altschuler, Nahins & Goidel, P.C., for Twenty-Seven-Twenty Four Realty Corporation, owner.

SUBJECT – Application May 26, 2010 – Appeal challenging the Department of Buildings' determination that signs located on the north and south walls of the subject building are not a continuous legal nonconforming use. C2-2 Zoning district.

PREMISES AFFECTED – 27-24 21st Street, west side of 21st Street south of Astoria Boulevard, Block 539, Lot 35, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

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For Applicant: Marnie R. Kudow, Elizabeth Booth, Vincent Sokinich and Norman Mirsky.

For Opposition: John Egnatos Beene.

ACTION OF THE BOARD – Laid over to July 12, 2011, at 10 A.M., for continued hearing.

96-10-A & 97-10-A

APPLICANT – Rothkrug Rothkrug & Spector, for Hub Development Corporation, owner.

SUBJECT – Application June 1, 2010 – Proposed construction of a single family home located within the bed of a mapped street (Jay Street), contrary to General City Law Section 35. R3-1 Zoning District.

PREMISES AFFECTED – 673 & 675 Hunter Avenue, north side of Hunter Avenue, bed of Jay Street, Block 3864, Lot 98 & 99, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to June 14, 2011, at 10 A.M., for continued hearing.

14-11-A

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Schron and Eli Shron, owners.

SUBJECT – Application February 2, 2011 – Appeal challenging a determination by the Department of Buildings that a proposed cellar to a single family home is contrary to accessory use as defined in §12-10 in the zoning resolution. R2 zoning district.

PREMISES AFFECTED – 1221 East 22th Street, between Avenues K and L, Block 7622, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: John Egnatos Beene.

ACTION OF THE BOARD – Laid over to June 21, 2011, at 10 A.M., for continued hearing.

REGULAR MEETING TUESDAY AFTERNOON, MAY 17, 2011 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

90-10-BZ

CEQR #10-BSA-073Q

APPLICANT – James Chin & Associates, LLC, for Chan Ahn, owner.

SUBJECT – Application August 14, 2010 – Variance (§72-21) to permit a house of worship (*Korean Central Presbyterian Church*), contrary to front yard (§24-34), side yard (§24-35), and rear yard (§24-36). R2A zoning district. PREMISES AFFECTED – 58-06 Springfield Boulevard, corner of the west side of Springfield Boulevard, west north side of the Horace Harding Expressway, Block 7471, Lots 7 and 48, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Mindy Chin.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 20, 2011, acting on Department of Buildings Application No. 400644781, reads in pertinent part:

Variance is needed under ZR 72-21 to permit in an R2A zoning district, an existing church contrary to the following ZR sections: 24-35(a) Required side yard setback of 11'-8" not being provided or the space erected beyond the height of 10'-2" and 23'-4" and violating the non-compliant side yard walls of 10'-2" and ZR 24-36. Not providing the required 30'-0" rear yard; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R2A zoning district, the legalization of an existing church (Use Group 4), which does not comply with side yard and rear yard regulations, contrary to ZR §§ 24-35 and 24-36; and

WHEREAS, a public hearing was held on this application on March 1, 2011, after due notice by publication in *The City Record*, with a continued hearing on April 12, 2011, and then to decision on May 17, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown;

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and

WHEREAS, Community Board 11, Queens, recommends approval of this application; and

WHEREAS, State Senator Tony Avella provided written testimony in support of the proposal; and

WHEREAS, this application is brought on behalf of the Korean Central Presbyterian Church, a non-profit religious entity (the "Church"); and

WHEREAS, the subject site is located on an irregularly-shaped zoning lot consisting of two tax lots (Lot 7 and Lot 45) with a total lot area of 56,225 sq. ft., within an R2A zoning district; and

WHEREAS, Lot 7 is bounded by 58th Avenue to the north, Springfield Boulevard to the east, and the Horace Harding Expressway to the south, and has approximately 405 feet of frontage on Springfield Boulevard, a depth ranging between 89 feet and 147 feet, and a total lot area of 50,625 sq. ft.; and

WHEREAS, Lot 45 abuts the southwest corner of Lot 7 and is a corner lot with frontage on 220th Street and the Horace Harding Expressway, with a width of 40 feet, a depth of 140 feet, and a lot area of 5,600 sq. ft.; and

WHEREAS, the Lot 7 portion of the site is currently occupied by a two-story community facility building occupied by a church (Use Group 4), with a total floor area of 25,224 sq. ft. (0.45 FAR), as well as 67 parking spaces located on the northern portion of the lot; the Lot 45 portion of the site is currently and will remain vacant; and

WHEREAS, the applicant states that prior to December 15, 1961, the site was occupied by a one-story and cellar building occupied by a garden supply center, including a sales office, storage building, and greenhouses; and

WHEREAS, on October 27, 1966, under BSA Cal. No. 1065-66-BZ, the Board granted a variance to permit the construction of a two-story enlargement to the sales office and storage building of the existing garden supply center; and

WHEREAS, the applicant notes that the site has been occupied by the Church since 1994, and the applicant seeks to legalize an enlargement to the Church which increased the degree of non-compliance with side and rear yard regulations; and

WHEREAS, the applicant notes that, due to the large size of the subject lot, and its frontage on three streets, corner lot regulations apply to the portions of Lot 7 within 100 feet of the street lines of 58th Avenue and the Horace Harding Expressway, respectively, and interior lot regulations apply to the remainder of the lot, which has a width of approximately 200 feet and has a frontage only on Springfield Boulevard; and

WHEREAS, the applicant states that the church building is situated such that corner lot regulations apply to the southern portion of the building within 100 feet of the Horace Harding Expressway, where the main sanctuary and a portion of the gymnasium are currently located, and interior lot regulations apply to the remainder of the building; therefore, the vertical enlargement at the rear of the church building increased the degree of non-compliance with both side yard and rear yard regulations; and

WHEREAS, the pre-existing building provided a side yard/rear yard with a depth of 5'-11" along the western lot line of Lot 7 with a height ranging from 10'-2" to 23'-4", which were pre-existing legal non-complying conditions (a rear yard with a depth of 30 feet is required for the portion of Lot 7 that qualifies as an interior lot, and a side yard with a depth of 11'-8" is required for the portion of Lot 7 that qualifies as a corner lot); and

WHEREAS, the enlargement of the church building, which vertically extended the pre-existing walls at the rear of the building, was constructed on the footprint of the pre-existing building and maintains the existing non-complying side yards and rear yard; however, increasing the height of the rear walls of the subject building increased the degree of the pre-existing non-compliances with side and rear yard regulations; and

WHEREAS, specifically, the enlargement increased the height of the existing walls at the rear of the current main sanctuary from 10'-2" to between 18'-2" and 35'-0", without providing the required side yard of 11'-8" above the height of the pre-existing non-complying wall; the enlargement also increased the height of the existing walls at the rear of the current gymnasium from 23'-4" to 28'-0", without providing the required side yard of 11'-8" for the corner lot portion of the gymnasium or the 30'-0" rear yard for the interior lot portion of the gymnasium above the height of the pre-existing non-complying wall; and

WHEREAS, the proposal provides for the following uses: (1) meeting rooms at the cellar; (2) the main sanctuary, multi-purpose room/gymnasium, assembly room, children's worship room, kitchen, cry room, choir practice room, classrooms, offices and administrative rooms on the first floor; (3) a sanctuary balcony at the first floor mezzanine; and (4) meeting rooms and assembly rooms at the second floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Church which necessitate the requested variance: (1) to provide sufficient space for the current Church and to accommodate for future growth; (2) to provide an indoor crucifix and other indoor religious symbols at a sufficient height; and (2) to provide a gymnasium/multi-purpose room which can accommodate the needs of the Church; and

WHEREAS, the applicant states that approximately 300 to 400 people currently attend the church services in the main sanctuary on Sundays, and that number is expected to grow in future years; and

WHEREAS, the applicant represents that a significantly larger number of people attend the services for the Christmas and Easter holidays; and

WHEREAS, the applicant states the main sanctuary can only accommodate 357 people at the first floor, and that the vertical enlargement of the main sanctuary was necessary in order to provide a 202 person balcony for the main sanctuary to accommodate the size of the growing congregation; and

WHEREAS, the applicant represents that the Church's religious doctrine requires it to maintain an indoor crucifix and other symbols of its religion erected high above the ground; and

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WHEREAS, the applicant states that these religious requirements also necessitated the increase of the pre-existing height of the main sanctuary; and

WHEREAS, as to the height of the gymnasium/multi-purpose room, the applicant states that the Church has a programmatic need of providing a recreation facility for community outreach and youth programs for the surrounding community and members of the Church; and

WHEREAS, the applicant represents that sports such as volleyball and basketball are a critical component of the Church's community outreach and youth programs, and these activities require a facility with high ceilings, thereby necessitating an increase in the pre-existing height of the gymnasium/multi-purpose room; and

WHEREAS, the applicant states that the requested waivers enable the Church to legalize the existing building, maintain the use it has accommodated for over ten years, and meet its programmatic needs; and

WHEREAS, the Board acknowledges that the Church, as a religious institution, is entitled to significant deference under the 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, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the Board notes that the applicant provided evidence of the Church's status as a non-profit religious institution; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Church 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 enlarged building does not alter the essential character of the neighborhood, does not substantially impair the appropriate use or development of adjacent property, and is not detrimental to the public welfare; and

WHEREAS, the applicant states that that the proposed/existing use and floor area are permitted as-of-right in the subject zoning district and only the vertical extension of the pre-existing non-complying yards is contrary to zoning district regulations; and

WHEREAS, the applicant further states that the subject church building has existed at the site at its current size for more than ten years; and

WHEREAS, the applicant further states that, while the vertical enlargement at the rear of the site increases the degree of non-compliance as to the yards, the subject building has a maximum height of 35 feet, which is permitted in the underlying R2A zoning district; and

WHEREAS, the applicant also submitted a 400-ft. radius diagram which reflects that the adjacent homes to the rear of

the church building front on 220th Street and have rear yards facing the main sanctuary and gymnasium with depths ranging from 55 feet to 65 feet, thereby providing between 61 feet and 71 feet of open space between the rear of the church building and the rear of the adjacent homes; and

WHEREAS, the Board notes that the site could be developed as-of-right with a building with greater floor area, if all yards were provided; and

WHEREAS, the Board further notes that the enlargement does not create any new non-compliance but rather increases the degree of existing non-compliance; and

WHEREAS, accordingly, 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, 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 Church could occur on the existing lot; and

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

WHEREAS, the Board notes that the building complies with all bulk and use regulations, with the exception of the non-complying yards; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Church the relief needed both to meet its programmatic needs and to occupy 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 6 NYCRR Part 617.12 (a) and 617.5; 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) 10BSA073Q, dated March 8, 2010; 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 determination prepared

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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 R2A zoning district, the legalization of an enlargement to an existing church (Use Group 4), which does not comply with side yard and rear yard regulations, contrary to ZR §§ 24-35 and 24-36; *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 13, 2011” – One (1) sheet and “Received April 8, 2011” – Eight (8) sheets; and *on further condition*:

THAT the building parameters shall be as reflected on the approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4);

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, May 17, 2011.

169-09-BZ

APPLICANT – Sheldon Lobel, for Saint Georges Crescent, LLC, owner.

SUBJECT – Application June 8, 2009 – Variance (§72-21) to allow a multi-family residential building, contrary to floor area (§23-145), rear yard (§23-47), height and setback (§23-633), rear setback (§23-663), minimum distance between windows and lot lines (§23-861), and maximum number of dwelling units (§23-22) regulations. R8 zoning district.

PREMISES AFFECTED – 186 Saint George’s Crescent, east side of St. George’s Crescent, 170’ southeast of the corner formed by the intersection of Van Cortland Avenue, and Grand Concourse, Block 3312, Lot 12, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to June 21, 2011, at 1:30 P.M., for continued hearing.

227-09-BZ

APPLICANT – Gerald J. Caliendo, R.A., for David Rosero/Chris Realty Holding Corporation, lessee.

SUBJECT – Application July 10, 2009 – Variance (§72-21) to allow a two-story commercial building, contrary to use regulations (§22-10). R6B zoning district.

PREMISES AFFECTED – 100-14 Roosevelt Avenue, south side of Roosevelt Avenue, 109.75’ west of the corner of 102nd Street and Roosevelt Avenue, Block 1609, Lot 8, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 12, 2011, at 1:30 P.M., for adjourned hearing.

197-10-BZ thru 199-10-BZ

APPLICANT – Antonio S. Valenziano, AIA, for John Merolo, owner.

SUBJECT – Application October 26, 2010 – Variance (§72-21) to allow three residential buildings in a manufacturing district, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 59, 63 & 67 Fillmore Street, 491.88’ west of York Avenue, Block 61, Lot 27, 29, 31, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 7, 2011, at 1:30 P.M., for deferred decision.

227-10-BZ

APPLICANT – Eric Palatnik, P.C., for Power Test Realty Company Limited Partnership, owner.

SUBJECT – Application December 14, 2010 – Reinstatement (§11-411) of a previously approved variance permitting the operation of an automotive service station (UG 16B) (*Getty*) which expired on October 11, 2000; Amendment to legalize fuel dispensing islands; Extension of Time to obtain a certificate of occupancy which expired on November 17, 1993; Waiver of the rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 204-12 Northern Boulevard, Northern Boulevard and 204th Street. Block 7301, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 12, 2011, at 1:30 P.M., for continued hearing.

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3-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Schron and Eli Shron, owners.

SUBJECT – Application January 10, 2011 – Special Permit (§73-622) for the enlargement of a single family home, contrary to floor area and open space (§23-141) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1221 East 22nd Street, between Avenue K and Avenue L, Block 7622, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to June 21, 2011, at 1:30 P.M., for continued hearing.

4-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 1747 East 2nd Street, LLC, owner.

SUBJECT – Application January 10, 2011 – Variance (§72-21) to allow a three-story synagogue, contrary to lot coverage (§24-11), floor area (§113-51), wall height and total height (§113-55), front yard (§113-542), side yards (§113-543), encroachment into required setback and sky exposure plane (§113-55), and parking (§25-18, 25-31, and 113-561). R5 zoning district.

PREMISES AFFECTED – 1747-1751 East 2nd Street, aka 389 Quentin Road, northeast corner of East 2nd Street and Quentin Road, Block 6634, Lot 49, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to June 21, at 1:30 P.M., for continued hearing.

10-11-BZ & 11-11-BZ

APPLICANT – Rampulla Associates Architects, for Charles Cannizaro, owner.

SUBJECT – Application February 3, 2011 – Variance (§72-21) to allow two, single family homes contrary to front yard (§23-45) and rear yard regulations (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 115, 121 Finely Avenue, north of Finely Avenue, 100' southwest of Marine Way, Block 4050, Lot 53, 56, 59, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip Rampulla.

For Opposition: Michael Calantuano and Frank Marchiano.

ACTION OF THE BOARD – Laid over to June 21, 2011, at 1:30 P.M., for continued hearing.

19-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Brown and Yechiel Fastag, owners.

SUBJECT – Application February 24, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence, contrary to floor area and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1271 East 24th Street, east side of East 24th Street, between Avenue L and Avenue M, Block 7642, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to June 14, 2011, at 1:30 P.M., for continued hearing.

Adjourned: P.M.

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*CORRECTION

This resolution adopted on May 3, 2011, under Calendar No. 127-10-BZ and printed in Volume 96, Bulletin Nos. 17-19, is hereby corrected to read as follows:

127-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Aleksandr Goldshmidt and Inna Goldshmidt, owners.

SUBJECT – Application July 12, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space, lot coverage (§23-141), exceeds the maximum perimeter wall height (§23-631) and less than the required rear yard (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 45 Coleridge Street, east side of Coleridge Street, between Shore Boulevard and Hampton Avenue, Block 8729, Lot 65, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 10, 2010, acting on Department of Buildings Application No. 320148416, reads in pertinent part:

Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio.

Proposed plans are contrary to ZR 23-141 in that the proposed open space is less than the minimum required open space.

Proposed plans are contrary to ZR 23-141 in that the proposed lot coverage exceeds the maximum permitted lot coverage.

Proposed plans are contrary to ZR 23-631 in that the proposed perimeter wall height exceeds the maximum permitted perimeter wall height.

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard; 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 home, which does not comply with the zoning requirements for floor area, open space, lot coverage, 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 11, 2011, after due notice by publication in *The City Record*, with continued hearings on

February 8, 2011, March 8, 2011 and March 29, 2011, and then to decision on May 3, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

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

WHEREAS, the subject site is located on the east side of Coleridge Street between Shore Boulevard and Hampton Avenue, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a single-family home with a floor area of 2,921 sq. ft. (0.49 FAR); 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 2,921 sq. ft. (0.49 FAR) to 5,943 sq. ft. (0.99 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 61 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 38 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide a rear yard with a depth of approximately 22'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant proposes to provide a rear yard with a depth of approximately 22'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant proposes to provide a perimeter wall height of approximately 21'-6 1/4" (a maximum perimeter wall height of 21'-0" is permitted); and

WHEREAS, the Board notes that the special permit under ZR § 73-622 allows a perimeter wall height to exceed the permitted height in an R3-1 zoning district, provided that the perimeter wall height is equal to or less than the perimeter wall height of an adjacent single- or two-family detached or semi-detached residence with an existing non-complying perimeter wall facing the street; and

WHEREAS, in support of the requested waiver for perimeter wall height, the applicant provided a survey establishing the height of the adjacent building; and

WHEREAS, the Board notes that the adjacent single family home at 53 Coleridge Street has a perimeter wall height of 21'-6 1/4"; and

WHEREAS, at hearing, the Board directed the applicant to establish the adjacent home's perimeter wall height and to revise its plans so as not to exceed its height; and

WHEREAS, the applicant represents that the perimeter wall of the proposed home, as revised, therefore falls within the scope of the special permit; and

WHEREAS, the Board has determined that the applicant has submitted sufficient information to establish that applicant may match the pre-existing perimeter wall of the adjacent home, which exceeds a height of 21'-0"; and

WHEREAS, based upon its review of the record, the

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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 home, which does not comply with the zoning requirements for floor area, open space, lot coverage, 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 April 21, 2011"-(14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of approximately 5,943 sq. ft. (.99 FAR); a minimum open space of 61 percent; a maximum lot coverage of 38 percent; a rear yard with a minimum depth of approximately 22'-0"; and a maximum perimeter wall height of approximately 21'-6 1/4", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 3, 2011.

Bulletin No. 21, Vol. 96, dated May 25, 2011.

***The resolution has been revised to correct the FAR which read: "(0.9 FAR)" now reads: "(.99 FAR)". Corrected in**

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703-80-BZ	2994/3018 Cropsey Avenue, Brooklyn
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69-11-A

88-11 173rd Street, East side of 173rd Street between 89th Avenue and Warwick Circle., Block 9830, Lot(s) 22,23 (tentative), Borough of **Queens, Community Board: 12**. An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development of prior R4-1 zoning district. R4-1 district.

70-11-A

88-13 173rd Street, East side of 173rd Street between 89th Avenue and Warwick Circle., Block 9830, Lot(s) 22,23 (tentative), Borough of **Queens, Community Board: 12**. An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development of prior R4-1 zoning district. R4-1 district.

71-11-BZ

41-02 Forley Street, Northeast corner of the intersection formed by Forley Street and Britton Avenue., Block 1513, Lot(s) 6, Borough of **Queens, Community Board: 04**. Variance (§72-21) to allow the legalization for conversion for the mosque to permit an enlargement of said premises R4 district.

72-11-BZ

101-06 Astoria Boulevard, South east corner of 101st Street., Block 1688, Lot(s) 30, Borough of **Queens, Community Board: 3**. Re-Instatement (11-411) to reinstate the variance granted under Cal. No. 711-56-BZ for a gasoline service station in a R3-2 zoning district. R3-2 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 14, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 14, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

662-56-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Flatbush Holdings LLC, owner.

SUBJECT – Application April 6, 2011 – Extension of Term (§11-411) of a previously approved variance which permitted the a public parking lot (UG 8), which expired on January 23, 2011; Waiver of the Rules of Practice and Procedure. C1-2/R5 zoning district.

PREMISES AFFECTED – 3875 Flatbush Avenue, Northerly side of Flatbush Avenue, 100' east of the intersection of Flatlands Avenue. Block 7821, Lots 21, 23. Borough of Brooklyn.

COMMUNITY BOARD #18BK

1250-65-BZ

APPLICANT – Peter Hirshman, for 87th Street Owners Corporation, owner; Park 87th Corporation, lessee.

SUBJECT – Application April 21, 2011 – Extension of Term for transient parking in an existing multiple dwelling which expired on March 21, 2011. R8B zoning district.

PREMISES AFFECTED – 55 East 87th Street, 107.67' west of Park Avenue, Block 1499, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #8M

118-95-BZ

APPLICANT – Carl A Sulfaro, for White Castle System, Incorporated, owner.

SUBJECT – Application April 11, 2011 – Extension of Term of a previously granted Special Permit (§73-243) for the continued operation of a drive-thru facility at an eating and drinking establishment (*White Castle*) which expires on July 25, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on May 22, 2008 and waiver of the rules. C1-2/R6 zoning district.

PREMISES AFFECTED – 89-03 57th Avenue, southeast corner of Queens Boulevard and 57th Avenue, Block 1845, Lot 45, Borough of Queens.

COMMUNITY BOARD #4Q

JUNE 14, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 14, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

56-10-BZ

APPLICANT – T-Mobile Northeast LLC, for Luca & Maryann Guglielmo, owners.

SUBJECT – Application April 19, 2010 – Variance (§72-21) to construct a telecommunications facility on the rooftop of an existing building. The proposal is contrary to sky exposure plane (§33-431) and front yard (§23-45). C1-2/R3-2 zoning district.

PREMISES AFFECTED – 3424 Quentin Road, Quentin Road and East 35th Street, Block 7717, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #18BK

6-11-BZ

APPLICANT – Paul Bonfilio, for Denis Forde, Rockchapel Reality, LLC, owner.

SUBJECT – Application January 19, 2011 – Variance (§72-21) to permit the construction of a one family detached residence on a vacant corner tax lot contrary to ZR §23-711 for minimum distance between buildings on the same zoning lot; ZR §23-461 for less than the required width of a side yard on a corner lot and ZR §23-89(b) less than the required open area between two buildings. R2A zoning district.

PREMISES AFFECTED – 50-20 216th Street, corner of 51st Avenue, Block 7395, Lot 13, 16, Borough of Queens.

COMMUNITY BOARD #11Q

34-11-BZ

APPLICANT – Joan Humphreys/A & H Architecture PC, for Keith W. Bails/272 Driggs Avenue Corporation, owner; Adriane Stare/Caribou Baby d/b/a Stollenwerck Stare LLC, 272 Driggs Avenue, lessee.

SUBJECT – Application March 29, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Caribou Baby*). C2-4 Overlay/R6B zoning district.

PREMISES AFFECTED – 272 Driggs Avenue, north side of Driggs Avenue 85.29' west of Eckford Street, Block 2681, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #1BK

CALENDAR

49-11-BZ

APPLICANT – Sheldon Lobel, P.C., for A & G Real Estate, LLC, owner; Barry Bootcamp, lessee.

SUBJECT – Application April 15, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Barry's Bootcamp*). C6-3A zoning district.

PREMISES AFFECTED – 135 West 20th Street, north side of West 20th Street, between 6th and 7th Avenues, Block 796, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #4M

Jeff Mulligan, Executive Director

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REGULAR MEETING TUESDAY MORNING, MAY 24, 2011 10:00 A.M.

Present: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

435-74-BZ

APPLICANT –Eric Palatnik, P.C., for J. B. Automotive Center of New York, Inc., owner.

SUBJECT – Application January 26, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of an automotive repair center which expired on January 14, 2011; waiver of the rules. R3-1 zoning district.

PREMISES AFFECTED – 552 Midland Avenue, southwest corner of Midland and Freeborn Street, Block 3804, Lot 18, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

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 the continued use of an automotive service station, which expired on January 14, 2010; and

WHEREAS, a public hearing was held on this application on April 5, 2011, after due notice by publication in *The City Record*, with a continued hearing on May 3, 2011, and then to decision on May 24, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

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

WHEREAS, the site is located on the southeast corner of Midland Avenue and Freeborn Street, within an R3-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 14, 1975 when, under the subject calendar number, the Board granted a variance to permit the reconstruction and rehabilitation of an automotive service station with accessory uses, for a term of 15 years; and

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

WHEREAS, most recently, on December 19, 2000, the Board granted an extension of term for ten years from the expiration of the prior grant, to expire on January 14, 2010, and granted an amendment to legalize the elimination of the gasoline service use from the site; and

WHEREAS, the applicant now requests an additional ten-year extension of term; and

WHEREAS, at hearing, the Board directed the applicant to remove the pole banners from the site and verify that the site complies with C1 district signage regulations, and to remove the vehicles parked in the ramp area; and

WHEREAS, in response, the applicant submitted photographs and revised plans reflecting that the pole banners have been removed from the site, the concrete has been restored to the sidewalk area where the poles were located, the site complies with C1 district signage regulations, and the vehicles have been removed from the ramp area on the site; 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 14, 1975, so that as amended this portion of the resolution shall read: “to extend the term for ten years from the expiration of the prior grant, to expire on January 14, 2020; *on condition* that all use and operations shall substantially conform to plans filed with this application marked Received ‘January 26, 2011’-(2) sheets and ‘May 9, 2011’-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on January 14, 2020;

THAT all conditions from the prior resolution not specifically waived by the Board 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. 500509693)

Adopted by the Board of Standards and Appeals May 24, 2011.

145-99-BZ

APPLICANT – Bryan Cave LLP/Frank E. Chaney, Esq., for Hudson Spring Partners, LLP, owners.

SUBJECT – Application March 24, 2011 – Application to request a re-hearing, pursuant to Board Rules Section 1-10(e), of a variance application for residential conversion of a six-story commercial building, previously denied on March 14, 2000. M1-6 zoning district.

PREMISES AFFECTED – 286 Spring Street, southeast corner of Spring Street and Hudson Street, Block 579, Lot 5,

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Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Frank Chaney.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, this is an application for a re-hearing, pursuant to Section 1-10(e) of the Board’s Rules of Practice and Procedure, of a variance application which the Board previously denied; and

WHEREAS, a public hearing was held on this application on May 10, 2011, after due notice by publication in The City Record, and then to decision on May 24, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the southeast corner of Spring Street and Hudson Street, within an M1-6 zoning district; and

WHEREAS, the site is occupied by a six-story L-shaped historic warehouse building, currently in commercial use, with frontage on Spring Street and Hudson Street; and

WHEREAS, in 1999, an application was made under the subject calendar number for a variance pursuant to ZR § 72-21; the application sought approval for the conversion of the second through sixth floors of the subject building to residential use, which is contrary to ZR § 42-00; and

WHEREAS, on March 14, 2000, the Board denied the application; and

WHEREAS, at the time of the denial, the Board found that the applicant had failed to provide substantial evidence in support of the required finding that unique site conditions create practical difficulties or unnecessary hardship in complying with zoning regulations; and

WHEREAS, the Board did not dispute that the subject L-shaped building on an irregular lot was unique, but it found that the building was functioning and almost fully occupied, so it was unable to accept the assertion that the building was unmarketable for conforming industrial and office uses; and

WHEREAS, additionally, the Board rejected the applicant’s assertion that the subject building could not compete with large amounts of newly-created office space, which was proposed to become available in the area; and

WHEREAS, the Board noted that since the new office space was not yet available, it is unclear what, if any effect it would have on the subject building’s marketability; and

WHEREAS, the applicant asserts that there has been a material change in circumstances since the Board’s denial of

the variance application in 1999 and requests that the Board re-hear the case pursuant to Section 1-10(e) of the Rules of Practice and Procedure which provides: “A request for a rehearing shall not be granted unless substantial new evidence is submitted that was not available at the time of the initial hearing, or there is a material change in plans or circumstances or an application is filed under a different jurisdictional provision of the law”; and

WHEREAS, the applicant asserts that there has been a material change in circumstances with respect to the site as well as the surrounding neighborhood and thus a re-hearing of the use variance is warranted; and

WHEREAS, specifically, the applicant cites that (1) the building occupancy has decreased significantly and (2) the subject building cannot compete with the more than two and one-half million sq. ft. of new office space in larger buildings able to accommodate a variety of office sizes, which has been introduced to the area’s commercial rental market; and

WHEREAS, as to the building’s occupancy, the applicant represents that 35.3 percent of the 17 office units are vacant; if three additional units, which were vacant for an extended period of time and are currently occupied by the owner’s relatives who do not pay market rent, are included as vacant, the vacancy rate is 52.9 percent of the units, 41.5 percent of the total office floor area, and 41.9 percent of the rent roll; and

WHEREAS, the applicant represents that two units have been vacant for more than two years and four have been vacant for more than one year; and

WHEREAS, the applicant represents that other units have remained vacant for periods between nine months and more than four years; and

WHEREAS, the applicant cites to industry data, which reflects that the vacancy rate in the surrounding Hudson Square area has been approximately 20 percent since 2004; and

WHEREAS, the applicant represents that it is unable to realize a reasonable rate of return with a vacancy rate that is more than double that in the area; and

WHEREAS, as to the Hudson Square area’s office space market, the applicant identifies the following industrial buildings which have been converted to commercial office space since the 1999 application: One Hudson Square (a 16-story, 993,903 sq. ft. building); 304 Hudson Street (an eight-story, 230,000 sq. ft. building); 326 Hudson Street (a 23-story, 345,621 sq. ft. building); 348 Hudson Street (a nine-story, 259,000 sq. ft. building); and 341 Hudson Street (a 17-story, 797,000 sq. ft. building); and

WHEREAS, additionally, the applicant identifies the Business Incubator at 160 Varick Street, a city-subsidized facility for small businesses, which is currently at full capacity with 35 businesses; and

WHEREAS, as to the neighborhood context, the applicant cites to several rezonings in the area which have taken place since the 1999 denial, which include (1) the 2003 Hudson Square Rezoning, which rezoned a portion of the area, just west of the site from M1-6 and M2-4 zoning

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districts to a C6-2A zoning district, which permits residential use as-of-right; (2) the 2006 North Tribeca Rezoning, which rezoned a four-block area south of Canal Street from M1-5 to C6-2A and C6-3A, which permits residential uses as-of-right; and (3) the 2010 North Tribeca Rezoning, which rezoned the remaining M1-5 area to C6-2A; and

WHEREAS, the applicant states that the Hudson Square and North Tribeca rezonings have led to several residential conversions and the construction of new residential buildings at sites including: 300 Spring Street, 505 Greenwich Street, 255 Hudson Street, and 479 Greenwich Street; and

WHEREAS, the applicant cites to additional actions such as a proposed Hudson Square Special District, which would allow for more residential use in the area; and Board use variances between 2005 and 2007, which have allowed for residential use within M1-5 and M1-6 zoning districts in the area; and

WHEREAS, the Board has reviewed the record and determined that the applicant has identified substantial evidence, which supports the conclusion that there is a material change in circumstances since the 1999 application; and

WHEREAS, the Board notes that the 1999 application was denied because the Board must reject a variance application that does not comply with any one of the five variance findings and, accordingly, it did not make a determination related to findings not directly addressed by its prior resolution.

Therefore it is Resolved that, based upon the above, this application for a re-hearing of the BSA Cal. No. 145-99-BZ is granted.

Adopted by the Board of Standards and Appeals, May 24, 2011.

273-00-BZ

APPLICANT – Mitchell Ross, Esq., for 10 West Thirty Third Joint Venture, owner; Spa Sol, Incorporated, lessee.
SUBJECT – Application July 22, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Spa Sol*) which expires on February 13, 2011; Amendment to legalize interior layout/increase in number of treatment rooms. C6-4 zoning district.

PREMISES AFFECTED – 3 West 33rd Street, 1.07' southwest of West 33rd Street and Fifth Avenue, Block 834, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of the term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on February 13, 2011, and an amendment for a change in the hours of operation and to legalize modifications to the interior layout of the site; and

WHEREAS, a public hearing was held on this application on April 5, 2011, after due notice by publication in *The City Record*, with a continued hearing on May 3, 2011, and then to decision on May 24, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, states that it has no objection to this application; and

WHEREAS, the PCE is located on the south side of West 33rd Street, between Fifth Avenue and Broadway, within a C6-4 zoning district; and

WHEREAS, the subject site is occupied by a 22-story commercial building; and

WHEREAS, the PCE occupies a total of 1,907 sq. ft. of floor area in portions of the first floor and first floor mezzanine of the subject building, with an additional 1,434 sq. ft. of floor space located in a portion of the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 13, 2001 when, under the subject calendar number, the Board granted a special permit for the establishment of a PCE in the subject building for a term of ten years, to expire on February 13, 2011; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, the applicant also requests an amendment for a change in the hours of operation of the PCE; and

WHEREAS, the prior grant limited the hours of operation of the PCE to 10:00 a.m. to 12:00 midnight, daily; and

WHEREAS, the applicant now proposes the following hours of operation for the PCE: Monday through Saturday, from 10:00 a.m. to 2:00 a.m.; and Sunday, from 11:00 a.m. to 1:00 a.m.; and

WHEREAS, the applicant also requests an amendment to legalize modifications to the interior layout of the site, which enabled the applicant to increase the number of treatment rooms at the cellar level from two to six without increasing the amount of floor space occupied by the PCE; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment to the hours of operation 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 February 13, 2001, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from February 13, 2011, to expire on February 13, 2021,

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and to permit the noted modifications to the hours of operation and interior layout of the site; *on condition* that all use and operations shall substantially conform to BSA-approved plans associated with the prior grant; and *on further condition*:

THAT the term of this grant shall expire on February 13, 2021;

THAT the hours of operation for the PCE shall be: Monday through Saturday, from 10:00 a.m. to 2:00 a.m.; and Sunday, from 11:00 a.m. to 1:00 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 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. 120207481)

Adopted by the Board of Standards and Appeals, May 24, 2011.

290-06-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Rusabo 368 LLC, owner; Great Jones Lafayette LLC, lessee.

SUBJECT – Application April 20, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a six-story, eight-unit residential building with ground floor retail which expired on April 17, 2011. M1-5B zoning district.

PREMISES AFFECTED – 372 Lafayette Street, aka 11 Great Jones Street, block bounded by Lafayette, Great Jones and Bond Streets and Shinbone Alley, Block 530, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jim Power.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit the construction of a six-story mixed-use commercial/residential building, which expired on April 17, 2011; and

WHEREAS, a public hearing was held on this

application on May 10, 2011, after due notice by publication in *The City Record*, and then to decision on May 24, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the west side of Lafayette Street, between Great Jones Street and Bond Street, in an M1-5B zoning district within the NoHo Historic District; and

WHEREAS, the Board has exercised jurisdiction over the site since April 17, 2007 when, under the subject calendar number, the Board granted a variance to permit the proposed construction of a six-story, eight-unit residential building with ground floor retail, contrary to ZR §§ 42-10 and 42-14; and

WHEREAS, substantial construction was to be completed by April 17, 2011, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to financing delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction 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, dated April 17, 2007, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years, to expire on May 24, 2015; *on condition*:

THAT substantial construction shall be completed by May 24, 2015;

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. 104520608)

Adopted by the Board of Standards and Appeals, May 24, 2011.

703-80-BZ

APPLICANT – Joseph P. Morsellino, for Louis N. Petrosino, owner.

SUBJECT – Application July 1, 2010 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of an existing scrap metal storage establishment which expires on December 2, 2010; Amendment to legalize the enclosure of an open storage area. C8-1 zoning district.

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PREMISES AFFECTED – 2994/3018 Cropsey Avenue, southwest corner of Bay 54th Street, Block 6947, Lot 260, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for decision, hearing closed.

982-83-BZ

APPLICANT – H Irving Sigman, for Barone Properties, Inc., owner.

SUBJECT – Application February 22, 2011 – Extension of Term (§11-411) of a previously approved variance permitting retail and office use (UG 6), which expired on March 6, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on May 25, 2006; Amendment (§11-412) to increase number of stores/offices from five to six; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 191-20 Northern Boulevard, southwest corner of 192nd Street, Block 5513, Lot 27, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: H. Irving Sigman.

For Opposition: Terri Pouymari and Henry Euler.

ACTION OF THE BOARD – Laid over to June 21, 2011, at 10 A.M., for continued hearing.

161-06-BZ

APPLICANT – Eric Palatnik, P.C., for Webster Affordable Solutions, owner.

SUBJECT – Application April 25, 2011 – Extension of Time to complete construction of a Variance (§72-21) for the construction of two eight-story mixed-use residential/commercial/community facility buildings which expires on September 11, 2011. C8-2 zoning district.

PREMISES AFFECTED – 3349 Webster Avenue, Webster Avenue, south of Gun Hill Road, Block 3355, Lot 121, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 21, 2011, at 10 A.M., for continued hearing.

316-06-BZ

APPLICANT – Jesse Masyr, Esq., Watchel & Masyr, LLP, for New York Botanical Garden, owner.

SUBJECT – Application April 29, 2011 – Extension of Time to Complete Construction of a Variance (§72-21) for the construction of a six story accessory garage (UG4) with 825 parking spaces which expired on April 10, 2011. R7D/C2-1 zoning district.

PREMISES AFFECTED – 2960 Webster Avenue, between Bedford Park Boulevard and Botanical Square South, Block 3274, Lot 1 & 4, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Ethan Goodman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to June 14, 2011, at 10 A.M., for decision, hearing closed.

221-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Chris Xu, owner.

SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the development of a transient hotel, contrary to district use regulations. M2-1 zoning district.

PREMISES AFFECTED – 34-08 Collins Place, north side of Collins Place, 34th Avenue, College Point and 35th Avenue, Block 4945, Lot 34, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

ACTION OF THE BOARD – Laid over to June 21, 2011, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

228-10-BZY

APPLICANT – Akerman Senterfitt, for 180 Lidlow Development, LLC, owner.

SUBJECT – Application December 15, 2010 – Extension of time (§11-332) to complete construction under the prior C6-1 zoning district regulations. C4-4A zoning district.

PREMISES AFFECTED – 180 Ludlow Street, east side of Ludlow Street, 125' south of Houston Street, Block 412, Lots 48-50, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Jessica Loeser.

MINUTES

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

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 minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on April 12, 2011, after due notice by publication in *The City Record*, with a continued hearing on May 10, 2011, and then to decision on May 24, 2011; and

WHEREAS, the site was inspected by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the east side of Ludlow Street, between Stanton Street and East Houston Street; and

WHEREAS, the site has 75 feet of frontage on Ludlow Street and a total lot area of approximately 6,801 sq. ft.; and

WHEREAS, the site is proposed to be developed with a 20-story hotel building (the “Building”); and

WHEREAS, the Building is proposed to have a floor area of 72,868 sq. ft.; and

WHEREAS, the Building complies with the former C6-1 zoning district parameters; and

WHEREAS, however, on November 19, 2008 (hereinafter, the “Enactment Date”), the City Council voted to enact the East Village/Lower East Side Rezoning, which rezoned the site from C6-1 to C4-4A; and

WHEREAS, on March 7, 2008, New Building Permit No. 104706695-01-NB (the “Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of an 18-story hotel building; the permit was subsequently amended to permit the proposed 20-story hotel building; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows 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 a certificate 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 a single building which is non-complying under an amendment to the Zoning Resolution, as a

“minor development”; and

WHEREAS, for a “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: “[I]n 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: “[F]or 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, by letter dated April 1, 2011, DOB stated that the Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; 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

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WHEREAS, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of November 19, 2010 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes 100 percent of the foundation, and 100 percent of the 20-story superstructure of the Building; and

WHEREAS, in support of this statement, the applicant has submitted the following: construction tables; framing plan surveys; construction contracts; copies of cancelled checks; an Application and Certification for Payment from the general contractor; and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$5,454,212, or 22 percent, out of the approximately \$24,852,263 cost to complete; and

WHEREAS, as noted above, the applicant has submitted financial records, construction contracts, copies of cancelled checks, and an Application and Certification for Payment from the general contractor evidencing payments made by the applicant; 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 initial 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 two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 104706695-01-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 development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on May 24, 2013.

Adopted by the Board of Standards and Appeals, May 24, 2011.

44-11-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Incorporated, owner; Paul Atanasio, lessee.

SUBJECT – Application April 13, 2011 – Proposed reconstruction and enlargement of an existing single family dwelling, contrary to General City Law Section 35, Article 3. R4 zoning District.

PREMISES AFFECTED – 74 Tioga Walk, west side of Tioga Walk 332.6' north of Breezy Point Boulevard. Block 16350, Lot p/o 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, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated April 5, 2011, acting on Department of Buildings Application No. 420329683, reads in pertinent part:

“A-1 The existing building to be altered lies within 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 24, 2011, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated April 21, 2011, the Fire Department states that it has reviewed the subject proposal and has no objections provided the following conditions are met:

(1) the entire building be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code; and (2) the entire building be provided with interconnected smoke alarms in accordance with Section 907.2.10 of the NYC Building Code; and

WHEREAS, by letter dated April 21, 2011, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated May 19, 2011, the Department of Transportation (“DOT”) states that it has no objection to the subject proposal; and

WHEREAS, DOT states that the subject lot is not currently included in the agency’s Capital Improvement Program; and

WHEREAS, accordingly, the Board has determined 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 April 5, 2011, acting on Department of Buildings Application No 420329683, is modified by the power vested in the Board by Section 35 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 May 24, 2011" – 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 the home shall be sprinklered and smoke alarms shall be installed 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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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 24, 2011.

45-11-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Incorporated, owner; Kathleen & Joseph Buckley, lessee.

SUBJECT – Application April 13, 2011 – Proposed reconstruction and enlargement of an existing single family home, contrary to General City Law Section 36, Article 3, and proposed upgrade of the private disposal system located partially within the bed of the Service Road, contrary to Department of Buildings Policy. R4 zoning district.

PREMISES AFFECTED – 29 Kildare Walk, east side of Kildare Walk 223" south of Oceanside Avenue. Block 16350, Lot p/o 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, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated March 29, 2011 acting on Department of Buildings Application No. 420323590, reads in pertinent part:

A-1 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 C27-291 (C26-401.1) of the Administrative Code of the City of New York.

A-2 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 May 24, 2011, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated April 21, 2011, the Fire Department states that it has reviewed the subject proposal and has no objections provided the following conditions are met: (1) the entire building be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code; and (2) the entire building be provided with interconnected smoke alarms in accordance with Section 907.2.10 of the NYC Building Code; and

WHEREAS, accordingly, the Board has determined 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 March 29, 2011, acting on Department of Buildings Application No. 420323590, 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 24, 2011- 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 home shall be sprinklered and smoke alarms shall be installed in accordance with the BSA-approved plans;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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 24, 2011.

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46-11-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Incorporated, owner; Joanne & Louis Isidora, lessee.

SUBJECT – Application April 13, 2011 – Proposed reconstruction of an existing single family home, contrary to General City Law Section 36, Article 3, and proposed upgrade of existing non-complying private disposal system in the bed of the service road, contrary to Department of Buildings Policy. R4 zoning District.

PREMISES AFFECTED – 57 Bedford Avenue, east side of Bedford Avenue 174 feet north of 12th Avenue. Block 16350, Lot p/o 300. 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, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated April 7, 2011 acting on Department of Buildings Application No. 420334150, reads in pertinent part:

A-1 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 C27-291 (C26-401.1) of the Administrative Code of the City of New York.

A-2 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 May 24, 2011, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated April 21, 2011, the Fire Department states that it has reviewed the subject proposal and has no objections provided the following conditions are met: (1) the entire building be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code; and (2) the entire building be provided with interconnected smoke alarms in accordance with Section 907.2.10 of the NYC Building Code; and

WHEREAS, accordingly, the Board has determined 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 April 7, 2011, acting on Department of Buildings Application No. 420334150, 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 24, 2011- 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 home shall be sprinklered and smoke alarms shall be installed in accordance with the BSA-approved plans;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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 24, 2011.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, MAY 24, 2011
1:30 P.M.**

Present: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

240-09-BZ

APPLICANT – T-Mobile Northeast LLC f/k/a Omnipoint Communications Inc., for 452 & 454 City Island Avenue Realty Corp., owner; T-Mobile Northeast LLC, lessee.

SUBJECT – Application August 10, 2009 – Variance (§72-21) to construct a telecommunications facility on the rooftop of an existing building, contrary to height (Special City Island District (CD), §112-103, §33-431) and rear and side yard setback (§23-47 and §23-464) requirements. R3A/C2-2/CD districts.

PREMISES AFFECTED – 454 City Island Avenue, east side of City Island Avenue bound by Browne Street, south and Beach Street to the north, Block 5646, Lot 3, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

Adopted by the Board of Standards and Appeals, May 24, 2011.

13-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, Miriam Loeb and Chaim Loeb, owner.

SUBJECT – Application February 3, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space (§23-141); side yard (§23-461 and §23-48); and rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1040 East 26th Street, west side of East 26th Street, between Avenue J and Avenue K, Block 7607, Lot 66, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 5, 2011, acting on Department of Buildings Application No. 320214200, reads in pertinent part:

“Obtain special permit approval from the Board of Standards and Appeals for the following objections:

Proposed floor area is contrary to ZR 23-141.

Proposed open space ratio is contrary to ZR 23-141.

Proposed rear yard is contrary to ZR 23-47.

Proposed side yard is contrary to ZR 23-461(a) and ZR 23-48;” 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 home, which does not comply with the zoning requirements for floor area, open space ratio, side yards and rear yard, contrary to ZR §§ 23-141, 23-461, 23-48 and 23-47; and

WHEREAS, a public hearing was held on this application on May 3, 2011 after due notice by publication in *The City Record*, and then to decision on May 24, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 26th Street, between Avenue J and Avenue K, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 3,103 sq. ft., and is occupied by a single-family home with a floor area of 1,941 sq. ft. (0.63 FAR); 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 1,941 sq. ft. (0.63 FAR) to 3,219 sq. ft. (1.04 FAR); the maximum permitted floor area is 1,551.5 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 52 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yards with widths of 1’-1½” along the southern lot line and 6’-6¾” along the northern lot line (a minimum width of 5’-0” is required for each side yard); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 21’-0” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or

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development of the surrounding area; and

WHEREAS, the applicant provided an analysis of the FAR of homes in the surrounding area, which reflects that there are at least four homes on the subject block with an FAR of 1.0 or greater; and

WHEREAS, based upon its review of the record, 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, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-48 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 18, 2011"-(11) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,219 sq. ft. (1.04 FAR); an open space ratio of 52 percent; a side yard with a minimum width of 1'-1½" along the southern lot line; a side yard with a minimum width of 6'-6 ¾" along the northern lot line; and a rear yard with a minimum depth of 21'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 24, 2011.

20-11-BZ

CEQR #11-BSA-063M

APPLICANT – The Law Office of Fredrick A. Becker, for 30 West 18th Associates Association, LLC, owner; Just Calm Down II, Inc., lessee.

SUBJECT – Application February 28, 2011 – Special Permit (§73-36) to allow the proposed physical culture establishment (*Just Calm Down*). C6-4A zoning district.

PREMISES AFFECTED – 30 West 18th Street, south side of West 18th Street, Block 819, Lot 59, 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, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision on behalf of the Manhattan Borough Commissioner, dated March 30, 2011, acting on Department of Buildings Application No. 104048905, reads in pertinent part:

“Legalization of subject physical culture establishment/spa is contrary to ZR Section 32-10. Go to BSA for special permit as per ZR Section 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C6-4A zoning district, the legalization of a physical culture establishment (PCE) at portions of the cellar and first floor of an 18-story mixed-use commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 3, 2011, after due notice by publication in *The City Record*, and then to decision on May 24, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of West 18th Street, between Fifth Avenue and Sixth Avenue, within a C6-4A zoning district; and

WHEREAS, the site is occupied by an 18-story mixed-use commercial/residential building; and

WHEREAS, the PCE occupies 1,782 sq. ft. of floor area on a portion of the first floor, with an additional 1,180 sq. ft. of floor space located in the cellar; and

MINUTES

WHEREAS, the PCE is operated as Just Calm Down Spa; and

WHEREAS, the proposed hours of operation for the PCE are: Monday through Friday, from 11:00 a.m. to 9:00 p.m.; Saturday, from 10:30 a.m. to 7:30 p.m.; and Sunday, from 11:00 a.m. to 7:30 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for the practice of massage by New York State licensed masseurs and masseuses; 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 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 Board notes that the PCE has been in operation since December 1, 2008 without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between December 1, 2008 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; 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. 11BSA063M, dated February 28, 2011; and

WHEREAS, the EAS documents 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, 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 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, on a site located within a C6-4A zoning district, the legalization of a physical culture establishment at portions of the cellar and first floor of an 18-story mixed-use commercial/residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 28, 2011"- (4) sheets and *on further condition*:

THAT the term of this grant shall expire on December 1, 2018;

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 all massages shall be performed by New York State licensed massage therapists;

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

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);

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 24, 2011.

236-09-BZ

APPLICANT – Marvin Mitzner, Esq, for Crosstown West 28 LLC, owner.

SUBJECT – Application July 31, 2009 – Variance (§72-21) to allow for a 29 story mixed use commercial and residential building contrary to use regulations (§42-00), floor area (§43-12), rear yard equivalent (§43-28), height (§43-43), tower regulations (§43-45) and parking (§13-10). M1-6 zoning district.

PREMISES AFFECTED – 140-148 West 28th Street, south side of West 28th Street, between 6th Avenue and 7th Avenue, block 803, Lots 62 and 65, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Ian Rasmussen.

ACTION OF THE BOARD – Laid over to July 26, 2011, at 1:30 P.M., for continued hearing.

MINUTES

45-10-BZ

APPLICANT – Sheldon Lobel, PC, for Leemilt's Petroleum, Incorporated, owner.

SUBJECT – Application April 5, 2010 – Special Permit (§11-411 and §11-412) for the reinstatement of a Variance for the continued operation of a gasoline service station (*Getty*) which expired on June 23, 1986; Amendment to increase the size of the auto laundry; Extension of Time to obtain a Certificate of Occupancy. C1-4/R7-1 zoning district.

PREMISES AFFECTED – 1413-1429 Edward L. Grant Highway, southwest corner of Plimpton Avenue and Edward L. Grant Highway, Block 2521, Lot 15, Borough of Bronx.

COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0

Absent: Vice-Chair Collins.....1

ACTION OF THE BOARD – Laid over to June 14, 2011, at 1:30 P.M., for decision, hearing closed.

230-10-BZ

APPLICANT – Eric Palatnik, P.C., for Leonid Fishman, owner.

SUBJECT – Application December 17, 2010 – Special Permit (§73-622) for the enlargement of a single family home, contrary to open space, lot coverage and floor area (§23-141(b)) and perimeter wall height (§23-631(b)). R3-1 zoning district.

PREMISES AFFECTED – 177 Kensington Street, Oriental Boulevard and Kensington Street, Block 8754, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik and Joel A. Miele.

For Opposition: Laura Krasner, Alfred Genlomp, Tanna Koifman and Diane Fox.

ACTION OF THE BOARD – Laid over to July 12, 2011, at 1:30 P.M., for continued hearing.

9-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Riverdale Equities, LTD, owner; White Plains Road Fitness Group, LLC, lessee.

SUBJECT – Application January 31, 2011 – Special Permit (§73-36) to permit the operation of the proposed physical culture establishment (*Planet Fitness*). C4-4 zoning district.

PREMISES AFFECTED – 2129A-39A White Plains Road, a/k/a 2129-39 White Plains Road, a/k/a 626-636 Lydig Avenue, southeast corner of the intersection of White Plains Road and Lydig Avenue, Block 4286, Lot 35, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0

Absent: Vice-Chair Collins.....1

ACTION OF THE BOARD – Laid over to June 14, 2011, at 1:30 P.M., for decision, hearing closed.

23-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 484 Fulton Owner, LLC, owner; 490 Fulton Street Fitness Group, LLC, lessee.

SUBJECT – Application March 3, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C5-4 (DB) zoning district.

PREMISES AFFECTED – 490 Fulton Street, west side of Bond Street, between Fulton Street and Livingston Street, Block 159, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to June 14, 2011, at 1:30 P.M., for continued hearing.

26-11-BZ

APPLICANT – Francis R. Angelino, Esq., for West Gramercy Associates, LLC, owner; SoulCycle East 18th Street, LLC, owner.

SUBJECT – Application March 11, 2011 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*SoulCycle*). M1-5 zoning district.

PREMISES AFFECTED – 12 East 18th Street, south side of Fifth Avenue and Broadway, Block 846, Lot 67, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Francis R. Angelino, Elizabeth Cutler and Peter Bryant.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4
Negative:.....0

Absent: Vice-Chair Collins.....1

ACTION OF THE BOARD – Laid over to June 21, 2011, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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DOCKET

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73-11-BZ

70 Tennyson Drive, North side Tennyson Drive between Nelson Avenue and Cleveland Avenue., Block 5212, Lot(s) 70, Borough of **Staten Island, Community Board: 3**. Variance (§72-21) to allow a four story, 100 unit residential building contrary to bulk regulations. C3A/SRD zoning district. C3A, SRD, LDGMA district.

74-11-BZ

1058 Forest Avenue, South east intersection of Forest Avenue & Manor Road in the West Brighton neighborhood of Staten Island., Block 315, Lot(s) 29, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) to allow for the conversion of a community facility building for office use, contrary to use regulations. R3-2 & R-2 zoning district. R3-2 & R-2 district.

75-11-A

2230-2234 Kimball Street, Kimball Street between Avenue U and Avenue V., Block 8556, Lot(s) 55, Borough of **Brooklyn, Community Board: 18**. Appeal challenging Department of Building's determination that the permit for the subject premises expired and became invalid because the permitted work was not commenced within 12 months from the date of issuance, per Title 28, §28-105.9 of the Administr R4 district.

76-11-BZ

2263 East 2nd Street, East side of East 2nd Street, approximately 235 feet south of Gravesend Neck Road., Block 7154, Lot(s) 68, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing family home contrary to floor area (23-161) and rear yard (23-47) regulators R4/OP zoning district. R4/OP district.

77-11-A

35-16 Astoria Boulevard, South side of Astoria Boulevard between 35th and 36th Streets., Block 633, Lot(s) 39 & 140, Borough of **Queens, Community Board: 1**. An appeal seeking a determination that the property owner has acquired a common law vested right to continue development under the prior R6 Zoning District regulations. R6B zoning district. R6B district.

78-11-BZ

78-70 Winchester Boulevard, Premises is a landlocked parcel located just south of Union Turnpike and west of 242nd Street., Block 7880, Lot(s) 550, Borough of **Queens, Community Board: 13**. Variance (72-21) for the construction of a mixed-use building containing residential and community facility uses, contrary to use regulation. C8-1 zoning district. C8-1 district.

79-11-A

54-14 74th Street, West side of 74th Street 100 feet south of the corner formed by the intersection of 74th Street & Grand Avenue., Block 2803, Lot(s) 28, Borough of **Queens, Community Board: 5**. An appeal challenging the Department of Buildings interpretation of Minor Alterations and Ordinary Repairs as per New York City building code. M1-1 district.

80-11-A

331 East 9th Street, North side of East 9th Street between 1st and 2nd Avenues., Block 451, Lot(s) 46, Borough of **Manhattan, Community Board: 3**. Appeal pursuant to Section 310 of the Multiple Dwelling Law requesting variance to allow for enlargement of the subject building. R8B zoning district . R8B district.

81-11-BZ

1382-4 Metropolitan Avenue, South side of Parkchester Road, approximately 200' east of intersection of Parkchester Road and Metropolitan Avenue., Block 3938, Lot(s) 7501, Borough of **Bronx, Community Board: 9**. Special Permit (73-36) to allow the operation of a physical culture establishment (Blink Fitness). C4-2 zoning district C4-2 (PC) 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 21, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 21, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

49-06-BZ

APPLICANT – Sheldon Lobel, P.C., for JZB Holdings LLC, owner.

SUBJECT – Application June 7, 2011 – Extension of Time to complete construction of a previously granted variance (72-21) for the construction of a two story commercial building which expired on May 8, 2011. R3-2/C1-2 zoning district.

PREMISES AFFECTED – 2041 Flatbush Avenue, Southeastern corner of the intersection of Flatbush Avenue and Baughman Place. Block 7868, Lot 18. Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEALS CALENDAR

29-11-A & 30-11-A

APPLICANT – Randy M. Mastro-Gibson, Dunn & Crutcher LLP, for Win Restaurant Equipment & Supply Corporation, owner; Fuel Outdoor, lessee.

SUBJECT – Application March 24, 2011 – An appeal challenging the Department of Building's determination that the sign permit lapsed on February 27, 2001. M1-5B Zoning District.

PREMISES AFFECTED – 318 Lafayette Street, Northwest corner of Houston and Lafayette Streets. Block 522, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #2M

32-11-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Margaret McLaughlin, lessee.

SUBJECT – Application March 29, 2011 – Proposed construction not fronting on a mapped street, contrary to General City Law Section 36, Article 3 within an R4 zoning district.

PREMISES AFFECTED – 6 Graham Place, south side, 230' west of mapped Beach 201st Street, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

62-11-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Richard & Jane O'Brien, lessees. SUBJECT – Application May 10, 2011 – An appeal challenging a Department of Building determination that requires a sprinkler system be provided for a building which is located on a 38' wide street per. Fire Department of New York section 503.8.2. R4 zoning district.

PREMISES AFFECTED – 103 Beach 217th Street, east side of Beach 217th Street, 40' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

63-11-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Raymond & Raymond Walsh, lessees.

SUBJECT – Application May 10, 2011 – An appeal challenging a Department of Building determination that requires a sprinkler system be provided for a building which is located on a 38' wide street per Fire Department of New York section 503.8.2. R4 zoning district.

PREMISES AFFECTED – 115 Beach 216th Street, east side of Beach 216th Street, 280' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

77-11-A

APPLICANT – Akerman Senterfitt LLP, for 3516 Development LLC, owner.

SUBJECT – Application May 27, 2011 – An Administrative Appeal pursuant to the common-law doctrine of vested rights, requesting a determination that the owner of the premises has completed substantial construction and incurred substantial financial expenditures prior to a zoning amendment and therefore should be permitted to complete construction.

PREMISES AFFECTED – 35-16 Astoria Boulevard, South side of Astoria Boulevard between 35th and 36th Streets. Block 633, Lots 39 & 140, Borough of Queens.

COMMUNITY BOARD #1Q

CALENDAR

JUNE 21, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 21, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

22-11-BZ

APPLICANT – Simons & Wright, LLC, for Agama LLC, owner; Vorea Holdings LLC, lessee.
SUBJECT – Application March 1, 2011– Variance (§72-21) to permit the conversion of a vacant warehouse to a physical culture establishment. R6B zoning district and Williamsburg Greenpoint IBZ.
PREMISES AFFECTED – 184 North 8th Street, between Driggs and Bedford Avenues, Block 2320, Lot 16, Borough of Brooklyn.
COMMUNITY BOARD #1BK

27-11-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 88 Franklin Street Group LLC, owner; Acqua Ancien Bath New York, LLC, lessee.
SUBJECT – Application March 22, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Acqua Ancien Bath*). C6-2A zoning district.
PREMISES AFFECTED – 86-88 Franklin Street, east of intersection of Church Street and Franklin Street, Block 175, Lot 8, Borough of Manhattan.
COMMUNITY BOARD #1M

36-11-BZ

APPLICANT – Francis R. Angelino, Esq., for 270 Greenwich Street Associates LLC, owner; SoulCycle Tribeca, LLC, lessee.
SUBJECT – Application April 1, 2011 – Special Permit (§73-36) to permit the legalization of a Physical Culture Establishment (*SoulCycle*) located in a C6-3 zoning district.
PREMISES AFFECTED – 270 Greenwich Street/103 Warren Street, west side of Joe DiMaggio Highway, Block 142, Lot 7501, Borough of Manhattan.
COMMUNITY BOARD #1M

37-11-BZ

APPLICANT – Moshe M. Friedman, for Eli Bauer, owner.
SUBJECT – Application April 4, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space §23-141; side yards §23-461 and §23-48 and less than the required rear yard §23-47. R-2 zoning district.
PREMISES AFFECTED – 1337 East 26th Street, east side,

300' of Avenue M and East 26th Street, Block 7662, Lot 32, Borough of Brooklyn.
COMMUNITY BOARD #14BK

59-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 156 South Avenue Corporation, owner; Community Health Center, lessee.
SUBJECT – Application May 5, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory diagnostic facility building. C8-1 zoning district.
PREMISES AFFECTED – 439 Port Richmond Avenue, southwest corner of Port Richmond Avenue and Homestead Avenue, Block 1048, Lot 9, Borough of Staten Island.
COMMUNITY BOARD #1SI

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JUNE 7, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

307-81-BZ

APPLICANT – Francis R. Angelino, Esquire, for 50 East 69th Street Corporation, owner.

SUBJECT – Application March 14, 2011 – Extension of Term of a variance (§72-21) which permitted a five-story medical office (UG 6) and owner occupied penthouse apartment (UG 2), scheduled to expire on September 15, 2011. R8B (LH-1A) zoning district.

PREMISES AFFECTED – 50 East 69th Street, South side between Madison and Park Avenues. Block 1383, Lot 40, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term of a previously granted variance for a five-story medical office (Use Group 6) with an owner-occupied penthouse apartment (Use Group 2); and

WHEREAS, a public hearing was held on this application on May 10, 2011, after due notice by publication in *The City Record*, and then to decision on June 7, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins and Commissioner Hinkson; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the site is located on the south side of East 69th Street, between Madison Avenue and Park Avenue, within an R8B zoning district; and

WHEREAS, the subject site is occupied by a five-story medical office building with an owner-occupied penthouse apartment; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 15, 1981 when, under the subject calendar number, the Board granted a variance to permit the conversion of an existing five-story mezzanine and penthouse building from a school into a medical office building with an owner-occupied penthouse apartment, for a term of ten

years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, most recently, on April 9, 2002, the Board extended the term of the variance for an additional ten years, to expire on September 15, 2011; and

WHEREAS, the applicant now seeks to extend the term of the variance for an additional ten years; and

WHEREAS, based upon its review of the record, the Board finds 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 *reopens* and *amends* the resolution, as adopted on September 15, 1981, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from September 15, 2011, to expire on September 15, 2021; *on condition* that the use and operation of the site shall comply with the drawings filed with this application and marked ‘Received March 14, 2011’–(7) sheets; and *on further condition*:

THAT the term of this grant shall expire on September 15, 2021;

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;

THAT the Department of Buildings must ensure compliance 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. 120550705)

Adopted by the Board of Standards and Appeals, June 7, 2011.

65-90-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Street Retail Incorporated, owner; Meadows Spa, lessee.

SUBJECT – Application March 1, 2011 – Extension of Term of a Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Meadows Spa*) which expired on January 29, 2011; Amendment to re-locate establishment from first floor to the cellar. C4-1/PC zoning district.

PREMISES AFFECTED – 61-19 190th Street, Northeast corner formed by the intersection of 190th Street and 64th Avenue. Block 7117, Lot 4, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Sandy Anagnostou.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of the term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on January 29, 2011, and an amendment to eliminate the PCE use from the first floor and re-locate floor space in the cellar; and

WHEREAS, a public hearing was held on this application on May 10, 2011, after due notice by publication in *The City Record*, and then to decision on June 7, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, Community Board 8, Queens, recommends approval of this application; and

WHEREAS, the PCE is located on the northeast corner of 190th Street and 64th Avenue, in a C4-2 zoning district within the Special Planned Community Preservation District; and

WHEREAS, the subject site is occupied by a two-story commercial building; and

WHEREAS, the PCE occupies a total of 2,920 sq. ft. of floor area on the first floor of the subject building, with an additional 6,753 sq. ft. of floor space located in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 29, 1991 when, under the subject calendar number, the Board granted a special permit for the establishment of a PCE in the subject building for a term of ten years, to expire on January 29, 2001; and

WHEREAS, most recently, on July 17, 2001, the Board extended the term of the PCE for an additional ten years, which expired on January 29, 2011; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, the applicant also requests an amendment to eliminate the PCE use at the first floor, and to provide additional floor space for the PCE at the cellar; and

WHEREAS, the applicant states that the requested amendment will result in a reduction of the total floor space occupied by the PCE, from 9,673 sq. ft. to 7,269 sq. ft., with 7,059 sq. ft. of floor space located in the cellar, and 210 sq. ft. of floor area located on the first floor for the entrance to the PCE; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment 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 29, 1991, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from January 29, 2011, to expire on January 29, 2021, and to permit the noted amendment to the previously-approved plans; *on condition* that the use and operation of the site shall comply with the drawings filed with this application and marked ‘Received March 1, 2011’-(2) sheets and ‘May 31, 2011’-(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on January 29, 2021;

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;

THAT the Department of Buildings must ensure compliance 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. 401193800)

Adopted by the Board of Standards and Appeals, June 7, 2011.

95-97-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 700 West 178th Street Associates, LLC, owner; TSI Forest Hills LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 14, 2010 – Extension of Term of a Special Permit (§73-36) for the continued operation of a physical culture establishment (*New York Sports Club*) which expired on May 1, 2007; Waiver of the Rules. C4-5X zoning district.

PREMISES AFFECTED – 69-47 Austin Street, northwest corner of Austin Street and 70th Avenue, Block 3237, Lot 30, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for waiver of the Rules of Practice and Procedure, a reopening, an extension of term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on May 1, 2007, and an amendment to the site plan to reflect the existing signage; and

WHEREAS, a public hearing was held on this application on January 11, 2011, after due notice by publication in *The City Record*, with continued hearings on February 15, 2011, March 29, 2011, and May 3, 2011, and then to decision on June 7, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 6, Queens recommends approval of the application; and

WHEREAS, the PCE is located on the northwest corner of Austin Street and 70th Avenue, within a C4-5X zoning district; and

WHEREAS, the PCE occupies 22,316 sq. ft. of floor area

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and 3,863 sq. ft. of floor space in the cellar of a four-story commercial building; and

WHEREAS, the PCE is operated as New York Sports Club; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 16, 1997 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on May 1, 2007; and

WHEREAS, at the time of the original approval and a subsequent amendment, the site was within a C8-2 zoning district, which has since been rezoned to C4-5X; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; and

WHEREAS, at hearing, the Board questioned whether the sign at the rear of the site, which was not shown on the previously approved plans, complies with relevant regulations; and

WHEREAS, in response, the applicant moved the sign at the rear of the site down to a maximum height of 40 feet and confirmed that the size of all signage at the site is either pre-existing pursuant to the prior C8-2 zoning district parameters or will comply with the current C4-5X regulations; and

WHEREAS, the applicant provided evidence that a permit has been obtained to legalize the sign at the rear of the site pursuant to the current C4-5X zoning regulations and a photograph reflecting that the sign was relocated; and

WHEREAS, the Board notes that the signage at the site is subject to DOB approval; and

WHEREAS, based upon its review of the record, the Board finds 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, as adopted on December 16, 1997, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from May 1, 2007, to expire on May 1, 2017, *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 14, 2010’-(6) sheets and ‘June 1, 2011’-(4) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 1, 2017;

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

THAT signage at the site shall not exceed that reflected on the BSA-approved plans;

THAT all new signage shall comply with C4-5X zoning district regulations and shall be subject to DOB review and approval;

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;

THAT the Department of Buildings must ensure compliance 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. 401714061)

Adopted by the Board of Standards and Appeals, June 7, 2011.

289-99-BZ

APPLICANT – Vito J. Fossella, LPEC, for Frances Gomez, owner.

SUBJECT – Application January 22, 2010 – Extension of Term of a variance (§72-21) for a parking facility accessory to a permitted use (UG16 automotive repair and accessory sales) which expired on December 12, 2010. C8-1/R3-1 zoning district.

PREMISES AFFECTED – 265 Hull Avenue, northeast side of Hull Avenue, 100’ southeast of corner formed by the intersection of Hull Avenue and Hylan Boulevard, Block 3668, Lots 12, 13, 14, 27, 28 & 29, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
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THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for the continued operation of a parking facility accessory to a permitted automotive repair use (Use Group 16), which expired on December 12, 2010; and

WHEREAS, a public hearing was held on this application on March 29, 2011, after due notice by publication in *The City Record*, with a continued hearing on May 3, 2011, and then to decision on June 7, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2 Staten Island, recommends approval of this application with the following conditions: (1) the parking lot be used exclusively for parking of vehicles for the businesses located at 2018 Hylan Boulevard; (2) no accessory parking from any other business be permitted and that signage on the site indicate the parking restrictions; and (3) the gate on Jefferson Avenue remain closed and locked at all times; and

WHEREAS, the site is located on the southeast corner of Hull Avenue and Hylan Boulevard, partially within a C8-1 zoning district and partially within an R3-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 12, 2000 when, under the subject calendar number, the Board granted a variance to permit, on a site divided by a zoning district boundary, a

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parking facility within the R3-2 portion of the site, accessory to a permitted automotive repair use (Use Group 16) with accessory retail sales existing within the C8-1 portion of the site, for a term of ten years, which expired on December 12, 2010; and

WHEREAS, the applicant notes that since the time of the original grant, the Department of City Planning rezoned the subject R3-2 zoning district to an R3-1 zoning district; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant submitted a notarized statement from the owner stating that the site will be used solely for accessory parking for 2018 Hylan Boulevard, and that no accessory parking from any other businesses will be permitted at the site; and

WHEREAS, the applicant also submitted photographs of signage on the site reflecting the parking restrictions; and

WHEREAS, as to the Community Board's request that the gate on Jefferson Avenue remain closed and locked at all times, the applicant states that this restriction was not a condition of the prior Board grant, and that closing the gate on Jefferson Avenue will generate more traffic on Hull Avenue and will impede maneuverability inside the lot; and

WHEREAS, at hearing, the Board directed the applicant to provide landscaping on the site in accordance with the prior grant; and

WHEREAS, in response, the applicant submitted photographs reflecting that landscaping has been installed on the site in accordance with the previously-approved plans; 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 *reopens*, and *amends* the resolution, dated December 12, 2000, so that as amended this portion of the resolution shall read: "to extend the term for ten years from December 12, 2010, to expire on December 12, 2020; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked 'Received December 22, 2010'-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on December 12, 2020;

THAT the parking facility shall be used solely for accessory parking for the businesses located at 2018 Hylan Boulevard;

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

THAT the Department of Buildings must ensure compliance 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. 500398018)

Adopted by the Board of Standards and Appeals, June 7, 2011.

101-05-BZ

APPLICANT – Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for 377 Greenwich LLC c/o Ira Drukler, owner.

SUBJECT – Application April 7, 2011 – Amendment to a Variance (§72-21) for a seven-story hotel with penthouse (*The Greenwich Hotel*). The amendment seeks to legalize the penthouse footprint and modify the penthouse façade. C6-2A/Tribeca Mixed Use (A-1) zoning district.

PREMISES AFFECTED – 377 Greenwich Street, east side of Greenwich Street on the corner formed by intersection of south of North Moore Street and east side of Greenwich Street, Block 187, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Elena Aristova.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted, in a C6-2A zoning district within Area A-1 of the Special Tribeca Mixed Use District, an eight-story (including penthouse) hotel building, contrary to ZR §§ 35-24 and 111-104; and

WHEREAS, a public hearing was held on this application on May 17, 2011, after due notice by publication in *The City Record*, and then to decision on June 7, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the subject site is located on the southeast corner of Greenwich Street and North Moore Street; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 16, 2005 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted, in a C6-2A zoning district within Area A-1 of the Special Tribeca Mixed Use District, an eight-story (including penthouse) hotel building, contrary to floor area ratio and height and setback as set forth at ZR §§ 35-24 and 111-104; and

WHEREAS, the applicant now requests that the Board amend the grant to legalize certain conditions that do not conform to the Board-approved plans; and

WHEREAS, the applicant seeks to remedy its failure to obtain approval from the Landmarks Preservation Commission (LPC) for the proposal it presented to the Board within the context of its 2005 application; and

WHEREAS, the Board notes that during the hearing process for the 2005 application, the applicant represented to the Board that its proposal had been approved by the LPC, but the iteration before the Board had not, in fact, been approved

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by the LPC; and

WHEREAS, subsequent to the Board's 2005 approval, the applicant constructed the hotel pursuant to the Board approved plans; and

WHEREAS, upon its discovery that the built conditions were inconsistent with an earlier LPC approval, which had not been before the Board, the LPC required the applicant to make changes to the penthouse and rooftop; and

WHEREAS, the applicant revised the penthouse and rooftop design in accordance with the LPC and the LPC issued a Certificate of Appropriateness, dated January 21, 2011; and

WHEREAS, the applicant states that the amendment is now necessary in order to reflect the LPC-approved revised penthouse and rooftop plan; and

WHEREAS, the applicant notes that the modifications include changes to the penthouse footprint; the removal of a mansard roof; and the addition of brick cladding to match the hotel's façade; and

WHEREAS, the applicant represents that the remainder of the building reflects the conditions of the 2005 Board-approved plans and the LPC did not require any additional modification; and

WHEREAS, the applicant represents that the revised plans do not trigger any new zoning non-compliance; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment does not alter the Board's findings made for the original variance; and

WHEREAS, accordingly, the Board finds that the proposed variance, as amended, is appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated August 16, 2005, so that as amended this portion of the resolution shall read: "to permit amendments to the penthouse and rooftop design; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received April 7, 2011'-(6) sheets; and *on further condition*:

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

THAT all construction shall be performed and maintained in accordance with the LPC Certificate of Appropriateness # 11-5961, dated January 21, 2011;

THAT 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. 102666394)

Adopted by the Board of Standards and Appeals, June 7, 2011.

1069-27-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 6702 New Utrecht Avenue LLC by Frank Momando, owner.

SUBJECT – Application February 23, 2011 – Extension of Term (§11-411) of for the continued operation of an automatic automobile laundry, simonizing room and offices which expired on March 6, 201; Extension of Time to obtain a Certificate of Occupancy. C1-2/R5 zoning district.

PREMISES AFFECTED – 6702-6724 New Utrecht Avenue, bounded by New Utrecht Avenue, 15th Avenue and Ovington Avenue/68th Street, Block 5565, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 21, 2011, at 10 A.M., for decision, hearing closed.

827-55-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products, Incorporated, owner.

SUBJECT – Application October 5, 2010 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*British Petroleum*) which expires on January 31, 2011. R3-2 zoning district.

PREMISES AFFECTED – 245-20 139th Avenue, southwest corner of Conduit Avenue, Block 13614, Lot 23, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 12, 2011, at 10 A.M., for continued hearing.

502-60-BZ

APPLICANT – Patrick O' Connell P.E. for Raymond Edwards, owner; Angel R. Herndez, lessee.

SUBJECT – Application February 23, 2011 – Extension of Term (§11-411) of a variance permitting the use of a parking lot (UG 8) for parking and storage of more than five (5) motor vehicles which expired on January 20, 2011. C2-4/R7-2 zoning district.

PREMISES AFFECTED – 4452 Broadway, Broadway & Fairview Avenue. Block 2170, Lot 62 & 400. Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Glendon Dockery.

ACTION OF THE BOARD – Laid over to July 26, 2011, at 10 A.M., for continued hearing.

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739-76-BZ

APPLICANT – Eric Palatnik, P.C. for Cord Meyer Development, LLC, owner; Peter Pan Games of Bayside; lessee.

SUBJECT – Application April 19, 2011 – Extension of Term of a Special Permit (§73-35) for the continued operation of an Amusement arcade (*Peter Pan Games*) which expired on April 10, 2011. C4-1 zoning district.

PREMISES AFFECTED – 212-95 26th Avenue, 26th Avenue and Bell Boulevard. Block 5900, Lot 2. Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 21, 2011, at 10 A.M., for continued hearing.

586-87-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Frasca Real Estate Incorporated, owner; 65th Street Auto Service Center, Incorporated, lessee.

SUBJECT – Application April 5, 2011 – Extension of Term (§11-411) for the continued operation of an existing gasoline service station (*Emporium*) with lubritorium, auto repairs and the sale of new/used cars which expired on July 12, 2008; waiver of the rules. R5B/C2-3 zoning district.

PREMISES AFFECTED – 1302/12 65th Street, southeast corner of intersection of 65th Street and 13th Avenue, Block 5754, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to July 12, 2011, at 10 A.M., for continued hearing.

APPEALS CALENDAR

202-10-BZY

APPLICANT – Law Offices of Marvin B. Mitzner, for Long Island City Partners, LLC, owner.

SUBJECT – Application October 29, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior M1-3D zoning district. M1-2/R5D zoning district.

PREMISES AFFECTED – 29-11 39th Avenue, north side of 39th Avenue between 29th and 30th Street, Block 384, Lots 31 and 32, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Ian Rasmussen.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

Commissioner Montanez5

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 minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on May 10, 2011, after due notice by publication in *The City Record*, and then to decision on June 7, 2011; and

WHEREAS, the site was inspected by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez; and

WHEREAS, the subject site is located on the north side of 39th Avenue, between 29th Street and 30th Street; and

WHEREAS, the site has 50 feet of frontage on 39th Avenue, a depth of approximately 99 feet, and a total lot area of approximately 4,969 sq. ft.; and

WHEREAS, the site is proposed to be developed with a nine-story hotel building (the “Building”); and

WHEREAS, the Building is proposed to have a floor area of 24,480 sq. ft.; and

WHEREAS, the Building complies with the former M1-3D zoning district parameters; and

WHEREAS, however, on October 7, 2008 (hereinafter, the “Enactment Date”), the City Council voted to enact the Dutch Kills Rezoning, which rezoned the site from M1-3D to M1-2/R5D, and extended the Special Long Island City District to the subject site; and

WHEREAS, on December 4, 2007, New Building Permit No. 402641888-01-NB (the “Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the proposed nine-story hotel building; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows 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 a certificate 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 a single building which is non-complying under an amendment to the Zoning Resolution, as a “minor development”; and

WHEREAS, for a “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: “[I]n the event that construction permitted in Section 11-331 (Right

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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: “[F]or 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, by letter dated November 22, 2010, DOB stated that the Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; 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, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be

considered for vesting purposes; accordingly, only the work performed as of October 7, 2010 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes 100 percent of the foundation, 100 percent of the superstructure and exterior of the Building, and the installation of all hardware, doors and fixtures for the Building; and

WHEREAS, in support of this statement, the applicant has submitted the following: construction tables; an affidavit from the general contractor; financial records; a list of expenditures; copies of cancelled checks; and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$3,663,059, or 97 percent, out of the approximately \$3,769,000 cost to complete; and

WHEREAS, as noted above, the applicant has submitted financial records, a list of expenditures, and copies of cancelled checks as evidence of the payments made by the applicant; 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 initial 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 two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 402641888-01-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 development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on June 7, 2013.

Adopted by the Board of Standards and Appeals, June 7, 2011.

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17-05-A

APPLICANT – Sheldon Lobel, P.C., for GRA V LLC, owner.

SUBJECT – Application February 15, 2011 – Application to reopen pursuant to a court remand for a determination of whether the property owner has established a common law vested right to continue construction under the prior R6 zoning district. R4A zoning district.

PREMISES AFFECTED – 3329 Giles Place, west side of Giles Place between Canon Place and Fort Independence Street, Block 3258, Lots 5 & 7, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to June 14, 2011, at 10 A.M., for adjourned hearing.

176-10-A

APPLICANT – Sheldon Lobel, P.C., for LIV Realty LLC, owner.

SUBJECT – Application September 8, 2010 – Proposed construction of a residential building not fronting a mapped street, contrary to General City Law Section 36. R6 zoning District.

PREMISES AFFECTED – 62 Brighton 2nd Place, east side, Block 8662, Lot 155, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Jordan Most, Lyor Zhoranichny.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to June 21, 2011, at 10 A.M., for continued hearing.

195-10-BZY

APPLICANT – Eric Palatnik, P.C., for Michael Batalia, owner.

SUBJECT – Application October 26, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior M1-3D zoning. M1-2/R5B zoning district.

PREMISES AFFECTED – 38-28 27th Street, between 38th and 39th Avenue, Block 387, Lot 31, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 12, 2011, at 10 A.M., for decision, hearing closed.

200-10-A, 203-10-A thru 205-10-A

APPLICANT – Sheldon Lobel, P.C., for Williams Davies,

LLC, owner.

SUBJECT – Application October 29, 2010 – Appeal seeking a common law vested right to continue construction commenced under the prior R5 zoning district. R4-1 zoning district

PREMISES AFFECTED – 1359, 1361, 1365 & 1367 Davies Road, southeast corner of Davies Road and Caffrey Avenue, Block 15622, Lots 15, 14, 13, 12, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 21, 2011, at 10 A.M., for decision, hearing closed.

REGULAR MEETING TUESDAY AFTERNOON, JUNE 7, 2011 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

304-09-BZ

CEQR #10-BSA-028K

APPLICANT – Stuart A. Klein, Esq. for Junius-Glenmore Development, LLC, owner; Women in Need, Inc., lessee.

SUBJECT – Application November 4, 2009 – Variance (§72-21) to allow the erection of a ten-story, mixed-use community facility (*Women In Need*) and commercial building, contrary to floor area (§42-00, 43-12 and 43-122), height and sky exposure plane (§43-43), and parking (§44-21). M1-4 zoning district.

PREMISES AFFECTED – 75-121 Junius Street, Junius Street, bounded by Glenmore Avenue and Liberty Avenue, Block 3696, Lot 1, 10, Borough of Brooklyn.

COMMUNITY BOARD #16BK

APPEARANCES –

For Applicant: Jay Goldstein.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough

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Commissioner, dated October 9, 2009, acting on Department of Buildings Application No. 320024709, reads, in pertinent part:

“42-00. Proposed residential use is not permitted within a manufacturing district; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-4 zoning district within the East New York Industrial Business Zone (“IBZ”), the proposed construction of a six-story mixed-use residential/community facility building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on April 27, 2010 after due notice by publication in *The City Record*, with continued hearings on July 27, 2010, January 11, 2011, March 1, 2011, and April 5, 2011, and then to decision on June 7, 2011; and

WHEREAS, this application is brought on behalf of Women in Need, Inc. (“WIN”), a not-for-profit entity; and

WHEREAS, Community Board 16, Brooklyn, recommends disapproval of this application; and

WHEREAS, City Council Members Diana Reyna and Erik Martin Dilan recommend disapproval of this application; and

WHEREAS, representatives of the Brooklyn Chamber of Commerce, the East New York Business Improvement District, the East Brooklyn District Management Association, and the Local Development Corporation of East New York provided testimony in opposition to this application; and

WHEREAS, certain members of the community testified in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to this application are the “Opposition;” and

WHEREAS, the Opposition had the following primary concerns: (1) the site is located within the East New York IBZ and is not appropriate for residential use; (2) the size of the building, as originally proposed, is out of context for the surrounding area; (3) there are environmentally hazardous conditions on the site; (4) there is a lack of commercial and retail services in the neighborhood; and (5) the proposal will cause a disruption of traffic patterns; and

WHEREAS, the applicant submitted letters of support for this application from Brooklyn Borough President Marty Markowitz, the Brownsville Community Development Corporation, the United Way of New York City, the Corporation for Supportive Housing, and certain members of the community; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is a through lot bounded by Liberty Street to the north, Junius Street to the west, and Glenmore Avenue to the south, with 400 feet of frontage on Junius Street, a depth of 111’-2”, and a total lot area of approximately 44,500 sq. ft.; and

WHEREAS, the site consists of two tax lots: Lot 1 is located on the southern portion of the site with a lot area of 20,289 sq. ft., and is currently vacant; and Lot 10 is located on

the northern portion of the site with a lot area of 20,233 sq. ft., and is currently occupied by a vacant two-story church building which is proposed to be demolished; and

WHEREAS, the applicant proposes to construct a six-story mixed-use residential/community facility building on the subject site; and

WHEREAS, the proposed building has the following parameters: a total floor area of 148,165 sq. ft. (3.33 FAR); a perimeter wall and total height of 57’-0”; a rear yard with a depth of 83’-0”; and 24 parking spaces; and

WHEREAS, the applicant states that the proposed building will provide 176 affordable housing units, with 105 units dedicated to residents with special needs; and

WHEREAS, the applicant originally proposed to construct a ten-story mixed-use residential / commercial / community facility building with a floor area of 274,688 sq. ft. (6.18 FAR), a wall height of 91’-0”, a total building height of 99’-6”, 280 residential units, and commercial and community facility space at the cellar and ground floor; and

WHEREAS, at the direction of the Board, the applicant revised its proposal to eliminate the proposed commercial use and the ground floor community facility space, reduce the residential unit count from 280 to 176, and reduce the proposed bulk of the building to the current six-story proposal; and

WHEREAS, the revised proposal also reduced the length of the street wall along Junius Street, enabling the applicant to provide a 7,600 sq. ft. park area along the southern portion of the lot; and

WHEREAS, the proposal provides for the following uses: (1) community facility space, offices, a recreation room, building service rooms, and mechanical rooms at the cellar; (2) residential units, an office, lobby and lounge at the first floor; and (3) residential units on the second through sixth floors; and

WHEREAS, since the site is located in an M1-4 zoning district within the East New York IBZ, which does not permit residential development as-of-right, 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 site’s subsurface contamination and resultant need for remediation; (2) the site is encumbered with a significant slope; (3) the site abuts train tracks and elevated subway tracks; and (5) the applicant’s programmatic need to provide a sufficient number of units for project viability; and

WHEREAS, as to the contamination at the site, the applicant submitted Phase I and Phase II reports as well as an Environmental Assessment Statement which indicate that the site contains contamination which will need to be removed pursuant to Department of Environmental Protection (“DEP”) regulations; and

WHEREAS, the applicant submitted an engineer’s report which states that the remediation measures required at the site include the excavation and disposal of approximately 1,104 cubic yards of contaminated soil, the installation of a vapor

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barrier and active or passive venting system, and the addition of two feet of clean sand on top of the vapor barrier, in accordance with DEP requirements; and

WHEREAS, the applicant submitted a construction estimate indicating that the additional labor and expense associated with the remediation of the site is \$830,233; and

WHEREAS, as to the slope of the site, the applicant states that there is a drop in grade of approximately 15 feet along the eastern portion of the site; and

WHEREAS, the applicant represents that the costs associated with leveling out the site to accommodate an as-of-right building would be prohibitively expensive; and

WHEREAS, as to the adjacent train tracks, the applicant states that the eastern portion of the site abuts the Long Island Rail Road ("LIRR") and elevated subway tracks; and

WHEREAS, the applicant states that the adjacency of these structures will require the installation of sound attenuating windows and other insulation to reduce the noise pollution and vibrations produced by the trains; and

WHEREAS, the applicant represents that excavation and foundation work will have to be first approved and then monitored by MTA representatives to ensure that the construction does not affect the adjacent train tracks; and

WHEREAS, the applicant further represents that, due to the proximity of the tracks, the applicant may be required to use caissons and non-impact driven timber piles in order to avoid any impact on the tracks foundations, which will further add to the cost of construction performed on the site; and

WHEREAS, the Board agrees that these unique physical conditions create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

WHEREAS, the applicant states that a use variance is also requested based on WIN's programmatic need to provide 176 units of affordable housing, with 105 units dedicated to New York City Department of Health and Mental Hygiene ("DOHMH") special needs housing; and

WHEREAS, the applicant states that WIN's goals for this project are to help men, women, children and families who have survived domestic abuse and/or substance abuse, as well as homelessness, to become self-sufficient and to facilitate their transition back into mainstream society, and to provide affordable housing to families in need; and

WHEREAS, the applicant further states that WIN will offer social services to its residents, including educational, job training, and placement services, in order to empower the residents to become integrated into society; and

WHEREAS, the applicant submitted a letter dated November 30, 2010 from DOHMH confirming that financing of the proposed development of 105 special needs units is contemplated by the agency; and

WHEREAS, the applicant represents that it will also utilize bond and subsidy financing through the City's Housing Development Corporation, four percent Low Income Housing Tax Credits, and other subsidies, and that it intends to seek financing for the proposed project from the New York State Office of Temporary and Disability Assistances' Homeless Housing and Assistance program, from the New York State

Housing Finance Agency through a tax exempt bond and second mortgage subsidy, and from the Federal Home Loan Bank's Affordable Housing Program; and

WHEREAS, the applicant states that it has a programmatic need for the additional 71 units of affordable housing because the proposed 105 units of special needs housing, which will be funded through a contract with DOHMH, do not provide sufficient funding to develop a building large enough to meet the balance of WIN's programmatic needs, and the 71 general low-income units are essential to the project's ability to fund building amenities, such as security, which are necessary for a project with a substantive number of special needs supportive housing units; and

WHEREAS, the applicant further states that the 71 general low-income units are necessary for a housing project of this nature in order to meet WIN's programmatic need of facilitating the integration of its special needs residents back into mainstream society, because the integration success rate decreases as the percentage of units occupied by special needs residents increases; therefore, the general low-income units are required to provide the appropriate mix of units necessary to ensure the success of the project; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in conjunction with the programmatic need of the applicant, 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, however, at the Board's direction the applicant analyzed the feasibility of a three-story as-of-right industrial building with no cellar at the site; and

WHEREAS, the financial analysis indicates that the as-of-right scenario is not financially viable due to the premium costs associated with the unique conditions of the site; 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 neighborhood is characterized by a mix of residential, community facility, commercial and manufacturing uses; and

WHEREAS, throughout the course of the hearing process, the Board raised questions about any potential effect that the introduction of residential use might have on the IBZ and future manufacturing uses on the surrounding block; and

WHEREAS, in response, the applicant submitted an aerial map reflecting that the subject site is located on the western edge of the IBZ, and states that the heavier industrial and manufacturing uses in the IBZ take place to the east of the site and that the site is separated from these uses by the LIRR tracks and the elevated subway tracks which abut the site's eastern lot line; and

WHEREAS, the applicant represents that this separation ensures that the proposed building will not have a significant

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impact on the existing businesses in the surrounding area to the east of the site; and

WHEREAS, the applicant also submitted a land use map and a survey of surrounding uses which reflects that the surrounding area to the west of the LIRR tracks and elevated subway tracks consist of a mix of residential, community facility, commercial, and manufacturing uses; and

WHEREAS, the land use map submitted by the applicant reflects that only 14 of the 103 sites analyzed are occupied by active manufacturing uses, while 25 of the sites are occupied by residential uses; and

WHEREAS, specifically, the applicant states that directly to the north of the site are two six-story buildings owned and operated by WIN which contain a total of 427 units, there are two playgrounds and a school located within two blocks to the west of the site, and there are at least nine residential buildings ranging in height from three stories to 24 stories within two blocks to the southwest of the site; and

WHEREAS, the applicant further states that the majority of the surrounding lots which are not vacant or occupied by residential uses are used as commercial parking lots for various transportation companies, reflecting that the surrounding area to the west of the LIRR and elevated subway tracks is more transportation and utility oriented and is not characterized by heavy manufacturing uses; and

WHEREAS, the applicant notes that the proposal also includes a 7,600 sq. ft. park area along the southern portion of the lot, which will serve as a buffer between the proposed building and the scrap metal recycling yard located to the south of the site; and

WHEREAS, the applicant represents that the proximity of the LIRR and elevated subway tracks does not make the site unsuitable for residential use because the tracks are located to the rear of the site and the building will be set back from the lot line to further distance the residents from the tracks, and the building will be constructed with sound attenuating windows and other insulation to reduce the noise and vibrations from passing trains; and

WHEREAS, as to bulk, the applicant notes that there is an R6 zoning district located one block to the west of the site, and the Board directed the applicant to reduce the bulk of the proposed building to its current FAR of 3.3 in order to bring it closer to what is permitted in the adjacent R6 zoning district; and

WHEREAS, the applicant states that the two buildings owned by WIN directly to the north of the site are also six-story buildings, but they each have a height of approximately 75 feet while the height of the proposed building is only 57 feet; and

WHEREAS, at hearing, the Board questioned whether the proposed residential use would be compatible with the truck traffic generated by the existing uses surrounding the property; and

WHEREAS, in response, the applicant submitted a survey and maps which reflect that the truck traffic and vehicular traffic in the surrounding area is limited due to the narrow streets and single directional flow of traffic into and out of the area and the limited number of loading docks and/or curb

cuts on the surrounding blocks; and

WHEREAS, the applicant states that pedestrian traffic from the proposed building will be in context with the existing pedestrian traffic from the two WIN facilities already located in the immediate vicinity, as well as the multiple residential buildings and numerous churches in the area; and

WHEREAS, the applicant submitted a map illustrating the anticipated routes, distances and estimated walking times to the area park/playground, convenience stores and public transportation from the site, all of which are less than one-quarter mile from the site; and

WHEREAS, the Board recognizes the Opposition's concerns regarding the site's location in the IBZ, but finds that the location of the proposed building is appropriate in the instant case for the following reasons: (1) the site has been vacant for decades and is encumbered with conditions that make industrial uses infeasible; (2) the site is located toward the western edge of the IBZ where surrounding uses are more transportation and utility related; (3) an R6 zoning district and a significant number of residential uses are located just one block away; (4) there is a significant need for housing in the surrounding area; (5) there are existing WIN buildings located immediately to the north of the site, and there is easy access to mass transit, bus routes, and commercial and recreation services; and (6) the proposal will not impede adjacent industrial 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; and

WHEREAS, as noted above, the applicant originally proposed to construct a ten-story mixed-use residential/commercial/community facility building with a floor area of 274,688 sq. ft. (6.18 FAR), a wall height of 91'-0", a total building height of 99'-6", 280 residential units, and commercial and community facility space at the cellar and ground floor; and

WHEREAS, at the Board's direction, the applicant revised its plans to eliminate the proposed commercial use and the ground floor community facility space, reduce the residential unit count from 280 to 176, and reduce the requested bulk to the current six-story proposal; and

WHEREAS, the applicant states that the proposed building is of the minimum size that can be feasibly developed for its proposed use as affordable housing; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief and allow WIN to carry out 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, Part 617; and

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

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information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 10-BSA-028K dated May 23, 2011; 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 Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis has reviewed the project for potential hazardous materials, air quality and noise impacts; and

WHEREAS, DEP accepts the April 2010 Remedial Action Plan and the Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, a site survey and permits search was conducted for the active industrial facilities for the area within a 400 foot radius of the proposed project; and

WHEREAS, based on the air quality screening analysis conducted, DEP determined that significant impacts from industrial/manufacturing uses on the proposed project are not anticipated; and

WHEREAS, DEP reviewed the results of noise monitoring, which determined that a range of 28 to 35 dBA of window-wall noise attenuation and an alternate means of ventilation are required for the proposed building; 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, in an M1-4 zoning district within the East New York IBZ, the proposed construction of a six-story mixed-use residential/community 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 May 25, 2011" – (9) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be: six stories; a total floor area of 148,165 sq. ft. (3.33 FAR); a perimeter wall and total height of 57'-0"; a rear yard with a depth of 83'-0"; and 24 parking spaces, as indicated on the

BSA-approved plans;

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor shall obtain from DEP a Notice to Proceed;

THAT prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain from DEP a Notice of Satisfaction;

THAT window-wall noise attenuation and a variable capacity air source heat recovery air-conditioning system as an alternate means of ventilation shall be provided in the proposed building 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 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 construction shall proceed in accordance with ZR § 72-23; and

THAT the Department of Buildings must ensure compliance 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 7, 2011.

16-11-BZ

APPLICANT – Eric Palatnik, P.C., for Judah Rosenweig, owner.

SUBJECT – Application February 14, 2011 – Special Permit (§73-621) for the enlargement of an existing two story with attic single family home contrary to floor area and open space (§23-141(a)). R1-2 zoning district.

PREMISES AFFECTED – 181-30 Aberdeen Road, between Surrey and Tyron Place, Block 7224, Lot 34, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated February 8, 2011, acting on Department of Buildings Application No. 420236809, reads, in pertinent part:

“Proposed development change is contrary to ZR

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Sections 23-141(a): floor area and to ZR 23-141(a): open space ratio and therefore requires a special permit as per ZR 73-621;" and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03, to permit, within an R1-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area and open space, contrary to ZR § 23-141(a); and

WHEREAS, a public hearing was held on this application on May 3, 2011, after due notice by publication in *The City Record*, and then to decision on June 7, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 8, Queens, recommends approval of the application; and

WHEREAS, the subject site is located on the east side of Aberdeen Road, between Surrey Place and Tyron Place; and

WHEREAS, the subject site has a total lot area of 6,121 sq. ft., and is occupied by a single-family home with a floor area of approximately 3,015 sq. ft. (0.49 FAR); and

WHEREAS, the applicant seeks an increase in the floor area from 3,015 sq. ft. (0.49 FAR), to 3,338 sq. ft. (0.54 FAR); the maximum floor area permitted is 3,061 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to maintain the existing building envelope, but to fill in a double height area on the second floor and convert the attic to useable space; and

WHEREAS, the applicant represents that the proposed floor area exceeds the maximum permitted floor area by nine percent; and

WHEREAS, the applicant proposes to provide an open space ratio of 135 percent (150 percent is the minimum required); and

WHEREAS, as a threshold matter, in R1-2 zoning districts, ZR § 73-621 is only available to enlarge homes that existed on December 15, 1961; and

WHEREAS, the applicant states that the home was constructed around 1935 and that recently, it replaced studs and walls that had rotted beyond repair, pursuant to an Alteration Type II application; and

WHEREAS, the applicant represents that all work performed pursuant to the Alteration Type II application reflected the structurally necessary in-kind replacement of existing building components and, thus, the existing home satisfies the requirement that the home existed on December 15, 1961; and

WHEREAS, in support of its assertion that the existing home constitutes a pre-1961 home for the purpose of the special permit, the applicant submitted a 1935 survey, a 1950 Sanborn Map, a survey of recent structural repair work, and an affidavit from the project architect which states that the home was built sometime before 1940; and

WHEREAS, the Board has reviewed the evidence and accepts that the existing home existed in its pre-enlarged state prior to December 15, 1961; and

WHEREAS, ZR § 73-621 permits the enlargement of a residential building such as the subject single-family home if the following requirements are met: (1) the proposed open space ratio is at least 90 percent of the required open space; (2) in districts where there are lot coverage limits, the proposed lot coverage does not exceed 110 percent of the maximum permitted; and (3) the proposed floor area ratio does not exceed 110 percent of the maximum permitted; and

WHEREAS, as to the open space, the applicant represents that the proposed reduction in the open space ratio is ten percent of the existing and results in an open space ratio that is 90 percent of the minimum required; and

WHEREAS, as to the lot coverage, the applicant represents that the existing lot coverage is a pre-existing non-complying condition, which will not be changed; and

WHEREAS, as to the floor area ratio, the applicant represents that the proposed is 109 percent of the maximum permitted under the special permit; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 73-621; and

WHEREAS, based upon its review of the record, 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 §§ 73-621 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, within an R1-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area and open space, contrary to ZR § 23-141(a); *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 February 14, 2011"-(10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,338 sq. ft. (0.54 FAR) and a minimum open space ratio of 135 percent, 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

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cellar;

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

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 7, 2011.

201-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for For Our Children, Inc., owner.

SUBJECT – Application August 1, 2008 – Variance (§72-21) to allow a one story commercial building (UG 6); contrary to use regulations (§22-00). R3X zoning district. Variance (§72-21) to allow a one story commercial building (UG 6); contrary to use regulations (§22-00). R3X zoning district.

PREMISES AFFECTED – 40-38 216th Street, between 215th Place and 216th Street, 200' south of 40th Avenue, Block 6290, Lot 70, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 19, 2011, at 1:30 P.M., for decision, hearing closed.

24-09-BZ

APPLICANT – Sheldon Lobel, PC, for Meadows Park Rehabilitation and Health Care Center, LLC, owners.

SUBJECT – Application February 12, 2009 – Variance to allow the enlargement of a community facility (*Meadow Park Rehabilitation and Health Care Center*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), height (§24-521) and rear yard (§24-382) regulations. R3-2 district.

PREMISES AFFECTED – 78-10 164th Street, Located on the western side of 164th Street between 78th Avenue and 78th Road, Block 6851, Lot 9, 11, 12, 23, 24, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most.

For Opposition: Kenneth D. Cohen and Peter J. Sell.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 12, 2011, at 1:30 P.M., for decision, hearing closed.

230-09-BZ

APPLICANT – Peter Hirshman, for Mr. Filipp T Tortora, owner.

SUBJECT – Application July 20, 2009 – Variance (§72-21) for the construction of a three story, three family residence, contrary to front yard regulations (§23-45). R-5 zoning district.

PREMISES AFFECTED – 1700 White Plains Road, northeast corner of White Plains and Van Nest Avenue, Block 4033, Lot 31, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Peter Hirshman.

ACTION OF THE BOARD – Laid over to July 19, 2011, at 1:30 P.M., for continued hearing.

31-10-BZ

APPLICANT – Eric Palatnik, P.C., for 85-15 Queens Realty, LLC, owner.

SUBJECT – Application March 16, 2010 – Variance (§72-21) to allow for a commercial building, contrary to use (§22-00), lot coverage (§23-141), front yard (§23-45), side yard (§23-464), rear yard (§33-283), height (§23-631) and location of uses within a building (§32-431) regulations. C1-2/R6, C2-3/R6, C1-2/R7A, R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard aka 51-35 Reeder Street, north side of Queens Boulevard, between Broadway and Reeder Street, Block 1549, Lot 28, 41, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 16, 2011, at 1:30 P.M., for adjourned hearing.

46-10-BZ

APPLICANT – Eric Palatnik, P.C., for 1401 Bay LLC, owner.

SUBJECT – Application April 8, 2010 – Special Permit (§73-44) to permit a reduction in required parking for ambulatory and diagnostic treatment center. C4-2 zoning district.

PREMISES AFFECTED – 1401 Sheepshead Bay Road, Avenue Z and Sheepshead Bay Road, Block 7459, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August

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16, 2011, at 1:30 P.M., for adjourned hearing.

54-10-BZ

APPLICANT – Eric Palatnik, P.C., for Richard Valenti as Trustee, owner; Babis Krasanakis, lessee.

SUBJECT – Application April 19, 2010 – Special Permit (§73-44) to permit reduction in required parking for an ambulatory diagnostic or treatment center. C4-2 zoning district.

PREMISES AFFECTED – 150(c) Sheepshead Bay Road, aka 1508 Avenue Z, south side of Avenue Z, between East 15th and East 16th Street, Block 7460, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 16, 2011, at 1:30 P.M., for adjourned hearing.

95-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Raymond Kohanbash, owner.

SUBJECT – Application May 27, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461 and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2216 Quentin Road, south side of Quentin Road between East 22nd Street and East 23rd Street, Block 6805, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to July 12, 2011, at 1:30 P.M., for continued hearing.

118-10-BZ

APPLICANT – Eric Palatnik, P.C., for Arkady Nabatov, owner.

SUBJECT – Application June 28, 2010 – Reinstatement (§11-411 & §11-413) of an approval permitting the operation of an automotive service station (UG 16B), with accessory uses, which expired on December 9, 2003; amendment to legalize a change in use from automotive service station to automotive repair, auto sales and hand car washing. R4 zoning district.

PREMISES AFFECTED – 2102/24 Avenue Z, aka 2609/15 East 21st Street. Block 7441, Lot 371. Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Katherine D’Ambrosi.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 19, 2011, at 1:30 P.M., for decision, hearing closed.

177-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLC, for Cee Jay Real Estate Development, owner.

SUBJECT – Application September 9, 2010 – Variance (§72-21) for the construction of a detached three-story single family home, contrary to open space (§23-141); front yard (§23-45) and side yard (§23-461). R3A zoning district.

PREMISES AFFECTED – 8 Orange Avenue, south west corner of Decker Avenue and Orange Avenue, Block 1061, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 12, 2011, at 1:30 P.M., for adjourned hearing.

194-10-BZ

APPLICANT – Eric Palatnik, P.C., for Revekka Kreposterman, owner.

SUBJECT – Application October 26, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 175 Exeter Street, north of Oriental Avenue, Block 8737, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Judith Baron.

ACTION OF THE BOARD – Laid over to July 26, 2011, at 1:30 P.M., for continued hearing.

196-10-BZ

APPLICANT – James Chin & Associates, LLC, for Turtle Bay Inn, LLC., owner.

SUBJECT – Application October 25, 2010 – Variance (§72-21) to allow ground floor commercial use in an existing residential building, contrary to use regulations (§22-00). R8B zoning district.

PREMISES AFFECTED – 234 East 53rd Street, mid-block parcel located on the south side of 53rd Street, between 2nd and 3rd Avenue, Block 1326, Lot 34, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 26, 2011, at 1:30 P.M., for adjourned hearing.

197-10-BZ thru 199-10-BZ

APPLICANT – Antonio S. Valenziano, AIA, for John Merolo, owner.

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SUBJECT – Application October 26, 2010 – Variance (§72-21) to allow three residential buildings in a manufacturing district, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 59, 63 & 67 Fillmore Street, 491.88’ west of York Avenue, Block 61, Lot 27, 29, 31, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 21, 2011, at 1:30 P.M., for deferred decision.

1-11-BZ

APPLICANT – Martyn & Don Weston Architects, for RAC LLC Realty, owner; Sahadi Importing Company, lessee.

SUBJECT – Application January 3, 2011 – Variance (§72-21) to allow a ground floor enlargement to a pre-existing non complying commercial building, contrary to floor area regulations (§53-31). C2-3/R6 zoning district.

PREMISES AFFECTED – 189-191 Atlantic Avenue, north side of Atlantic Avenue, 240’ east of Clinton Street, Block 276, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Don Weston and Charles Sahadi.

ACTION OF THE BOARD – Laid over to July 12, 2011, at 1:30 P.M., for continued hearing.

21-11-BZ

APPLICANT – Eric Palatnik, P.C., for 1810-12 Voorhies Avenue, LLC, owner.

SUBJECT – Application February 28, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory or diagnostic treatment facility. C1-2/R4 zoning district.

PREMISES AFFECTED – 1810 Voorhies Avenue, south side of Voorhies Avenue, between East 19th Street and Sheepshead Bay Road, Block 8772, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik, Yevgeniy Rybak and Sergey Rybak.

ACTION OF THE BOARD – Laid over to July 26, 2011, at 1:30 P.M., for continued hearing.

24-11-BZ

APPLICANT – Jay A. Segal, Esq., Greenberg Traurig, LLP, for LaSalle New York City, Inc., owner; WCL Academy of New York LLC, lessee.

SUBJECT – Application March 8, 2011 – Variance (§72-21) to permit the construction of an elevator and vestibule in the courtyard of a school building (*WCL Academy*) contrary to floor area (§24-11), lot coverage (§24-11) and permitted

obstruction requirements (§24-51). C6-2A/R8B zoning district.

PREMISES AFFECTED – 44-50 East 2nd Street, north side of East 2nd Street, between First and Second Avenues, Block 444, Lot 59, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Jay Segal

ACTION OF THE BOARD – Laid over to July 12, 2011, at 1:30 P.M., for continued hearing.

Adjourned: P.M.

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*CORRECTION

This resolution adopted on July 13, 2010, under Calendar No. 160-08-BZ and printed in Volume 95, Bulletin Nos. 27-29, is hereby corrected to read as follows:

160-08-BZ

CEQR #08BSA-092K

APPLICANT – Dominick Salvati and Son Architects, for HJC Holding Corporation, owner.

SUBJECT – Application June 11, 2008 – Variance (§72-21) to permit the legalization of commercial storage of motor vehicles/buses (UG 16C) with accessory fuel storage and motor vehicles sales and repair (UG 16B), which is contrary to §22-00. R4 zoning district.

PREMISES AFFECTED – 651-671 Fountain Avenue, Bounded by Fountain, Stanley, Euclid and Wortman Avenues, Block 4527, Lot 61, 64, 67, 74-78, 80, 82, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Peter Hirschman, Frank R. Angelino.

For Opposition: Ronald J. Dillon.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated June 3, 2008, acting on Department of Buildings Application No. 310139025, reads in pertinent part:

“The proposed commercial storage of motor vehicles (bus storage) sales and repairs Use Group 6 & 16 (replacing BSA Cal. Number 841-76-BZ and 78-79-BZ) in an R4 zoning district is not permitted as per Section 22-00 of the New York City Zoning Resolution and is referred to the BSA for a variance;”
and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R4 zoning district, the legalization of commercial storage of motor vehicles (bus parking) with repairs and accessory fuel storage (Use Group 16) which does not conform to district use regulations, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on November 10, 2009 after due notice by publication in *The City Record*, with continued hearings on January 12, 2010, March 2, 2010, April 13, 2010, May 25, 2010 and June 15, 2010, and then to decision on July 13, 2010; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Brooklyn,

recommends disapproval of this application; and

WHEREAS, a representative of the Concerned Homeowners Association provided written and oral testimony in opposition to this application (hereinafter, the “Opposition”), with the following primary concerns: (1) the site is not unique; (2) the prior variances expired and therefore commercial/manufacturing use is not grandfathered on the site; (3) the site value is overpriced and a conforming development could provide a reasonable return; and (4) the proposal constitutes a self-created hardship; and

WHEREAS, several members of the community testified in support of the application; and

WHEREAS, the subject site comprises the entirety of Block 4527, bounded by Stanley Avenue to the north, Euclid Avenue to the east, Wortman Avenue to the south, and Fountain Avenue to the west, within an R4 zoning district; and

WHEREAS, the site is irregularly shaped, with approximately 207’-10” of frontage on Stanley Avenue, 500’-0” of frontage on Euclid Avenue, 70’-0” of frontage on Wortman Avenue, and 502’-11” of frontage on Fountain Avenue, and a lot area of 77,729 sq. ft.; and

WHEREAS, on June 7, 1977, under BSA Cal. No. 841-76-BZ, the Board granted a variance over a portion of the subject site consisting of Lots 61, 64, 77, 78, 80, 113 and 120, to permit the enlargement in area of an existing automobile wrecking yard including the sale of new and used cars and parts with accessory automobile repairs, for a term of ten years; and

WHEREAS, on October 30, 1979, under BSA Cal. No. 78-79-BZ, the Board granted a variance to permit the enlargement in area of the existing automobile wrecking and dismantling establishment approved pursuant to BSA Cal. No. 841-76-BZ, onto Lots 94 and 110 (current Lot 94); and

WHEREAS, subsequently, the grants were amended and the terms extended until their expiration on June 7, 2007; and

WHEREAS, as to the Opposition’s argument that the prior variances expired and commercial / manufacturing use is not grandfathered on the site, the Board agrees and therefore has required the filing of the subject application for a new variance for the entire site; and

WHEREAS, the applicant states that the aforementioned variances related to the entirety of Block 4527 except for a 100’-0” by 190’-0” parcel at the northeast corner of the subject site (the “Northeast Parcel”); and

WHEREAS, the applicant further states that the subject site, including the Northeast Parcel, is currently occupied as an open commercial storage for bus parking, with motor vehicle repairs and accessory fuel storage (Use Group 16); and

WHEREAS, the applicant notes that the site is occupied by the operations of the L & M Bus Corporation, which provides school bus transportation for the Department of Education, Interagency Transportation Solutions, and the Department of Homeless Services, and employs 275 people predominantly from the surrounding neighborhood; and

WHEREAS, the applicant proposes to legalize the current use of the site as open commercial storage for bus parking, with repairs and accessory fuel storage; and

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WHEREAS, commercial use is not permitted in the subject R4 zoning district, thus the applicant seeks a use variance to permit the subject Use Group 16 uses; and

WHEREAS, the Board notes that the site is the subject of a padlock petition and closure action pursuant to Administrative Code § 28-212.1, and that the applicant executed a stipulation with the Department of Buildings (“DOB”), dated November 21, 2008, which allows for operation of the site while the applicant pursues the subject application for a variance to legalize the existing conditions; 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 development: (1) the irregular shape of the site; (2) the existing subsurface soil conditions at the site; (3) the history of development on the site and associated contamination; (4) the site’s location on a heavily-trafficked thoroughfare; and (5) the preponderance of adjacent manufacturing and commercial land uses; and

WHEREAS, as to the site’s irregular shape, the applicant states that the site has an irregular trapezoidal shape, with 207’-10” of frontage on Stanley Avenue, 500’-0” of frontage on Euclid Avenue, 70’-0” of frontage on Wortman Avenue, and 502’-11” of frontage on Fountain Avenue; and

WHEREAS, the applicant states that the site has a maximum width of approximately 225’-0” on the northern portion of the site and a minimum width of 70’-0” on the southern portion of the site; and

WHEREAS, the applicant submitted Sanborn maps reflecting that the majority of the surrounding block and lot configurations are more regular than the subject site; and

WHEREAS, specifically, the applicant represents that the typical through block in the R4 zoning district to the east of the subject site has a uniform width of approximately 200’-0”; and

WHEREAS, the applicant states the irregular width of the subject site restricts residential development as compared to the typical 200’-0” wide through block; and

WHEREAS, in support of its argument that the irregular and unique configuration of the block constrains the development of the site to its full density, the applicant submitted plans reflecting that a rectangular-shaped site with an equivalent lot area could provide 32 two-family homes, as compared to the 28 two-family homes that can be constructed on the subject site due to the inclusion of required yards and setbacks; and

WHEREAS, during the course of the hearing process, the Board raised concerns that the Northeast Parcel was not subject to the prior variances on the site, and that when it is separated from the variance sites it is a regular site in terms of its size and shape and therefore does not suffer any hardship; and

WHEREAS, in response, the applicant states that excluding the Northeast Parcel from the subject site would create an even more irregular configuration on the remainder of the site, and as such, its inclusion is both rational and practical in order to alleviate some of the hardship on the site; and

WHEREAS, as to the soil conditions at the site, the applicant states that the site has a high water table and contains

a significant amount of urban fill that requires the use of pile foundations for the construction of each home under a complying residential development scenario; and

WHEREAS, the applicant submitted a report from a geotechnical consultant (the “Geotechnical Report”) along with area wide historical maps showing flood plains which reflect that a historic creek ran directly through the subject site, and historic and urban fill materials were deposited on the site to an average depth of nine to ten feet to raise it to the current elevation, which is approximately four to six feet above the adjacent sites; and

WHEREAS, the Geotechnical Report also reflects that groundwater was encountered at the site at a depth of nine to ten feet; and

WHEREAS, the Geotechnical Report states that the presence of existing fill materials can lead to excessive total and differential settlement, and recommends the use of pile foundations which would add an additional cost of approximately \$27,000 for each home; and

WHEREAS, the applicant states that the need for pile foundations is unique to the subject site, and submitted data from the Department of Buildings indicating that most of the recent residential developments in the surrounding area were not constructed on pile foundations; and

WHEREAS, specifically, the applicant provided evidence that only three out of 20 of the most recent residential developments in the area were constructed with pile foundations; and

WHEREAS, in addition to the need for pile foundations, the Geotechnical Report states that the site will require additional dewatering and earthwork considerations due to the unique soil conditions on the site; and

WHEREAS, the applicant represents that the aforementioned soil conditions are unique to the subject site, as adjacent properties have never been historically filled, and the path of the creek was generally in a north-south direction, such that it did not extend to any of the sites to the east which are located in the R4 zoning district; and

WHEREAS, as to the history of development on the site, the applicant states that portions of the subject site have been occupied by commercial and manufacturing uses since at least 1937, similar to the uses found within the M1-1 zone located across Fountain Avenue to the west of the site; and

WHEREAS, in support of this statement, the applicant has submitted certificates of occupancy and Sanborn Maps evidencing the prior commercial and manufacturing uses of the site; and

WHEREAS, the applicant states that the commercial history of the site is further evidenced by the variances granted by the Board under BSA Cal. Nos. 841-76-BZ and 78-79-BZ, which permitted the continued use and expansion of the existing automobile wrecking yard and sale of new and used cars and parts with accessory automobile repairs throughout the subject site, with the exception of the Northeast Parcel; and

WHEREAS, the applicant represents that the long term use of the site for manufacturing uses is evidence that residential uses are not viable; and

WHEREAS, the applicant further represents that the

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history of manufacturing uses at the site has potentially resulted in contamination on the site that would require the excavation and disposal of soils that would increase the costs associated with the construction of a conforming residential development; and

WHEREAS, the applicant submitted a report from its environmental consultant, stating that soil borings indicate that the urban fill material is contaminated by a number of hazardous materials; and

WHEREAS, the applicant states that, due to the contamination, the soil must be remediated before any residential development can occur on the site; and

WHEREAS, the applicant submitted a cost estimate for the soil remediation prepared by its financial analyst, which reflects a remediation cost for the entire site of approximately \$600,000, and approximately \$201,000 for the Northeast Parcel alone; and

WHEREAS, during the course of the hearing process, the Board questioned whether contamination of the Northeast Parcel should be considered as part of the site's hardship since it was never subject to the prior variances on the site, and any contamination of the Northeast Parcel may have been self-created; and

WHEREAS, in response, the applicant states that although the Northeast Parcel was not subject to the variances on the other portions of the site, the Sanborn maps submitted to the Board reflect that it nonetheless has a history of commercial use dating back to at least 1951, which pre-dates the current zoning scheme and the variances granted on the remainder of the site; and

WHEREAS, the applicant further states that the soil boring samples which evidenced high levels of contaminants that require remediation were taken from within the Northeast Parcel; and

WHEREAS, as to the site's location, the applicant states that Fountain Avenue is a 100-ft. wide, heavily-trafficked thoroughfare, and that there is a preponderance of adjacent manufacturing and commercial land uses; and

WHEREAS, the applicant represents that the high volume of commercial traffic and the resultant noise on Fountain Avenue due to the adjacent M1-1 zoning district inhibits the residential use of the property; and

WHEREAS, the applicant also asserts that an abundance of commercial and manufacturing uses in the surrounding area diminishes the marketability of the site for a conforming residential use; and

WHEREAS, the applicant submitted a land use map reflecting that a large M1-1 zoning district is located adjacent to west of the subject site, another M1-1 zoning district is located two blocks to the south of the site, and an M3-1 zoning district is located six blocks to the east of the subject site; and

WHEREAS, the applicant states that the subject site fronts Fountain Avenue, which is the district boundary line between the R4 and M1 zoning districts, and the M1 district directly across Fountain Avenue is fully occupied with commercial, manufacturing and industrial uses, which makes the proposed site less desirable for residential use; and

WHEREAS, the applicant also provided a list of several

large commercial and manufacturing uses located in the surrounding area; and

WHEREAS, the Board does not find the location on Fountain Avenue or the surrounding uses to be unique conditions to the site, noting that Fountain Avenue and the surrounding blocks have residential uses, some of which were developed recently, suggesting that the location and surrounding uses do not directly affect the use of the site for residential development; and

WHEREAS, however, the Board finds that a conforming development of the site in strict compliance with the Zoning Resolution is not feasible due to the constraints the irregularity of the site places on maximizing the density and FAR on the site, in combination with the need to offset additional construction costs associated with the pile foundations and soil remediation; and

WHEREAS, accordingly, the Board finds that the irregular shape of the subject lot, its history of development, and its unique soil 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 which analyzed: (1) a conforming residential development with 16 two-family homes; (2) a lesser variance which contemplated the conforming residential development of the Northeast Parcel, with the remainder of the site occupied by the existing bus parking and motor vehicle repairs use; and (3) the proposed scenario with bus parking and motor vehicle repairs throughout the entire site; and

WHEREAS, at hearing, the Board directed the applicant to revise the conforming residential scenario to maximize the number of dwelling units and floor area on the site, and to analyze an alternative with conforming residential development of the Northeast Parcel, independent from the remainder of the site; and

WHEREAS, in response, the applicant submitted a revised feasibility study which analyzed: (1) a conforming residential development with 28 two-family homes; (2) a lesser variance which contemplated the conforming residential development of the Northeast Parcel, with the remainder of the site occupied by the existing bus parking and motor vehicle repairs use; (3) the conforming residential development of the Northeast Parcel, independent from the remainder of the site; and (4) the proposed scenario with bus parking and motor vehicle repairs throughout the entire site; and

WHEREAS, the study concluded that the as-of-right and lesser variance scenarios would not result in a reasonable return, but that only the proposed scenario would realize a reasonable return; and

WHEREAS, specifically, the feasibility study showed that even if the Northeast Parcel were not included within the subject site, conforming residential development would still not be feasible on the Northeast Parcel due to costs associated with the pile foundation and remediation costs; and

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WHEREAS, the applicant also submitted an analysis of a regular rectangular-shaped site with an equivalent lot area to the subject site that could accommodate 32 two-family homes and provide a reasonable return, which showed that but for the irregular shape of the site, conforming residential development would be able to overcome the additional costs associated with the pile foundations and soil remediation; and

WHEREAS, during the course of the hearing process, the Board questioned the financial analysis with regards to the site value, revenues, and cost of construction; and

WHEREAS, the Board notes that the financial consultant provided responses that addressed each issue to the satisfaction of the Board; 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 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, the applicant represents that the surrounding area is characterized by a mix of residential, commercial, and manufacturing uses; and

WHEREAS, the applicant submitted a land use map reflecting that a large M1-1 zoning district is located adjacent to the west of the subject site, another M1-1 zoning district is located two blocks to the south of the site, and an M3-1 zoning district is located six blocks to the east of the subject site; and

WHEREAS, the applicant states that the subject site fronts Fountain Avenue, which is the district boundary line between the R4 and M1-1 zoning districts, and the M1-1 district directly across Fountain Avenue is fully occupied with commercial, manufacturing and industrial uses; and

WHEREAS, the applicant also listed a number of large commercial and manufacturing uses located in the surrounding area, including the Brooklyn Union Gas Gate Station located two blocks south of the site; the Department of Sanitation building located less than one-half mile from the site; and the United States Postal Service building located 11 blocks from the site; and

WHEREAS, the applicant notes that a portion of the subject site has been occupied commercially since at least 1937, and the majority of the site was occupied since 1979 by an automobile wrecking yard including the sale of new and used cars and parts with accessory automobile repairs, pursuant to the variances granted by the Board under BSA Cal. Nos. 841-76-BZ and 78-79-BZ; and

WHEREAS, the applicant submitted a report from the Department of City Planning which discusses the decline of the residential market in the surrounding area, as well as research conducted by the Furman Center reflecting a significant increase in foreclosures; the applicant states that no new work permits have been issued by the Department of Buildings for the construction of new homes in the surrounding area since 2005; and

WHEREAS, the applicant submitted a letter from the Department of Transportation ("DOT") dated October 5, 2009, which states that the proposed action will not result in significant traffic impacts; and

WHEREAS, at hearing, the Board raised concerns with the existing use and operation of the site and its impact on nearby residential uses, noting that the existing site conditions did not satisfy the finding required to be made under ZR § 72-21(c); and

WHEREAS, the Board directed the applicant to provide an operational plan and site improvements that will minimize the impact of the proposed development on the surrounding residential uses; and

WHEREAS, as to its operational plan, the applicant states that it has reduced the number of buses operating on the site from approximately 165 to 125, including buses awaiting repair, buses undergoing bi-annual inspections, and buses on call; and

WHEREAS, the applicant further states that it has limited activities on the site to the storage and dispatch of the 125 buses, and minor repairs including oil changes and changing tires and light bulbs; and

WHEREAS, the applicant states that 20 parking spaces have been designated for employee parking on the site; the applicant represents that 20 spaces are sufficient for its 275 employees because the majority of employees walk to work or take the subway or bus and the company provides a shuttle service to and from the subway and bus stations to encourage use of public transportation among its employees; and

WHEREAS, the applicant further states that the internal circulation on the site has been improved through the creation of one contiguous site with an internal pathway to the Wortman Avenue portion of the site, permitting buses to reach the repair shop and fuel pump portion of the site without exiting the site on Wortman Avenue and re-entering on Fountain Avenue; and

WHEREAS, the applicant states that all access to the site has been consolidated with ingress and egress at the two Fountain Avenue curb cuts facing the manufacturing zoned blocks, and the three existing curb cuts on Euclid Avenue, Wortman Avenue, and Stanley Avenue will be closed, thereby eliminating all curb cuts facing residentially zoned blocks; thus, all of the bus operation on the site will be consolidated, and the traffic will be reduced along with the presence of buses on the three residentially zoned blocks opposite the site; and

WHEREAS, the applicant notes that the hours of operation for the buses at the site will be limited to Monday through Friday, from 6:00 a.m. to 7:15 p.m., and Saturday and Sunday, from 8:00 a.m. to 4:00 p.m.; the hours of operation for the repair shop will be limited to Monday through Friday, from 6:00 a.m. to 5:00 p.m.; and

WHEREAS, as to the site improvements, the applicant submitted a beautification plan, which includes: (1) removal of the second story of the two-story storage shed located along Euclid Avenue; (2) painting the metal repair structures on the site; (3) the installation of a new chain link fence with a height of eight feet around the perimeter of the entire site, with privacy slats installed throughout the fencing; (4) the planting of 44 new street trees and 172 new evergreen trees around the

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perimeter of the site; and (5) the installation of new sidewalks and tree pits, each with a width of four feet, on Stanley Avenue, Euclid Avenue and Wortman Avenue; and

WHEREAS, the Board notes that the implementation of the aforementioned improvements to the operational plan and site conditions is necessary in order for the applicant to satisfy ZR § 72-21(c); and

WHEREAS, as noted above, the current site conditions do not satisfy ZR § 72-21(c); thus, the Board finds it appropriate to condition the resolution on the implementation of the noted improvements to the operational plan and the site conditions and to set a timetable for the implementation of such improvements; and

WHEREAS, the Board requires the following schedule for the implementation of the noted site improvements: (1) the revised hours of operation, parking layout and internal circulation at the site will be implemented immediately upon the Board's approval of the subject variance application; (2) the removal of the second story of the storage shed and the painting of the metal repair structures will be completed by September 15, 2010; (3) the new sidewalks, tree pits, and planting strips will be installed by April 15, 2011; (4) the new fencing and slats will be installed by May 15, 2011; and (5) the proposed landscaping and the planting of street trees will be completed by July 15, 2011; and

WHEREAS, the Board notes that pursuant to ZR § 72-22, it has the authority to prescribe conditions and safeguards to the grant of a variance, and the applicant's failure to comply with such conditions constitute the basis for the revocation of the grant or the denial of a future application for renewal of the grant; 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 site's unique physical conditions; and

WHEREAS, the Board notes that the applicant provided an analysis of a lesser variance scenario with the Northeast Parcel occupied by conforming residential development and the remainder of the site occupied by the existing bus storage use, as well as a separate analysis for the conforming residential development of the Northeast Parcel, independent from the remainder of the site; and

WHEREAS, the applicant provided evidence that the alternative scenarios were not feasible; and

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

WHEREAS, as to the Opposition's contention that the applicant did not satisfy the ZR § 72-21 findings related to the uniqueness of the site, the ability to realize a reasonable return, and whether the hardship was self-created, the Board notes that the applicant has submitted Sanborn maps, certificates of occupancy, geotechnical reports, foundation surveys, environmental studies, several alternative schemes of

development, and numerous financial reports in support of this application, which the Board finds sufficient to satisfy these findings; 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 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. 08BSA-092K, dated March 19, 2010; 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 site within an R4 zoning district, the legalization of commercial storage of motor vehicles (bus parking) with repairs and accessory fuel storage (Use Group 16), which does not conform with applicable zoning use regulations, 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 June 29, 2010"- (4) sheets and "April 1, 2010"(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on July 13, 2013;

THAT the total number of buses on the site shall be limited to 125;

THAT the activities on the site shall be limited to the storage and dispatching of 125 buses and minor repairs;

THAT 20 parking spaces shall be provided on the site for employee parking;

THAT the existing curb cuts on Euclid Avenue, Wortman Avenue, and Stanley Avenue shall be eliminated in accordance with the BSA-approved plans;

THAT the hours of operation for bus storage and parking shall be limited to Monday through Friday, from 6:00 a.m. to 7:15 p.m., and Saturday and Sunday, from 8:00 a.m. to 4:00 p.m.; and the hours of operation for the repair shop shall be limited to Monday through Friday, from 6:00 a.m. to 5:00 p.m.;

MINUTES

THAT the second story of the two-story accessory storage shed along Euclid Avenue shall be removed and the metal repair structures on the site shall be painted by September 15, 2010;

THAT sidewalks, tree pits, and planting strips shall be installed and maintained in accordance with the BSA-approved plans by April 15, 2011;

THAT fencing shall be installed and maintained in accordance with the BSA-approved plans, by May 15, 2011;

THAT landscaping and street trees shall be provided and maintained in accordance with the BSA-approved plans by July 15, 2011;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by January 13, 2012;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT 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 13, 2010.

***The resolution has been revised to correct the 9th condition which read: "...by May 15, 2013" now reads: "May 15, 2011". Corrected in Bulletin Nos. 23-24, Vol. 96, dated June 16, 2011.**

BULLETIN

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June 22, 2011

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Tuesday, June 14, 2011**

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677-53-BZ 61-26/30 Fresh Meadow Lane, Queens
662-56-BZ 3875 Flatbush Avenue, Brooklyn
1250-65-BZ 55 East 87th Street, Manhattan
118-95-BZ 89-03 57th Avenue, Queens
111-01-BZ 9001 Ditmas Avenue, Brooklyn
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96-10-A & 97-10-A 673 & 675 Hunter Avenue, Staten Island

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45-10-BZ 1413-1429 Edward L. Grant, Bronx
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DOCKET

New Case Filed Up to June 14, 2011

82-11-BZ

2020 Homecrest Avenue, West side of Homecrest Avenue, approximately 165 feet south of Avenue T., Block 7316, Lot(s) 13, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of an existing single family home, contrary to floor area (23-141); side yard (23-461); rear yard (23-47) regulations. R5 zoning district. R5 district.

83-11-A

159 West 78th Street, North side of West 78th Street between Columbus and Amsterdam Avenues., Block 1150, Lot(s) 8, Borough of **Manhattan, Community Board: 7**. Appeal pursuant to section 310 of the Multiple Dwelling Law requesting variance to allow for enlargement of the subject building R8B district.

84-11-A

333 East 9th Street, North side of East 9th Street between 1st and 2nd Avenues., Block 451, Lot(s) 45, Borough of **Manhattan, Community Board: 3**. Appeal pursuant to Section 310 of the Multiple Dwelling Law requesting variance to allow for enlargement of the subject building. R8B district.

85-11-A

335 East 9th Street, North side of East 9th Street between 1st and 2nd Avenues., Block 451, Lot(s) 44, Borough of **Manhattan, Community Board: 3**. Appeal filed pursuant to Section 310 of the Multiple Dwelling Law to vary certain provisions of the MDL that apply to a proposed one story enlargement to the 5 story building . R8b zoning district. R8B district.

86-11-A

663-673 2nd Avenue, Northwest corner of East 36th Street and 2nd Avenue., Block 917, Lot(s) 21, 24-31, Borough of **Manhattan, Community Board: 6**. An appeal of the Department of Buildings revocation of non-conforming sign approval.C1-9 zoning district. C1-9 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

JULY 12, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 12, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

281-39-BZ

APPLICANT – Eric Palatnik, P.C., for 1599 Lexington Avenue Corporation, owner.

SUBJECT – Application May 3, 2011 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) with accessory uses which expired on May 18, 2009; Waiver of the Rules of Practice and Procedure. C1/R7-2 zoning district.

PREMISES AFFECTED – 1605 Lexington Avenue, southeast corner of 102nd Street, Block 1629, Lot 150, Borough of Manhattan.

COMMUNITY BOARD #11M

926-86-BZ

APPLICANT – Sheldon Lobel, P.C., for Manes Bayside Realty LLC, owner.

SUBJECT – Application November 1, 2010 – Extension of Term of a previously approved application permitting the operation of an automotive dealership with accessory repairs (UG 16B) which expired on November 4, 2010; Extension of time to obtain a Certificate of Occupancy which expired on January 6, 2006; Waive of the Rules of Practice and Procedure. C2-2/R6-B/R3X zoning district.

PREMISES AFFECTED – 217-07 Northern Boulevard, block front on the northerly side of Northern Boulevard between 217th Street and 218th Street, Block 6320, Lot 18, Borough of Queens.

COMMUNITY BOARD #11Q

188-96-BZ

APPLICANT – Mitchell S. Ross, Esq., for 444 Soundview Services Stations, Incorporated c/o William McCombs, owner; Scott Greco, lessee.

SUBJECT – Application June 22, 2010 – Pursuant to ZR §11-411 for an Extension of Term of an expired variance for the continued operation of a Gasoline Service Station (Gulf) with accessory convenience store which expired January 6, 2008; Waiver of the rules. R5 zoning district.

PREMISES AFFECTED – 444 Soundview Avenue, north side of Soundview Avenue and west of Underhill Avenue, Block 3498, Lot 51, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEALS CALENDAR

182-06-A thru 211-06-A

APPLICANT – Akerman Senterfitt, LLP, for Boymelgreen Beachfront Community, LLC, owners.

SUBJECT – Application April 18, 2011 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously granted Common Law Vesting which expired March 19, 2011.

PREMISES AFFECTED – 126, 128, 130, 134, 136, 140, 146, 148, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 161, and 163 Beach 5th Street. 150, 152, 154, 156, 158, 160, and 162 Beach 6th Street and 511 SeaGirt Avenue Block 15609, Lots 1, 3, 6, 8, 10, 12, 14, 16, 18, 58, 63, 64, 65, 66, 67, and 68 and Block 15608, Lots 1, 40, 42, 45, 51, 52, 53, 57, 58, 61, 63, 65, 67, and 69. Borough the Queens

COMMUNITY BOARD #14Q

52-11-A

APPLICANT – New York City Economic Development Corporation, for Department of Small Business Services, owner.

SUBJECT – Application March 30, 2011 – Appeal for a variance to Appendix G, Section G304.1.2 of the NYC Building Code to allow for a portion of a structure to be located below a food zone.

PREMISES AFFECTED – South Street & John Street, East South Street, at John Street, under the FDR Drive. Block 73, Lots 2 & 8. Borough of Manhattan.

COMMUNITY BOARD #1M

JULY 12, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, July 12, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

28-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 291 Broadway Realty Associates LLC, owner; Garuda Thai Inc. dba The Wat, lessee.

SUBJECT – Application March 24, 2011 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*The Wat*). C6-4 zoning district.

PREMISES AFFECTED – 291 Broadway, northwest corner of Broadway and Reade Street, Block 150, Lot 38, Borough of Manhattan.

COMMUNITY BOARD #1M

CALENDAR

31-11-BZ

APPLICANT – Goldman Harris LLC, for Bronx Sheperds Restoration Corporation, owner.

SUBJECT – Application March 28, 2011 – Variance (§72-21) to allow a mixed use community facility and commercial building contrary to use (ZR 32-12), floor area (ZR 33-123), rear yard (ZR 33-292), and height and setback (ZR 33-432) regulations. C8-3 zoning district.

PREMISES AFFECTED – 1665 Jerome Avenue, west side of Jerome Avenue between Featherbed Lane and Clifford Lane, Block 2861, Lot 35, Borough of Bronx.

COMMUNITY BOARD #5BX

38-11-BZ

APPLICANT – Eric Palatnik, P.C., for Arveh Schimmer, owner.

SUBJECT – Application April 5, 2011– Special Permit (§73-622) for the enlargement of an existing two family home to be converted into a single family home contrary to floor area and open space §23-141(a); side yard §23-461(a) and less than the required rear yard §23-47. R-2 zoning district.

PREMISES AFFECTED – 1368 East 27th Street, between Avenue M and N, Block 7662, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JUNE 14, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

316-06-BZ

APPLICANT – Jesse Masyr, Esq., Watchel & Masyr, LLP,
for New York Botanical Garden, owner.

SUBJECT – Application April 29, 2011 – Extension of
Time to Complete Construction of a previously granted
Variance (§72-21) for the construction of a six story
accessory garage (UG4) with 825 parking spaces on six
stories, one cellar and the roof level which expired on April
10, 2011. R7D/C2-1 zoning district.

PREMISES AFFECTED – 2960 Webster Avenue, between
Bedford Park Boulevard and Botanical Square South, Block
3274, Lot 1 & 4, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Ethan Goodman.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and
an extension of time to complete construction of a
previously granted variance to permit, within a C8-2 zoning
district, the construction of an accessory parking facility to
an existing community facility, which expired on April 10,
2011; and

WHEREAS, a public hearing was held on this
application on May 24, 2011, after due notice by publication
in *The City Record*, and then to decision on June 14, 2011;
and

WHEREAS, the premises and surrounding area had a site
and neighborhood examination by Chair Srinivasan; and

WHEREAS, the subject site is located on the south side
of Webster Avenue between Bedford Park Boulevard and
Botanical Square South; and

WHEREAS, the applicant notes that at the time of the
original approval the site was located within a C8-2 zoning
district, but that the site was rezoned on March 23, 2011 to a
C2-4 (R7D) zoning district; and

WHEREAS, the Board has exercised jurisdiction over
the site since April 10, 2007 when, under the subject calendar
number, the Board granted a variance to permit the proposed
construction of a six-story with cellar and rooftop parking

garage with 825 parking spaces, accessory to the New York
Botanical Garden; and

WHEREAS, substantial construction was to be
completed by April 10, 2011, in accordance with ZR § 72-23;
and

WHEREAS, the applicant states that, at the time the
application was filed, construction of approximately 25 percent
of the proposed parking facility is complete, including the
completion of all excavation, foundations, and the cellar level,
and the commencement of concrete construction on portions of
four stories of the building; and

WHEREAS, the applicant states that due to funding
delays, additional time is necessary to complete the project;
thus, the applicant now requests an extension of time to
complete construction; and

WHEREAS, based upon its review of the record, the
Board finds that the requested extension of time to complete
construction 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, dated April 10,
2007, so that as amended this portion of the resolution shall
read: “to grant an extension of the time to complete
construction for a term of four years, to expire on April 10,
2015; *on condition:*

THAT substantial construction shall be completed by
April 10, 2015;

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. 201088492)

Adopted by the Board of Standards and Appeals, June
14, 2011.

677-53-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for James
Marchetti, owner.

SUBJECT – Application April 22, 2010 – Extension of
Term (§11-411) of a Variance for the operation of a UG16
Auto Body Repair Shop (*Carriage House*) with incidental
painting and spraying which expired on March 24, 2007;
Extension of Time to Obtain a Certificate of Occupancy
which expired on January 13, 1999; Amendment (§11-412)
to enlarge the building; Waiver of the Rules. R4/C2-2
zoning district.

PREMISES AFFECTED – 61-26/30 Fresh Meadow Lane,
west side of Fresh Meadow Lane, 289’ northerly of the
intersection with 65th Avenue, Block 6901, Lot 48, Borough
of Queens.

COMMUNITY BOARD #8Q

MINUTES

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to July 12, 2011, at 10 A.M., for continued hearing.

662-56-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Flatbush Holdings LLC, owner.

SUBJECT – Application April 6, 2011 – Extension of Term (§11-411) of a previously approved variance which permitted a public parking lot (UG 8), which expired on January 23, 2011; Waiver of the Rules. C1-2/R5 zoning district.

PREMISES AFFECTED – 3875 Flatbush Avenue, Northerly side of Flatbush Avenue, 100' east of the intersection of Flatlands Avenue. Block 7821, Lots 21, 23. Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to July 12, 2011, at 10 A.M., for continued hearing.

1250-65-BZ

APPLICANT – Peter Hirshman, for 87th Street Owners Corporation, owner; Park 87th Corporation, lessee.

SUBJECT – Application April 21, 2011 – Extension of Term for transient parking in an existing multiple dwelling which expired on March 21, 2011. R8B zoning district.

PREMISES AFFECTED – 55 East 87th Street, 107.67' west of Park Avenue, Block 1499, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Peter Hirshman

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 12, 2011, at 10 A.M., for decision, hearing closed.

118-95-BZ

APPLICANT – Carl A Sulfaro, for White Castle System, Incorporated, owner.

SUBJECT – Application April 11, 2011 – Extension of Term of a previously granted Special Permit (§73-243) for the continued operation of a drive-thru facility at an eating and drinking establishment (*White Castle*) which expires on July 25, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on May 22, 2008; Waiver of the rules. C1-2/R6 zoning district.

PREMISES AFFECTED – 89-03 57th Avenue, southeast corner of Queens Boulevard and 57th Avenue, Block 1845,

Lot 45, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

ACTION OF THE BOARD – Laid over to July 26, 2011, at 10 A.M., for continued hearing.

111-01-BZ

APPLICANT – Eric Palatnik, P.C. for Barge Realty, Incorporated, owner; Wendy's International, lessee.

SUBJECT – Application February 23, 2011 – Extension of term of a previously granted Special Permit (§73-243) for an accessory drive-thru facility at an eating and drinking establishment (*Wendy's*) which expired February 1, 2011; Amendment for minor modification to previous conditions on the site. C1-2 (R5) zoning district.

PREMISES AFFECTED – 9001 Ditmas Avenue, Corner of Ditmas Avenue and Remsen Avenue. Block 8108, Lot 6. Borough of Brooklyn.

COMMUNITY BOARD #17BK

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 12, 2011, at 10 A.M., for decision, hearing closed.

156-03-BZ

APPLICANT – Steven M. Sinacori, Esq., of Akerman Senterfitt, for RKO Plaza LLC & Farrington Avenue Developers, LLC, owner.

SUBJECT – Application November 30, 2009 – Amendment to a variance (§72-21) for a proposed 17-story mixed-use development. The amendment seeks to increase the number of dwelling units from 200 to 357, accessory parking from 229 spaces to 360 spaces, and the amount of retail space. C2-2/R6 zoning district.

PREMISES AFFECTED – 135-35 Northern Boulevard, north side of Northern Boulevard, between Prince Street and Farrington Street, Block 4958, Lot 38 & 48, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Howard Goldman, Jack Freeman, Patrick Thompson.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 12, 2011, at 10 A.M., for decision, hearing closed.

MINUTES

APPEALS CALENDAR

17-05-A

APPLICANT – Sheldon Lobel, P.C., for GRA V LLC, owner.

SUBJECT – Application February 15, 2011 – Application to reopen pursuant to a court remand for a determination of whether the property owner has established a common law vested right to continue construction under the prior R6 zoning district. R4A zoning district.

PREMISES AFFECTED – 3329 Giles Place, west side of Giles Place between Canon Place and Fort Independence Street, Block 3258, Lots 5 & 7, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Jordan Most.

For Opposition: Teresa Grant Steeth, Karen Argenti, Judy Baier, Margaret Groarke, B. Aocon, Part Westphid.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for decision, hearing closed.

96-10-A & 97-10-A

APPLICANT – Rothkrug Rothkrug & Spector, for Hub Development Corporation, owner.

SUBJECT – Application June 1, 2010 – Proposed construction of a single family home located within the bed of a mapped street (Jay Street), contrary to General City Law Section 35. R3-1 zoning district.

PREMISES AFFECTED – 673 & 675 Hunter Avenue, north side of Hunter Avenue, bed of Jay Street, Block 3864, Lot 98 & 99, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 12, 2011, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING TUESDAY AFTERNOON, JUNE 14, 2011 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

45-10-BZ

APPLICANT – Sheldon Lobel, PC, for Leemilt's Petroleum, Incorporated, owner.

SUBJECT – Application April 5, 2010 – Special Permit (§11-411 and §11-412) for the reinstatement of a Variance for the continued operation of a gasoline service station (*Getty*) which expired on June 23, 1986; Amendment to increase the size of the auto laundry; Extension of Time to obtain a Certificate of Occupancy. C1-4/R7-1 zoning district.

PREMISES AFFECTED – 1413-1429 Edward L. Grant Highway, southwest corner of Plimpton Avenue and Edward L. Grant Highway, Block 2521, Lot 15, Borough of Bronx.

COMMUNITY BOARD #4BX

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated March 4, 2010, acting on Department of Buildings Application No. 220045948, reads in pertinent part:

“The continued operation of the property with a gasoline service station is contrary to ZR § 22-10 and BSA Cal. No. 622-55-BZ and must be referred to the BSA for approval;” and

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reinstatement of a prior Board approval to permit the operation of a gasoline service station with accessory uses (Use Group 16) pursuant to ZR § 11-411, an amendment to permit modifications to the previously-approved plans pursuant to ZR § 11-412, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on December 14, 2010, after due notice by publication in the *City Record*, with continued hearings on March 15, 2011 and May 24, 2011, and then to decision on June 14, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner

MINUTES

Montanez, and Commissioner Ottley-Brown; and

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

WHEREAS, the premises is located on the southeast corner of Plimpton Avenue and Edward L. Grant Highway, within a C1-4 (R7-1) zoning district; and

WHEREAS, the applicant notes that the site was formerly comprised of tax lots 15, 16, 17, 20 and 23, however, these lots have all been merged into current Lot 15; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 19, 1955 when, under BSA Cal. No. 14-55-BZ, the Board granted a variance to permit the construction of a gasoline service station on former tax lot 17, for a term of 15 years; and

WHEREAS, on June 18, 1957, under BSA Cal. No. 622-55-BZ, the Board granted a new variance to permit the construction of a gasoline service station, lubritorium, non-automatic car wash, office and salesroom, minor repairs, and parking and storage of more than five motor vehicles on all lots now comprising the subject site (former tax lots 15, 16, 17, 20 and 23), for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, on June 23, 1981, under BSA Cal. Nos. 622-55-BZ and 77-81-A, the Board amended the resolution to permit the reduction in the size of the existing building, thereby eliminating the car wash, lubritorium, and minor auto repairs from the site, and permitting the relocation of the gas pump island and the construction of a new steel canopy over the gasoline pumps, and extended the term of the variance for a term of five years, which expired on June 23, 1986; and

WHEREAS, the applicant states that the work permitted pursuant to the June 23, 1981 grant was never commenced and the site currently operates in substantial compliance with the Board's grant prior to the June 23, 1981 amendments; and

WHEREAS, the term of the variance has not been extended since its expiration on June 23, 1986; and

WHEREAS, the applicant represents, however, that the use of the site as a gasoline service station with accessory uses has been continuous since the initial grant; and

WHEREAS, the applicant now proposes to reinstate the grant as it existed prior to the amendments that were approved in the June 23, 1981 grant, which were never undertaken; and

WHEREAS, the applicant has requested a ten-year extension of term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance for a term of not more than ten years; and

WHEREAS, the applicant also seeks to amend the grant to approve site conditions that do not conform with previously approved plans, to reflect: (1) the removal and relocation of 14 oil and underground storage tanks for motor fuel; (2) the enlargement of the car wash portion of the service station building by 425 sq. ft.; (3) the continued operation of the car wash and automotive repair uses at the site, which have been continuous despite the June 23, 1981 grant which permitted the reconfiguration of the site and the discontinuance of these uses;

(4) the discontinuance of the used car sales operation on the site; (5) the installation of interior partitions in the building's accessory sales and office area; and (6) the installation of a landscaping and parking area on the southern portion of the lot; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for changes to the site; and

WHEREAS, during the course of the hearing process, the Board questioned whether the queuing space on the site was sufficient for the car wash operation, and directed the applicant to comply with C1 district signage regulations and to install landscaping on the site in accordance with the previously approved plans; and

WHEREAS, in response, the applicant submitted revised drawings reflecting the queuing of vehicles at the car wash entrance, and states that there are no complaints on record from the community board or any of the relevant City agencies regarding the queuing of vehicles at the site; and

WHEREAS, the applicant also submitted photographs reflecting the removal of all non-complying signs from the site, a signage plan reflecting that the site complies with C1 district signage regulations, and revised plans reflecting the installation of a landscaping area in the southeast corner of the site with a landscaping strip extending along the retaining wall at the southern lot 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.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, 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 11-412 for a reinstatement of a prior Board approval of a gasoline service station with accessory uses (UG 16), an amendment to permit the noted modifications to the site, and an extension of time to obtain a certificate of occupancy to June 14, 2012; *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 3, 2011"-(3) sheets and "May 11, 2011"-(2) sheets; and *on further condition*:

THAT this permit shall be for a term of ten years, to expire on June 14, 2021;

THAT all signage on the site shall comply with C1 district regulations;

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

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

THAT a new certificate of occupancy be obtained by June 14, 2012;

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;

THAT the approved plans shall be considered approved

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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 14, 2011.

9-11-BZ

CEQR #11-BSA-055X

APPLICANT – Sheldon Lobel, P.C., for Riverdale Equities, LTD, owner; White Plains Road Fitness Group, LLC, lessee.

SUBJECT – Application January 31, 2011 – Special Permit (§73-36) to permit the operation of the proposed physical culture establishment (*Planet Fitness*). C4-4 zoning district.

PREMISES AFFECTED – 2129A-39A White Plains Road, a/k/a 2129-39 White Plains Road, a/k/a 626-636 Lydig Avenue, southeast corner of the intersection of White Plains Road and Lydig Avenue, Block 4286, Lot 35, Borough of Bronx.

COMMUNITY BOARD #11BX

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated January 17, 2011, acting on Department of Buildings Application No. 210059951, reads in pertinent part:

“Proposed physical culture establishment is not permitted in a C4-4 zoning district and requires special permit by the Board of Standards and Appeals as per Zoning Resolution section 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C4-4 zoning district, the operation of a physical culture establishment (PCE) at portions of the cellar and first floor, and the entire second floor of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 5, 2011, after due notice by publication in *The City Record*, with continued hearings on May 10, 2011 and May 24, 2011, and then to decision on June 14, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Bronx, recommends disapproval of this application, citing concerns with the proposed 24-hour operation of the PCE; and

WHEREAS, certain members of the community provided testimony in opposition to this application (hereinafter, the “Opposition”), citing concerns with the proposed 24-hour operation of the PCE, the impact of the PCE on neighboring residential uses, parking, and security; and

WHEREAS, the subject site is located on the southeast corner of White Plains Road and Lydig Avenue, within a C4-4 zoning district; and

WHEREAS, the site has 118 feet of frontage on White Plains Road, 102 feet of frontage on Lydig Avenue, and a total lot area of 10,694 sq. ft.; and

WHEREAS, the site is occupied by a two-story commercial building which is currently under construction; and

WHEREAS, the PCE will occupy a total of 16,507 sq. ft. of floor space at portions of the cellar and first floor, and the entire second floor; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, 24 hours per day; Friday, from 12:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, in response to the concerns raised by the community board and neighborhood residents, the applicant submitted a revised drawing reflecting that tint glazing will be installed on all of the PCE’s second floor windows on the Lydig Avenue frontage, to prevent any adverse impact from the PCE’s hours of operations on the residential properties located to the west of the subject site on Lydig Avenue; and

WHEREAS, at the direction of the Board, the applicant also agreed to turn off the illuminated sign located on Lydig Avenue between 11:00 p.m. to 7:00 a.m.; and

WHEREAS, as to the security concerns raised by the Opposition, the applicant states that exterior security cameras will be installed on the building, and the applicant submitted a letter from Planet Fitness stating that its staff is trained with respect to security issues and will conduct periodic checks of the building’s perimeter; and

WHEREAS, the applicant also submitted a traffic and parking analysis which reflects that the peak hourly automobile trips generated by the PCE will not adversely affect traffic conditions in the area, and that there is ample available parking in the vicinity of the site during the PCE’s peak hours, both on the street and in a nearby municipal parking lot; 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

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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 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 617.2; 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. 11BSA055X, dated January 31, 2011; and

WHEREAS, the EAS documents 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, 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 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, on a site within a C4-4 zoning district, the operation of a physical culture establishment at portions of the cellar and first floor, and the entire second floor of a two-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 10, 2011"- (1) sheet and "Received January 31, 2011"- (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 14, 2021;

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 all massages shall be performed by New York State licensed massage therapists;

THAT tint glazing shall be installed on the PCE's windows as indicated on the BSA-approved plans;

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

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);

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, June 14, 2011.

25-11-BZ

CEQR #11-BSA-055X

APPLICANT – Sheldon Lobel, P.C., for Health Science Center at Brooklyn Foundation, Incorporated, owner; Downstate Technology Center, Incorporated, lessee.

SUBJECT – Application March 9, 2011 – Variance (§72-21) to permit the enlargement of an existing medical research facility (*Downstate Advanced Biotechnology Incubator*), contrary to floor area (§43-10), height and setback (§43-20), required parking (§43-21), parking space dimensions (§44-42) and off street loading bay (§44-52) regulations. M1-1 zoning district.

PREMISES AFFECTED – 760 Parkside Avenue, South side of Parkside Avenue, mid-block between New York Avenue and Nostrand Avenue. Block 4828, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #9BK

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 4, 2011, acting on Department of Buildings Application No. 320271059, reads in pertinent part:

1. The proposed enlargement to a biotechnology laboratory building for Downstate Medical Center, Use Group 17B, in an M1-1 zoning district exceeds the allowable floor area ratio of 1.00 contrary to section 43-12 of the Zoning Resolution.
2. The proposed three-story, 44'-6" front portion of

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the enlargement proposed to be located within the 20' initial setback distance on a narrow street exceeds the 30' or two stories allowed by section 43-43 of the Zoning Resolution.

3. The three-story, 44'-6" front portion of the proposed enlargement penetrates the sky exposure plane by 4'-6" contrary to section 43-43 of the Zoning Resolution.
4. Fewer accessory off-street parking spaces than one per 1,000 SF of floor area are proposed to be provided for the enlarged biotechnology laboratory building, Use Group 17B, in an M1-1 zoning district contrary to section 44-21 of the Zoning Resolution.
5. The dimensions of ten of the proposed accessory off-street parking stalls are less than the 8'-6" x 18' required by section 44-42 of the Zoning Resolution.
6. The loading berth required for hospitals and related facilities is not provided contrary to section 44-52 of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-1 zoning district, the proposed enlargement of a three-story building for the Downstate Advanced Biotechnology Incubator (the "Incubator"), occupied by medical research laboratories (Use Group 17) and offices, which does not comply with zoning requirements concerning floor area ratio ("FAR"), initial setback distance, sky exposure plane, the number and dimensions of parking spaces, and off-street loading berths, contrary to ZR §§ 43-12, 43-43, 44-21, 44-42 and 44-52; and

WHEREAS, a public hearing was held on this application on May 10, 2011, after due notice by publication in the *City Record*, and then to decision on June 14, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the applicant submitted general letters of support for the Incubator's program from numerous organizations and elected officials; and

WHEREAS, this application is brought on behalf of Downstate Technology Center, Inc. (the "Technology Center"), a not-for-profit medical research corporation affiliated with SUNY Downstate Medical Center ("SUNY Downstate"), a not-for-profit medical center and educational institution; and

WHEREAS, the applicant notes that SUNY Downstate is one of the 64 campuses of the State University of New York which are located throughout the state; and

WHEREAS, the applicant states that the proposed enlargement of the Incubator is part of SUNY Downstate's mission to help foster the development of the biotechnology industry in New York City, and that the Technology Center will oversee the development and management of the Incubator; and

WHEREAS, the subject site is located on the south side of Parkside Avenue, between New York Avenue and Nostrand Avenue, within an M1-1 zoning district; and

WHEREAS, the site has approximately 268 feet of frontage on Parkside Avenue, a depth of 126 feet, and a total lot area of 33,725 sq. ft., and

WHEREAS, the site is currently occupied by a three-story medical research facility building with research laboratories (Use Group 17) on the second and third floors, and medical offices, mechanical space and electrical space on the first floor (Use Group 4), and with a floor area of 23,760 sq. ft.; and

WHEREAS, the applicant proposes to enlarge the subject building by extending each floor with an approximately 114-ft. by 77-ft. enlargement, thereby adding approximately 8,750 sq. ft. per floor; and

WHEREAS, the applicant states that the proposed enlargement will enable the Incubator to add 19 new laboratories and additional offices, conference rooms, and multi-purpose rooms to the existing building; and

WHEREAS, the applicant proposes the following non-complying conditions: a floor area of 50,074 sq. ft. (the maximum permitted floor area is 33,725 sq. ft.); an FAR of 1.48 (the maximum permitted FAR is 1.0); encroachment into the sky exposure plane and the required 20'-0" initial setback; 29 parking spaces (a total of 51 parking spaces are required); ten parking spaces with dimensions less than the required dimensions of 8'-6" by 18'-0"; and no off-street loading berths (a minimum of one off-street loading berth is required); and

WHEREAS, the applicant states that the following are the programmatic needs of the Incubator: (1) to encourage growth in the field of medical research; (2) to be located close to the SUNY Downstate campus; (3) to maintain a program with a sufficient size to attract and accommodate additional doctors, scholars, and professors; and (4) to provide community development and educational programming; and

WHEREAS, in order to meet its programmatic needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, as to location, the applicant states that the Incubator's location close to the SUNY Downstate campus provides important benefits to the Technology Center's program, as research companies leasing space at the Incubator have access to SUNY Downstate's significant medical research resources; and

WHEREAS, the applicant further states that the Technology Center has a programmatic need to keep the Incubator at its current location by expanding the existing facility, and that relocating to a new site would be prohibitively expensive because the existing building's facilities include: (1) specialized acid neutralization tanks; (2) an acid collection system; (3) a sophisticated HVAC system; (4) computerized control of air pressure, negative pressure and fume hood exhaust; and (5) an emergency generator; and

WHEREAS, the applicant notes that the Incubator represents the only "wet laboratory" incubator space in Brooklyn, where chemicals, drugs, and biological matter are tested and analyzed, requiring dedicated utilities including specialized ventilation and piped utilities; and

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WHEREAS, as to the size of the program, the applicant states that it is necessary for the Incubator to maintain a sufficient size to attract and accommodate additional doctors, scholars and professors, and that having additional research companies within the existing facility will allow for increased interaction among companies, further allowing these companies to advance their own research through both knowledge-sharing and use of other core facilities; and

WHEREAS, as to the need for community development and educational programming, the applicant states that the Technology Center is involved in community health and outreach programs, teaching programs (in conjunction with SUNY Downstate), and a workforce development program with Hunter College that are housed at the Incubator; and

WHEREAS, the applicant further states that the expansion of the existing Incubator allows for the fulfillment of program goals relating to this community development and educational programming; and

WHEREAS, the applicant represents that the requested waivers of FAR, setback and sky exposure plane requirements will permit the number and layout of laboratories and other accessory offices and multipurpose rooms that are required to allow the Incubator to operate feasibly and efficiently; and

WHEREAS, specifically, the applicant states that if the proposed enlargement were to comply with the maximum FAR of 1.0, approximately 16,345 sq. ft. of the enlargement would have to be eliminated, which would result in a reduction of the number of additional laboratories from 19 to four; and

WHEREAS, the applicant further states that compliance with the required setback and sky exposure plane requirements would eliminate approximately ten feet from the proposed third floor, which would significantly decrease the size of four laboratories and eliminate two offices proposed on the third floor; and

WHEREAS, the applicant states that the size of the laboratories is an important part of the Incubator's programmatic needs, which require that each laboratory module be as small as possible but flexible enough to allow modules to be combined into a larger laboratory space, in order to accommodate and attract a range of biotechnology companies; and

WHEREAS, the applicant submitted a letter from its architect stating that the standard laboratory size for a biotechnology laboratory ranges from 500 to 800 sq. ft. and that the incubator facilities must be flexible in nature to allow for a variety of functions and to allow smaller lab spaces to grow into larger spaces; and

WHEREAS, the applicant states that the requested parking waivers are necessary because providing the additional 22 required accessory spaces would restrict the building footprint and reduce the necessary program space due to the limited lot area available, and the required minimum parking stall depth of 18 feet cannot be accommodated for all 29 of the parking spaces that are

proposed because the placement of bollards at the rear of the building to protect pedestrians entering and exiting, in combination with the ADA-compliant access provided on the east side of the existing building, reduce the aisle width in these areas; and

WHEREAS, the applicant further states that the requested loading berth waiver is necessary to allocate the floor area to laboratories and other necessary program space, and represents that the Incubator's loading requirements are relatively minimal and can be accommodated without the required loading berth; and

WHEREAS, the applicant represents that the loading berth waiver will also not affect the disposal of hazardous waste materials, as the Incubator is occupied by small biotechnology companies that generate minimal amounts of hazardous waste, which is stored in regulated containers in the laboratory modules until they are collected by a vendor certified to properly dispose of them at a coordinated pickup time, and such collection and disposal does not require the use of a loading berth; and

WHEREAS, the applicant concludes that the requested waivers are required to meet the programmatic needs of the Technology Center; and

WHEREAS, in addition to the programmatic needs of the Technology Center, the applicant represents that the subsurface conditions of the site also create an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, specifically, the applicant conducted a Phase I Environmental Site Assessment which detected various volatile organic compounds and metals within 15 feet below the ground surface; and

WHEREAS, the applicant represents that, due to this subsurface contamination, the costs associated with excavation and soil remediation prohibit the applicant from locating a portion of the enlargement below grade; and

WHEREAS, the applicant further represents that, in the absence of such subsurface soil condition, some of the floor space proposed to be located above grade could be located below grade where it would not be counted as floor area, thereby eliminating or reducing the degree of some of the requested waivers; and

WHEREAS, in analyzing the applicant's waiver requests, the Board acknowledges that the Technology Center, through its affiliation with an educational institution, is entitled to significant deference under the 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, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, at hearing, the Board requested that the applicant clarify the relationship between the Technology

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Center, the Incubator, and SUNY Downstate; and

WHEREAS, in response, the applicant states that SUNY Downstate, acting through the Health Science Center at Brooklyn Foundation, Inc. (the "Foundation"), one of SUNY Downstate's local campus foundations, created the Technology Center in 2000 to develop, maintain, and manage a multiphase biotechnology initiative instituted by SUNY Downstate to encourage growth in the field of medical research; and

WHEREAS, the applicant further states that the Foundation is the owner of the site, and that the Technology Center is a long-term lessee which oversees the development and management of the Incubator and subleases laboratory space within the Incubator to biotechnology companies; and

WHEREAS, the applicant notes that the activities at the biotechnology companies provide the necessary research and scholarship opportunities to promote SUNY Downstate's educational mission and the programmatic needs of the Technology Center; and

WHEREAS, the applicant states that the Research Foundation of SUNY (the "Research Foundation"), which manages the grants for all 64 SUNY campuses, is a corporate member of the Technology Center, and that SUNY Downstate and the Research Foundation handle certain administrative functions on behalf of the Technology Center, including personnel, benefits, and payroll; and

WHEREAS, the applicant represents that the Technology Center facilitates the interaction of SUNY Downstate students and faculty with biotechnology companies using innovative methods of study at the Incubator, and that MD and PhD students at SUNY Downstate regularly work with biotechnology companies at the Incubator as part of SUNY Downstate's teaching program, and medical doctors working at the Incubator are part of SUNY Downstate's faculty; and

WHEREAS, the applicant further represents that the constant interaction between the Incubator and the rest of SUNY Downstate's facilities is critical to the advancement of SUNY Downstate as a state-of-the-art educational and medical facility; and

WHEREAS, the applicant states that the Incubator's medical offices are used for clinical trials associated with research performed at the Incubator; and

WHEREAS, the applicant also submitted a letter from SUNY Downstate which states that the Incubator provides space to house early-stage biotechnology companies, which offer training opportunities for PhD, MD, MD/PhD and BA/BS and MS students, and the Incubator provides clinical space to train medical students, residents, and fellows in the care of patients and to learn how to perform clinical trials; and

WHEREAS, the letter submitted by the applicant states that 21 members of SUNY Downstate's faculty work at the Incubator, and each year 140 SUNY Downstate students and 45 residents and fellows rotate at the Incubator, and SUNY Downstate administers a bioscience/biotechnology technician training program at the Incubator which has trained over 260 students; and

WHEREAS, the letter submitted by the applicant further states that a majority of the companies at the incubator have at least one staff member from SUNY

Downstate, and 50 percent of the Technology Center's directors are on the SUNY Downstate staff; and

WHEREAS, accordingly, the Board finds that the Technology Center, as an integrated part of SUNY Downstate and a component of its educational mission, merits the deference afforded to educational institutions; and

WHEREAS, the Board accepts that the requested waivers will facilitate the construction of a building that will meet the specific needs of the Technology Center; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical conditions, when considered in conjunction with the Technology Center's programmatic needs, 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 Technology Center 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 enlargement 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 use is permitted as-of-right within the subject M1-1 zoning district; and

WHEREAS, the applicant submitted an FAR study of 75 lots on blocks within a 400-ft. radius of the site, which reflects that there are buildings with a similar bulk to that proposed on the nearby SUNY Downstate campus, and buildings with higher FARs are present within the surrounding residential districts, including the R6 and R7A districts adjacent to the subject M1-1 district; and

WHEREAS, the FAR study submitted by the applicant indicates that the average FAR in the surrounding area is 1.17, and the buildings fronting on Nostrand Avenue on the subject block all have FARs above the proposed FAR of 1.48; and

WHEREAS, as to parking, the applicant submitted an area map which reflects that parking facilities are located elsewhere on the SUNY Downstate campus in close proximity to the Incubator, and public parking facilities are located one block south of the Incubator; thus, there is sufficient parking in close proximity to the Incubator to accommodate any overflow parking from the site; and

WHEREAS, the applicant states that the Incubator is also easily accessed by public transportation, with the Winthrop Street subway station for the 2 and 5 subway lines located on Nostrand Avenue between Winthrop Street and Parkside Avenue; 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, 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 Technology Center and

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the constraints of the subject site; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to accommodate the Technology Center's current and projected 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 a Unlisted action pursuant to 6 NYCRR, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") 11BSA068K, dated May 26, 2011; 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 subject SUNY Downstate Biotechnology Center site at 760 Parkside Avenue is located within a larger area between Winthrop Street and Clarkson Avenue that was formerly used as a manufactured gasification plant (Flatbush Gas Company); and

WHEREAS, the subject site and six other parcels in the area are subject to an Order of Consent and Administrative Settlement ("OCAS") between Brooklyn Union Gas (now National Grid) and the New York State Department of Environmental Conservation ("DEC"); and

WHEREAS, OCAS requires that the site be investigated, characterized, and, if necessary, remediated, and that all site work must be done pursuant to a DEC-approved work plan and consistent with the National Oil and Hazardous Substances Pollution Contingency Plan; and

WHEREAS, a Phase II investigation of the subject site pursuant to a DEC-approved Work Plan was completed; and

WHEREAS, based on the results of the Phase II investigation, DEC identified the need for additional field sampling and remediation measures at the subject site; and

WHEREAS, the applicant has proposed a sub-slab vapor barrier system beneath the Incubator to ensure that any contamination within the undisturbed soil remaining on the site does not pose a risk to future occupants of the new building; 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, within an M1-1 zoning district, the proposed enlargement of a three-story building occupied by medical research laboratories (Use Group 17) and offices, which does not comply with zoning requirements concerning FAR, initial setback distance, sky exposure plane, the number and dimensions of parking spaces, and off-street loading berths, contrary to ZR §§ 43-12, 43-43, 44-21, 44-42 and 44-52, *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 10, 2011" – (10) sheets; and *on further condition*:

THAT the enlarged building will have the following parameters: a maximum floor area of 50,074 sq. ft. (1.48 FAR); a total height of 52'-2", and a minimum of 29 parking spaces, as illustrated on the BSA-approved plans;

THAT DOB shall ensure that a sub-slab vapor barrier system is included in the plans for the proposed building;

THAT 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 construction shall proceed in accordance with ZR § 72-23; and

THAT the Department of Buildings must ensure compliance 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 14, 2011.

56-10-BZ

APPLICANT – T-Mobile Northeast LLC, for Luca & Maryann Guglielmo, owners.

SUBJECT – Application April 19, 2010 – Variance (§72-21) to construct a telecommunications facility on the rooftop of an existing building. The proposal is contrary to perimeter wall height (§33-431) sky exposure plane (§33-431) and front yard (§23-45). C1-2/R3-2 zoning district.

PREMISES AFFECTED – 3424 Quentin Road, Quentin Road and East 35th Street, Block 7717, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Adam Moss and Jason Fichter.

For Opposition: Mary Campbell.

ACTION OF THE BOARD – Laid over to July 26, 2011, at 1:30 P.M., for continued hearing.

MINUTES

119-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Samson and Rivka Molinsky, owners.

SUBJECT – Application June 28, 2010 – Variance (§72-21) to allow legalization of an enlargement of a residential building, contrary to front yard (§23-45) and height (§23-631) regulations. R2X zoning district.

PREMISES AFFECTED – 787 Cornaga Avenue, southwest corner of Cornaga Avenue and Mador Court, Block 15571, Lot 133, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Josh Rinesmith, Richard Lobel, Lewis Garfinkel, Boomie Pinter, Jonathon Rapfogel, Rivka Molinsky.

ACTION OF THE BOARD – Laid over to July 12, 2011, at 1:30 P.M., for continued hearing.

128-10-BZ

APPLICANT – Eric Palatnik, P.C., for Merhay Yagaduyev, owner; Jewish Center of Kew Gardens Hill Inc., lessee.

SUBJECT – Application July 13, 2010 – Variance (§72-21) to permit proposed synagogue, religious school and Rabbi's residence (*Jewish Center of Kew Gardens*) contrary to floor area and lot coverage (§24-11), height, setback and sky exposure plane (§24-521), front yard (§24-34), side yards (§24-35), side setback (§24-551), and minimum distance between windows (§24-672 and §23-863). R4 zoning district.

PREMISES AFFECTED – 147-58 77th Road, 150th Street and 77th Road, Block 6688, Lot 31, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik and Sandy Anagnostov.

ACTION OF THE BOARD – Laid over to July 26, 2011, at 1:30 P.M., for continued hearing.

6-11-BZ

APPLICANT – Paul Bonfilio, for Denis Forde, Rockchapel Reality, LLC, owner.

SUBJECT – Application January 19, 2011 – Variance (§72-21) to permit the construction of a one family detached residence on a vacant corner tax lot contrary to ZR §23-711 for minimum distance between buildings on the same zoning lot; ZR §23-461 for less than the required width of a side yard on a corner lot and ZR §23-89(b) less than the required open area between two buildings. R2A zoning district.

PREMISES AFFECTED – 50-20 216th Street, corner of 51st Avenue, Block 7395, Lot 13, 16, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Paul Bonfilio.

For Opposition: Council Member Daniel Halloran, Xavier San Miguel of Senator Tony Avella Office, Anthony Lemma of Assembly Member Office, Michael Feiner, Armando

Coutinho, Sebastian D'Agostino, David S. Goldstein, Henry Euler, Ann Porfilio, Jay Koellner, Mary B. MaLone, Nancy Togmen, Brenda Goldstein, Richard Kashdan, Rita Kashdan, and others.

ACTION OF THE BOARD – Laid over to July 26, 2011, at 1:30 P.M., for continued hearing.

19-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Brown and Yechiel Fastag, owners.

SUBJECT – Application February 24, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence, contrary to floor area and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1271 East 24th Street, east side of East 24th Street, between Avenue L and Avenue M, Block 7642, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 12, 2011, at 1:30 P.M., for decision, hearing closed.

23-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 484 Fulton Owner, LLC, owner; 490 Fulton Street Fitness Group, LLC, lessee.

SUBJECT – Application March 3, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C5-4 (DB) zoning district.

PREMISES AFFECTED – 490 Fulton Street, west side of Bond Street, between Fulton Street and Livingston Street, Block 159, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 12, 2011, at 1:30 P.M., for decision, hearing closed.

34-11-BZ

APPLICANT – Joan Humphreys/A & H Architecture PC, for Keith W. Bails/272 Driggs Avenue Corporation, owner; Adriane Stare/Caribou Baby d/b/a Stollenwerck Stare LLC, 272 Driggs Avenue, lessee.

MINUTES

SUBJECT – Application March 29, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Caribou Baby*). C2-4 Overlay/R6B zoning district.

PREMISES AFFECTED – 272 Driggs Avenue, north side of Driggs Avenue 85.29' west of Eckford Street, Block 2681, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Joan Humphreys.

For Administration: Anthony Scaduo, Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 12, 2011, at 1:30 P.M., for decision, hearing closed.

49-11-BZ

APPLICANT – Sheldon Lobel, P.C., for A & G Real Estate, LLC, owner; Barry Bootcamp, lessee.

SUBJECT – Application April 15, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Barry's Bootcamp*). C6-3A zoning district.

PREMISES AFFECTED – 135 West 20th Street, north side of West 20th Street, between 6th and 7th Avenues, Block 796, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 12, 2011, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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AND APPEALS

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June 29, 2011

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DOCKET

New Case Filed Up to June 21, 2011

87-11-BZ

159 Exeter Street, Between Hampton Street and Oriental Boulevard., Block 8737, Lot(s) 26, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an single family home, which will be non-compliance in Floor Area, open space, and lot coverage, contrary to (§23-141)(b) ZR Section. R3-1 zoning district. R3-1 district.

88-11-BZ

1279 Redfern Avenue, southeasterly side of Redfern Avenue, 755.36 easterly of Nameoke Avenue, Block 1552, Lot(s) 48, Borough of **Queens, Community Board: 14**. Special Permit for proposed day care facility (School) in an M1-1 District is contrary to ZR§ 42-10 M1-1 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

JULY 19, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 19, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

1045-67-BZ

APPLICANT – Michael A. Cosentino, for Thomas Abruzzi, owner.

SUBJECT – Application June 14, 2011 – Extension of Time to obtain a Certificate of Occupancy for a previously approved Variance (§72-01 & 72-22) for an accessory parking lot to be used for adjoining commercial uses which expired on May 18, 2011. C2-2/R-2 zoning district.

PREMISES AFFECTED – 160-10 Crossbay, between 160th and 161st Avenue, Block 14030, Lots 6 & 20, Borough of Queens.

COMMUNITY BOARD #10Q

JULY 19, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, July 19, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

51-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Susan Sherer and Shimishon Sherer, owners.

SUBJECT – Application April 18, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space 23-141; yard less than the required rear yard 23-47. R2 zoning district.

PREMISES AFFECTED – 1226 East 26th Street, west side of 26th Street, between Avenue L and Avenue M, Block 7643, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #14BK

55-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Acadia 2914 Third Avenue LLC, owner; Third Avenue Bronx Fitness Group, LLC, lessee.

SUBJECT – Application April 25, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C4-4 zoning district.

PREMISES AFFECTED – 2914 Third Avenue, south of

East 152nd Street, Third Avenue and Bergen Avenue, Block 2362, Lot 13, Borough of Bronx.

COMMUNITY BOARD #1BX

56-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Adam Cohen, owner.

SUBJECT – Application April 25, 2011 – Variance (§72-21) for the enlargement of an existing one-family semi-detached residence contrary to (§ZR 22-11) and (§ZR 52-22) for non-conforming building; (§ZR 23-461(a)) side yard and (§ZR 23-141) exceeds maximum floor area. R2X zoning district.

PREMISES AFFECTED – 957 East 7th Street, East side of East 7th Street, approximately midblock between Avenue and Avenue I. Block 6510, Lot 68. Borough of Brooklyn.

COMMUNITY BOARD #12BK

57-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 208 West 125th Street Associates, LLC, owner; 208 West 125th Street Fitness Group, LLC, lessee.

SUBJECT – Application May 2, 2011– Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C6-3/C4-4D.

PREMISES AFFECTED – 208 West 125th Street and West 124th Street, west of Adam Clayton Powell Boulevard, Block 1930, Lot 37, Borough of Manhattan.

COMMUNITY BOARD #10M

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, JUNE 21, 2011 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

1069-27-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 6702
New Utrecht Avenue LLC by Frank Momando, owner.

SUBJECT – Application February 23, 2011 – Extension of
Term (§11-411) of for the continued operation of an
automatic automobile laundry, simonizing room and offices
which expired on March 6, 2011; Extension of Time to obtain
a Certificate of Occupancy. C1-2/R5 zoning district.

PREMISES AFFECTED – 6702-6724 New Utrecht
Avenue, bounded by New Utrecht Avenue, 15th Avenue and
Ovington Avenue/68th Street, Block 5565, Lot 1, Borough of
Brooklyn.

COMMUNITY BOARD #11BK

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, Commissioner Hinkson and
Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an
extension of term for the continued operation of an
automatic automobile laundry with accessory uses, and an
extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this
application on April 12, 2011, after due notice by
publication in *The City Record*, with continued hearings on
May 10, 2011 and June 7, 2011, and then to decision on June
21, 2011; and

WHEREAS, the premises and surrounding area had site
and neighborhood examinations by Chair Srinivasan, Vice-
Chair Collins, Commissioner Hinkson, Commissioner
Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Brooklyn,
recommends approval of this application; and

WHEREAS, the site is located on a triangular-shaped lot
bounded by New Utrecht Avenue to the east, Ovington Avenue
to the south and 15th Avenue to the west, within a C1-2 (R5)
zoning district; and

WHEREAS, the Board has exercised jurisdiction over
the subject site since March 6, 1956 when, under the subject
calendar number, the Board granted a variance to permit the

construction of an automatic automobile laundry, simonizing
room, boiler room and offices, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and
the term extended at various times; and

WHEREAS, most recently, on October 8, 2002, the
Board amended the grant to permit changes in the layout of
the premises, including the addition of an attendant's booth
and the relocation of the canopy on the site, and granted a
ten-year extension of term, which expired on March 6, 2011;
a condition of the grant was that a certificate of occupancy
be obtained; and

WHEREAS, the applicant now requests an additional
ten-year term and an extension of time to obtain a certificate
of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may
permit an extension of term; and

WHEREAS, at hearing, the Board directed the
applicant to clarify the operation of the car wash and how
queuing takes place on the site, and to remove excess
signage from the site, including the five pole banner signs
located in the public sidewalk; and

WHEREAS, in response, the applicant submitted a
circulation plan reflecting the direction in which cars move
on the site and clarifying where cars park on the site and
where cars queue on the site; and

WHEREAS, the applicant also submitted photographs
reflecting the removal of excess signage from the site,
including the removal of the pole banner signs and the
restoration of the sidewalk, and submitted a revised signage
analysis reflecting that the site complies with C1 district
signage regulations; and

WHEREAS, based upon the above, the Board finds
that the requested extension of term and extension of time to
obtain a certificate of occupancy 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 March 6,
1956, so that as amended this portion of the resolution shall
read: "to extend the term for ten years from the expiration of
the prior grant, to expire on March 6, 2021, and to grant an
extension of time to obtain a certificate of occupancy to June
21, 2012; *on condition* that all use and operations shall
substantially conform to drawings filed with this application
marked 'Received June 14, 2011-(3) sheets; and *on further
condition*:

THAT the term of the grant shall expire on March 6,
2021;

THAT all signage at the site shall comply with C1 district
regulations;

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

THAT a new certificate of occupancy shall be obtained
by June 21, 2012;

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

THAT the Department of Buildings must ensure
compliance with all other applicable provisions of the
Zoning Resolution, the Administrative Code and any other

MINUTES

relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application. No. 301186017)

Adopted by the Board of Standards and Appeals, June 21, 2011.

739-76-BZ

APPLICANT – Eric Palatnik, P.C. for Cord Meyer Development, LLC, owner; Peter Pan Games of Bayside; lessee.

SUBJECT – Application April 19, 2011 – Extension of Term of a Special Permit (§73-35) for the continued operation of an Amusement arcade (*Peter Pan Games*) which expired on April 10, 2011. C4-1 zoning district.

PREMISES AFFECTED – 212-95 26th Avenue, 26th Avenue and Bell Boulevard. Block 5900, Lot 2. Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 12, 2011, at 10 A.M., for decision, hearing closed.

982-83-BZ

APPLICANT – H Irving Sigman, for Barone Properties, Inc., owner.

SUBJECT – Application February 22, 2011 – Extension of Term (§11-411) of a previously approved variance permitting retail and office use (UG 6), which expired on March 6, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on May 25, 2006; Amendment (§11-412) to increase number of stores/offices from five to six; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 191-20 Northern Boulevard, southwest corner of 192nd Street, Block 5513, Lot 27, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: H. Irving Sigman and Peter Takvorian.

For Opposition: Terri Pouymari.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 19, 2011, at 10 A.M., for decision, hearing closed.

49-06-BZ

APPLICANT – Sheldon Lobel, P.C., for JZB Holdings LLC, owner.

SUBJECT – Application June 7, 2011 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the construction of a two-story commercial building which expired on May 8, 2011. R3-2/C1-2 zoning district.

PREMISES AFFECTED – 2041 Flatbush Avenue, Southeastern corner of the intersection of Flatbush Avenue and Baughman Place. Block 7868, Lot 18. Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Nora Martins.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 19, 2011, at 10 A.M., for decision, hearing closed.

161-06-BZ

APPLICANT – Eric Palatnik, P.C., for Webster Affordable Solutions, owner.

SUBJECT – Application April 25, 2011 – Extension of Time to complete construction of a Variance (§72-21) for the construction of two eight-story mixed-use residential/commercial/community facility buildings which expires on September 11, 2011. C8-2 zoning district.

PREMISES AFFECTED – 3349 Webster Avenue, Webster Avenue, south of Gun Hill Road, Block 3355, Lot 121, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 12, 2011, at 10 A.M., for decision, hearing closed.

221-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Chris Xu, owner.

SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the development of a transient hotel, contrary to district use regulations. M2-1 zoning district.

PREMISES AFFECTED – 34-08 Collins Place, north side of Collins Place, 34th Avenue, College Point and 35th Avenue, Block 4945, Lot 34, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Nora Martins.

MINUTES

ACTION OF THE BOARD – Case removed from SOC Calendar and laid over to July 26, 2011, at 1:30 P.M., for BZ public hearing.

APPEALS CALENDAR

200-10-A, 203-10-A thru 205-10-A

APPLICANT – Sheldon Lobel, P.C., for Williams Davies, LLC, owner.

SUBJECT – Application October 29, 2010 – Appeal seeking a common law vested right to continue construction commenced under the prior R5 zoning district. R4-1 zoning district

PREMISES AFFECTED – 1359, 1361, 1365 & 1367 Davies Road, southeast corner of Davies Road and Caffrey Avenue, Block 15622, Lots 15, 14, 13, 12, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Nora Matins.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction on four attached single-family homes under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on April 5, 2011, after due notice by publication in *The City Record*, with a continued hearing on June 7, 2011, and then to decision on June 21, 2011; and

WHEREAS, the site was inspected by Chair Srinivasan; and

WHEREAS, Community Board 14, Queens, recommends disapproval of the application; and

WHEREAS, the subject site is located on the southwest corner of Davies Road and Caffrey Avenue, in an R4-1 zoning district; and

WHEREAS, the site consists of Tax Lots 12 and 14 (Tentative Lots 12, 13, 14 and 15) and has 100 feet of frontage on Davies Road, 75 feet of frontage on Caffrey Avenue, and a total lot area of 7,500 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with four attached single-family homes; the homes on Tentative Lots 12 and 15 (the end lots) each have a floor area of 2,329 sq. ft., and the homes on lots 13 and 14 (the middle lots) each have a floor area of 2,125 sq. ft. (the “Homes”); and

WHEREAS, the subject site is currently located within an R4-1 zoning district, but was formerly located within an R5 zoning district; and

WHEREAS, the Homes comply with the former R5 zoning district parameters, specifically with respect to floor

area ratio (“FAR”); and

WHEREAS, however, on August 14, 2008 (the “Enactment Date”), the City Council voted to adopt the Rockaway Neighborhoods Rezoning, which rezoned the site to R4-1, as noted above; and

WHEREAS, the Homes do not comply with the R4-1 zoning district parameters as to FAR, and attached homes are not permitted in R4-1 districts; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to valid permits; and

WHEREAS, the Board notes that New Building Permit Nos. 402607345-01-NB, 402607390-01-NB and 402607407-01-NB were issued on August 30, 2007, and New Building Permit No. 402607504-01-NB was issued on September 13, 2007 (collectively, the “New Building Permits”), authorizing the development of four attached single-family homes pursuant to R5 zoning district regulations; and

WHEREAS, the New Building Permits lapsed by operation of law on the Enactment Date because the plans did not comply with the new R4-1 zoning district regulations and the Department of Buildings (“DOB”) determined that the Homes’ foundations were not complete; and

WHEREAS, by letter dated December 23, 2010, DOB stated that the New Building Permits were lawfully issued, authorizing construction of the Homes prior to the Enactment Date; 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

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (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

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 prior to the Enactment Date, the owner

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had completed the following: 100 percent of site preparation work; installation of 84 wooden timber piles, accounting for 100 percent of pile installation; 25 percent of excavation work; installation of 30 percent of the pile caps; and the pouring of ten cubic yards of concrete required for the foundation, accounting for 32 percent of footing installation; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site showing the amount of work completed as of the Enactment Date, concrete pour tickets, a foundation plan, an affidavit from the contractor, a TR5 Technical Report related to the installation of piles; vibration monitoring field inspection reports, a letter from the engineer, and concrete inspection and testing reports; and

WHEREAS, initially the applicant included an additional 46 cubic yards of concrete that were poured on the Enactment Date, however, due to a question as to the timeliness of the pour, the Board directed the applicant to remove the 46 cubic yards of concrete from its calculations; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the Enactment Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; 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 and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that prior to the Enactment Date, the owner expended \$149,921.29, including hard and soft costs and irrevocable commitments, out of \$1,248,856.24 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, copies of cancelled checks, invoices, and work orders; and

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the owner had paid or contractually incurred \$102,186.19 for the work performed at the site as of the Enactment Date, representing 47 percent of the foundation-related hard costs; and

WHEREAS, the applicant further states that the owner paid an additional \$47,735.10 in soft costs related to the work performed at the site as of the Enactment Date; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately 12 percent of the projected total cost; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with 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 serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that if vesting were not permitted, the site's permissible FAR would be reduced from 1.25 to 0.90, and attached homes would not be permitted; therefore, if required to construct pursuant to R4-1 district regulations, the applicant would be required to eliminate one of the homes from the site and redesign the entire site plan for the development; and

WHEREAS, the applicant submitted a complying site plan for the R4-1 district reflecting that the development would be reduced to three detached single-family homes with 2,250 sq. ft. of floor area each; and

WHEREAS, the applicant represents that the complying scenario would reduce the project value by approximately \$540,000, resulting in a project loss of \$170,000 under the complying scenario; and

WHEREAS, the applicant states that only 28 of the 84 timber piles installed at the site could be utilized in a complying development, resulting in a loss of approximately \$42,175 in pile installation costs alone; and

WHEREAS, applicant further states that the existing southeastern foundation wall is unusable in the complying development because the first floor extends over the wall by approximately three feet; therefore, approximately 22 cubic yards of concrete would also be lost under the complying development; and

WHEREAS, the Board agrees that the need to redesign, the limitations of any conforming construction, and the loss of actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, 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 Homes had accrued to the owner of the premises as of the Enactment Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of the New Building Permits associated with DOB Application Nos. 402607345-01-NB, 402607390-01-NB, 402607407-01-NB, and 402607504-01-NB, 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 two years from the date of this grant.

Adopted by the Board of Standards and Appeals, June 21, 2011.

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32-11-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Margaret McLaughlin, lessee.

SUBJECT – Application March 29, 2011 – Proposed construction which does not fronting on a mapped street, contrary to General City Law Section 36, Article 3. R4 zoning district.

PREMISES AFFECTED – 6 Graham Place, south side, 230' west of mapped Beach 201st Street, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated March 22, 2011, acting on Department of Buildings Application No. 420292588, reads in pertinent part:

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 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; and

WHEREAS, a public hearing was held on this application on June 21, 2011, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated April 13, 2011, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, accordingly, the Board has determined 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 March 22, 2011, acting on Department of Buildings Application No. 420292588, 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 29, 2011"- 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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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 21, 2011.

137-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Richard & Jane O'Brien, lessees.

SUBJECT – Application August 3, 2010 – Reconstruction and enlargement of an existing single-family home not fronting on a mapped street, contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 103 Beach 217th Street, 40' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

For Opposition: Anthony Scaduto and James Ahrens, Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for decision, hearing closed.

176-10-A

APPLICANT – Sheldon Lobel, P.C., for LIV Realty LLC, owner.

SUBJECT – Application September 8, 2010 – Proposed construction of a residential building not fronting a mapped street, contrary to General City Law Section 36. R6 zoning District.

PREMISES AFFECTED – 62 Brighton 2nd Place, east side, Block 8662, Lot 155, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Nora Martins.

ACTION OF THE BOARD – Laid over to July 26, 2011, at 10 A.M., for adjourned hearing.

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185-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Raymond & Regina Walsh, lessees.

SUBJECT – Application September 24, 2010 – Reconstruction and enlargement of an existing single-family home not fronting on a mapped street, contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 115 Beach 216th Street, east side Beach 216th south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

For Opposition: Anthony Scaduto and James Ahrens, Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for decision, hearing closed.

229-10-BZY

APPLICANT – Akerman Senterfitt, for 163 Orchard Street, LLC, owner.

SUBJECT – Application December 17, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior C6-1 zoning district. C4-4A zoning district.

PREMISES AFFECTED – 163 Orchard Street, Orchard and Houston Streets, between Sytanton and Rivington Street, Block 416, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to July 19, 2011, at 10 A.M, for continued hearing.

14-11-A

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Schron and Eli Schron, owners.

SUBJECT – Application February 2, 2011 – Appeal challenging a determination by the Department of Buildings that a proposed cellar to a single family home is contrary to accessory use as defined in §12-10 in the zoning resolution. R2 zoning district.

PREMISES AFFECTED – 1221 East 22th Street, between Avenues K and L, Block 7622, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyrn J. Altman and Ronny Livian.

For Opposition: John Egnatos Beene.

ACTION OF THE BOARD – Laid over to August

16, 2011, at 10 A.M., for continued hearing.

29-11-A & 30-11-A

APPLICANT – Randy M. Mastro-Gibson, Dunn & Crutcher LLP, for Win Restaurant Equipment & Supply Corporation, owner; Fuel Outdoor, lessee.

SUBJECT – Application March 24, 2011 – An appeal challenging the Department of Building's revocation of sign permits. M1-5B Zoning District.

PREMISES AFFECTED – 318 Lafayette Street, Northwest corner of Houston and Lafayette Streets. Block 522, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Randy Mastro.

For Opposition: John Egnatos Beene.

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for continued hearing.

62-11-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Richard & Jane O'Brien, lessees.

SUBJECT – Application May 10, 2011 – Appeal challenging the Fire Department's determination that a sprinkler system be provided, per Fire Code section 503.8.2. R4 zoning district.

PREMISES AFFECTED – 103 Beach 217th Street, east side of Beach 217th Street, 40' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

For Opposition: Anthony Scaduto and James Ahrens, Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for decision, hearing closed.

63-11-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Raymond & Raymond Walsh, lessees.

SUBJECT – Application May 10, 2011 – Appeal challenging the Fire Department's determination that a sprinkler system be provided, per Fire Code section 503.8.2. R4 zoning district.

PREMISES AFFECTED – 115 Beach 216th Street, east side of Beach 216th Street, 280' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

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For Applicant: Joseph A. Sherry.
For Opposition: Anthony Scaduto and James Ahrens, Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for decision, hearing closed.

77-11-A

APPLICANT – Akerman Senterfitt LLP, for 3516 Development LLC, owner.

SUBJECT – Application May 27, 2011 – Appeal seeking a determination that the property owner has acquired a common law vested right to continue development under the prior R6 zoning regulations. R6B zoning district.

PREMISES AFFECTED – 35-16 Astoria Boulevard, South side of Astoria Boulevard between 35th and 36th Streets. Block 633, Lots 39 & 140, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to July 19, 2011, at 10 A.M., for continued hearing.

REGULAR MEETING TUESDAY AFTERNOON, JUNE 21, 2011 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

197-10-BZ thru 199-10-BZ

CEQR #11-BSA-037R

APPLICANT – Antonio S. Valenziano, AIA, for John Merolo, owner.

SUBJECT – Application October 26, 2010 – Variance (§72-21) to allow three residential buildings in a manufacturing district, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 59, 63 & 67 Fillmore Street, 491.88' west of York Avenue, Block 61, Lot 27, 29, 31, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated December 1, 2010, acting on Department of Buildings Application Nos. 520036577, 520036586, and 520036595, reads, in pertinent part:

The proposed residential use is not permitted within an M1-1 zoning district contrary to section 42-00 of the NYC Zoning Resolution; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-1 zoning district, the proposed construction of three two-story single-family homes on three adjacent vacant lots, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on February 1, 2011, after due notice by publication in the *City Record*, with a continued hearing on March 1, 2011, and then to decision on June 21, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 1, Staten Island, recommends disapproval of this application based on concerns with the purported economic hardship and failure to provide alternatives which comply with R3A or R3X zoning district regulations; and

WHEREAS, the subject site comprises three through lots with frontage on Van Buren Street and Fillmore Street, between Franklin Avenue and York Avenue, within an M1-1 zoning district; and

WHEREAS, together, the three lots have a width of 75.5 feet, a depth of 111 feet, and a lot area of 8,380 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct three two-story one-family homes facing the Fillmore Street frontage, each home will have a proposed floor area of 1,662 sq. ft. (0.6 FAR), a total building height of 25'-2 13/16", a rear yard with a depth of 44.33 feet on Van Buren Street, and a front yard depth of 14 feet, with two parking spaces per dwelling unit; and

WHEREAS, because residential use is not permitted in the subject M1-1 zoning district, the applicant seeks a use variance to permit construction of the proposed building; and

WHEREAS, the applicant originally proposed three two-family homes with total building heights of 29'-11", and garages at the rear of the site at Van Buren Street; and

WHEREAS, the applicant represents 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 topography of the site; (2) the midblock location on a narrow street; and (3) the history of development of the site; and

WHEREAS, as to the topography, the applicant states that the site is encumbered with a steep slope of approximately 21 percent from Fillmore Street to Van Buren Street; and

WHEREAS, the applicant submitted a survey which

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reflects the site's slope; and

WHEREAS, the applicant states that the topography would require extensive grading of the entire site in order to accommodate a conforming commercial or manufacturing use with a marketable floor plate and parking; and

WHEREAS, the applicant states that although parking may be waived, the absence of street parking due to the narrowness of both streets would be infeasible for any conforming use and that a conforming use would be required to provide parking on site for customers and employees; and

WHEREAS, the applicant represents that there are premium costs associated with constructing on the rocky slope including transporting and disposing fill and rock and constructing a retaining wall; and

WHEREAS, as to the site's location midblock on a narrow street, the applicant states that Fillmore Street is mapped to a width of 40 feet and Van Buren Street is mapped to a width of 30 feet, and that the street beds are built to widths of 24.3 feet and 17.8 feet, respectively, which allows for one parking lane and one travel lane; and

WHEREAS, the applicant notes that nearby commercial streets such as Richmond Terrace have widths up to 80 feet; and

WHEREAS, the applicant states that there is insufficient onstreet parking since the single parking lane is occupied by cars associated with the surrounding residential uses, which were built prior to December 15, 1961 and do not provide offstreet parking; and

WHEREAS, the applicant asserts that the narrow streets which serve the area's residential traffic cannot support commercial traffic; and

WHEREAS, additionally, the applicant notes that the site is located in the midblock, which constrains maneuverability and would require traffic, including large trucks, to travel 475 feet from either Franklin Avenue or York Avenue, the nearest major cross streets; and

WHEREAS, as to the history of residential use at the site, the applicant provided a Sanborn map from 1937, which reflects that there were three homes fronting Fillmore Street at the site; and

WHEREAS, the applicant submitted DOB records, which reflect that the three homes were demolished in the past several decades; and

WHEREAS, the applicant represents, and the Sanborn map reflects that the site is now and has historically been surrounded on all sides by residential uses and that the subject block is occupied entirely by residential uses, except for one vacant site; 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 provided a financial analysis for (1) an as-of-right two-story retail and office building; (2) the initial proposal of three two-family homes; and (3) an alternate proposal of two two-family homes; and

WHEREAS, the applicant explained that it did not

propose the maximum available floor area (1.0 FAR) in the as-of-right scenario since it was unable to accommodate multiple levels of parking for a commercial development due to the expense of excavating the rock at the site and the absence of a market for such use to compensate for construction premiums; and

WHEREAS, the study concluded that the as-of-right and two two-family home alternative scenarios would not result in a reasonable return; and

WHEREAS, at hearing, the Board directed the applicant to analyze an alternate proposal of three single-family homes; and

WHEREAS, the applicant submitted the analysis and concluded that the current proposal for three two-family homes would realize a reasonable return and revised the plans accordingly; 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 proposal 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 character of the surrounding area is a mix of residential, manufacturing, and community facility uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that the subject block is occupied entirely by residential uses; and

WHEREAS, the applicant's 400-ft. radius diagram reflects that the zoning district boundary line divides Fillmore Street between an R3X zoning district across the street from the site and the subject M1-1 zoning district, but that both zoning districts, are primarily occupied with residential uses within the 400-ft. radius of the site; the radius map reflects that there are also a significant number of residential uses within the block to the north across Fillmore Street, which is within an M3-1 zoning district; and

WHEREAS, the applicant represents that residential uses occupy all of the adjacent sites and the applicant states that the site was historically occupied by residential use; and

WHEREAS, as to bulk, the Board had concern regarding the originally proposed height of 29'-11", which was driven in part by the proposal for two-family homes; and

WHEREAS, the Board noted that the proposal is not consistent with the Lower Density Growth Management Area (LDGMA) regulations that apply to all R3A zoning districts in Staten Island; and

WHEREAS, at the Board's direction, the applicant analyzed an alternate proposal of three single-family homes, in consideration of R3A and LDGMA regulations and provided the current proposal for three single-family homes with heights of 25'-2 13/16"; and

WHEREAS, the applicant analyzed the R3X regulations (applicable across Fillmore Street) and determined that the

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existing built conditions are consistent with R3A zoning regulations, but not R3X since the size of the lots would be permitted under R3A regulations, but would be non-complying pursuant to R3X regulations; and

WHEREAS, the applicant states that it complies with all R3A zoning district regulations, including FAR and height, except front yard (a front yard with a depth of 20 feet is required to be aligned with the adjacent homes); and

WHEREAS, the applicant submitted a streetscape which reflects that there are a range of building heights visible at the Fillmore Street frontage, which reflects that the majority of homes provide primary access from Van Buren Street, but the proposal is consistent with the heights visible from Fillmore Street or from Van Buren Street; and

WHEREAS, the applicant proposes to provide primary access to the proposed homes from Fillmore Street, which is at the top of the slope and allows for access at grade and requires less excavation of the site; and

WHEREAS, the Board directed the applicant to analyze an alternative where primary access to the homes was provided from Van Buren Street, since that is the predominant site plan on the block; and

WHEREAS, in response, the applicant provided an alternative with the homes facing Van Buren Street, which required deeper foundations and less access to light, air, and views; and

WHEREAS, the applicant also noted that the 1937 Sanborn map reflects that the historic homes at the site had primary access from Fillmore Street; 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 site's unique physical conditions; and

WHEREAS, as noted above, the applicant originally proposed three two-family homes; and

WHEREAS, at the Board's direction, the applicant revised the plans to reflect three single-family homes; and

WHEREAS, 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 Unlisted 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. 11-BSA-037R, dated June 14, 2011; 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 Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis has reviewed the project for potential hazardous materials and air quality impacts; and

WHEREAS, DEP reviewed the May 2010 Phase I Environmental Site Assessment Report and requested the submission of a Phase II Investigative Protocol (Work Plan) and Health and Safety Plan (HASP) to DEP for review and approval prior to the start of any field sampling; and

WHEREAS, DEP further requests that, after the Work Plan and HASP are approved by DEP, field sampling be delineated in the Phase II Site Investigation Report and be submitted to DEP for review and approval; and

WHEREAS, a Restrictive Declaration was executed on May 10, 2011 and filed for recording on June 15, 2011; and

WHEREAS, a site survey and permits search was conducted for the active industrial/manufacturing facilities for the area within a 400-ft. radius of the proposed project; and

WHEREAS, based on the air quality screening analysis conducted, DEP determined that significant adverse impacts from industrial/manufacturing uses on the proposed project are not anticipated; 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 the required findings under ZR § 72-21, to permit, within an M1-1 zoning district, the proposed construction of three two-story single-family homes, contrary to ZR § 42-00; *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 17, 2011"- nine (9) sheets; and *on further condition*:

THAT the bulk parameters of the proposed buildings shall be as follows, for each home: maximum floor area of 1,662 sq. ft. (0.6 FAR); and maximum total height of 25'-2 13/16" at the Fillmore Street elevation, as illustrated on the BSA-approved plans;

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor shall obtain from DEP a Notice to Proceed;

THAT prior to DOB's issuance of a temporary or permanent Certificate of Occupancy, the applicant or successor

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shall obtain from DEP a Notice of Satisfaction;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT all interior layouts and exits 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 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 21, 2011.

26-11-BZ

CEQR #11-BSA-069M

APPLICANT – Francis R. Angelino, Esq., for West Gramercy Associates, LLC, owner; SoulCycle East 18th Street, LLC, owner.

SUBJECT – Application March 11, 2011 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*SoulCycle*). M1-5 zoning district.

PREMISES AFFECTED – 12 East 18th Street, south side of Fifth Avenue and Broadway, Block 846, Lot 67, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Francis R. Angelino.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated May 18, 2011, acting on Department of Buildings Application No. 120584965, reads in pertinent part:

“Physical culture establishment is not permitted as of right in a M1-5M zoning district...and requires a BSA special permit per Section 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-5M zoning district within the Ladies Mile Historic District, the legalization of a physical culture establishment (“PCE”) on the first floor, mezzanine, and a portion of the cellar of a five-story mixed-use commercial/residential building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on May 24, 2011 after due notice by publication in *The City Record*, and then to decision on June 21, 2011;

and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of East 18th Street, between Fifth Avenue and Broadway, in an M1-5M zoning district within the Ladies Mile Historic District; and

WHEREAS, the site is occupied by a five-story mixed-use commercial/residential building; and

WHEREAS, the PCE has a total of 2,059 sq. ft. of floor area on the first floor and mezzanine, with an additional 1,639 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE will be operated as SoulCycle; and

WHEREAS, the proposed hours of operation are 5:30 a.m. to 9:30 p.m., seven days per week; and

WHEREAS, the applicant represents that the services at the PCE will include facilities for classes, instruction and programs for physical improvement; and

WHEREAS, the applicant represents that the proposal will not effect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission approving work associated with the proposed PCE, dated April 4, 2011; 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 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 Board notes that the PCE has been in operation since February 5, 2011, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between February 5, 2011 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; 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. 11BSA069M, dated May 11, 2011; and

WHEREAS, the EAS documents that the operation of the

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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, 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 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, on a site in an M1-5M zoning district within the Ladies Mile Historic District, the legalization of a physical culture establishment on the first floor, mezzanine, and a portion of the cellar of a five-story mixed-use commercial/residential building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 20, 2011"- One (1) sheet and "Received May 11, 2011"- Five (5) sheets and *on further condition*:

THAT the term of this grant shall expire on February 5, 2021;

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 all massages shall be performed by New York State licensed massage therapists;

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);

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, June 21, 2011.

169-09-BZ

APPLICANT – Sheldon Lobel, for Saint Georges Crescent, LLC, owner.

SUBJECT – Application June 8, 2009 – Variance (§72-21) to allow a multi-family residential building, contrary to floor area (§23-145), rear yard (§23-47), height and setback (§23-633), rear setback (§23-663), minimum distance between windows and lot lines (§23-861), and maximum number of dwelling units (§23-22) regulations. R8 zoning district.

PREMISES AFFECTED – 186 Saint George’s Crescent, east side of St. George’s Crescent, 170’ southeast of the corner formed by the intersection of Van Cortland Avenue, and Grand Concourse, Block 3312, Lot 12, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 19, 2011, at 1:30 P.M., for decision, hearing closed.

61-10-BZ

APPLICANT – James Chin & Associates, LLC, for Norman Wong, owner.

SUBJECT – Application April 26, 2010 – Variance (§72-21) to legalize an existing building contrary to height (§23-692), lot coverage (§23-245), rear yard (§23-532) and floor area (§23-145) regulations. R7-2/C1-5 zoning district.

PREMISES AFFECTED – 183 East Broadway, 43.5’ frontage on Henry Street and 26.1 frontage on East Broadway, Block 284, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Patrick Jones.

For Opposition: Ara Pehlivanian.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 19, 2011, at 1:30 P.M., for decision, hearing closed.

3-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Schron and Eli Shron, owners.

SUBJECT – Application January 10, 2011 – Special Permit (§73-622) for the enlargement of a single family home, contrary to floor area and open space (§23-141) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1221 East 22nd Street, between Avenue K and Avenue L, Block 7622, Lot 21, Borough of

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Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to July 26, 2011, at 1:30 P.M., for adjourned hearing.

4-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 1747 East 2nd Street, LLC, owner.

SUBJECT – Application January 10, 2011 – Variance (§72-21) to allow a three-story synagogue, contrary to lot coverage (§24-11), floor area (§113-51), wall height and total height (§113-55), front yard (§113-542), side yards (§113-543), encroachment into required setback and sky exposure plane (§113-55), and parking (§25-18, 25-31, and §113-561). R5 zoning district.

PREMISES AFFECTED – 1747-1751 East 2nd Street, aka 389 Quentin Road, northeast corner of East 2nd Street and Quentin Road, Block 6634, Lot 49, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to July 19, 2011, at 1:30 P.M., for continued hearing.

10-11-BZ & 11-11-BZ

APPLICANT – Rampulla Associates Architects, for Charles Cannizaro, owner.

SUBJECT – Application February 3, 2011 – Variance (§72-21) to allow two, single family homes contrary to front yard (§23-45) and rear yard regulations (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 115, 121 Finely Avenue, north of Finely Avenue, 100' southwest of Marine Way, Block 4050, Lot 53, 56, 59, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip Rampulla.

For Opposition: Robert M. Fisher and John Ryan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 19, 2011, at 1:30 P.M., for decision, hearing closed.

22-11-BZ

APPLICANT – Simons & Wright, LLC, for Agama LLC, owner; Vorea Holdings LLC, lessee.

SUBJECT – Application March 1, 2011 – Variance (§72-21) to permit the conversion of a vacant warehouse to a physical culture establishment. R6B zoning district.

PREMISES AFFECTED – 184 North 8th Street, between

Driggs and Bedford Avenues, Block 2320, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Chris Wright.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 26, 2011, at 1:30 P.M., for decision, hearing closed.

27-11-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 88 Franklin Street Group LLC, owner; Acqua Ancien Bath New York, LLC, lessee.

SUBJECT – Application March 22, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Acqua Ancien Bath*). C6-2A zoning district.

PREMISES AFFECTED – 86-88 Franklin Street, east of intersection of Church Street and Franklin Street, Block 175, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to July 26, 2011, at 1:30 P.M., for continued hearing.

36-11-BZ

APPLICANT – Francis R. Angelino, Esq., for 270 Greenwich Street Associates LLC, owner; SoulCycle Tribeca, LLC, lessee.

SUBJECT – Application April 1, 2011 – Special Permit (§73-36) to permit the legalization of a Physical Culture Establishment (*SoulCycle*). C6-3 zoning district.

PREMISES AFFECTED – 270 Greenwich Street/103 Warren Street, west side of Joe DiMaggio Highway, Block 142, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Francis R. Angelino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 19, 2011, at 1:30 P.M., for decision, hearing closed.

37-11-BZ

APPLICANT – Moshe M. Friedman, for Eli Bauer, owner.

SUBJECT – Application April 4, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side

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yards (§23-461) and (§23-48) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1337 East 26th Street, east side, 300' of Avenue M and East 26th Street, Block 7662, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 26, 2011, at 1:30 P.M., for decision, hearing closed.

59-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 156 South Avenue Corporation, owner; Community Health Center, lessee.

SUBJECT – Application May 5, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory diagnostic facility building. C8-1 zoning district.

PREMISES AFFECTED – 439 Port Richmond Avenue, southwest corner of Port Richmond Avenue and Homestead Avenue, Block 1048, Lot 9, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Fredrick A. Becker and Henry Thompson.

For Opposition: John D. Poppe.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 19, 2011, at 1:30 P.M., for decision, hearing closed.

Adjourned: P.M.

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*CORRECTION

This resolution adopted on June 7, 2011, under Calendar No. 101-05-BZ and printed in Volume 96, Bulletin Nos. 23-24, is hereby corrected to read as follows:

101-05-BZ

APPLICANT – Friedman & Gotbaum, LLP by Shelly S. Friedman, Esq., for 377 Greenwich LLC c/o Ira Drukler, owner.

SUBJECT – Application April 7, 2011 – Amendment to a Variance (§72-21) for a seven-story hotel with penthouse (*The Greenwich Hotel*). The amendment seeks to legalize the penthouse footprint and modify the penthouse façade. C6-2A/Tribeca Mixed Use (A-1) zoning district.

PREMISES AFFECTED – 377 Greenwich Street, east side of Greenwich Street on the corner formed by intersection of south of North Moore Street and east side of Greenwich Street, Block 187, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Elena Aristova.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted, in a C6-2A zoning district within Area A-1 of the Special Tribeca Mixed Use District, an eight-story (including penthouse) hotel building, contrary to ZR §§ 35-24 and 111-104; and

WHEREAS, a public hearing was held on this application on May 17, 2011, after due notice by publication in *The City Record*, and then to decision on June 7, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the subject site is located on the southeast corner of Greenwich Street and North Moore Street; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 16, 2005 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, which permitted, in a C6-2A zoning district within Area A-1 of the Special Tribeca Mixed Use District, an eight-story (including penthouse) hotel building, contrary to floor area ratio and height and setback as set forth at ZR §§ 35-24 and 111-104; and

WHEREAS, the applicant now requests that the Board amend the grant to legalize certain conditions that do not conform to the Board-approved plans; and

WHEREAS, the applicant seeks to remedy its failure to obtain approval from the Landmarks Preservation Commission (LPC) for the proposal it presented to the Board within the

context of its 2005 application; and

WHEREAS, the Board notes that during the hearing process for the 2005 application, the applicant represented to the Board that its proposal had been approved by the LPC, but the iteration before the Board had not, in fact, been approved by the LPC; and

WHEREAS, subsequent to the Board's 2005 approval, the applicant constructed the hotel pursuant to the Board approved plans; and

WHEREAS, upon its discovery that the built conditions were inconsistent with an earlier LPC approval, which had not been before the Board, the LPC required the applicant to make changes to the penthouse and rooftop; and

WHEREAS, the applicant revised the penthouse and rooftop design in accordance with the LPC and the LPC issued a Certificate of Appropriateness, dated January 21, 2011; and

WHEREAS, the applicant states that the amendment is now necessary in order to reflect the LPC-approved revised penthouse and rooftop plan; and

WHEREAS, the applicant notes that the modifications include changes to the penthouse footprint; the removal of a mansard roof; and the addition of brick cladding to match the hotel's façade; and

WHEREAS, the applicant represents that the remainder of the building reflects the conditions of the 2005 Board-approved plans and the LPC did not require any additional modification; and

WHEREAS, the applicant represents that the revised plans do not trigger any new zoning non-compliance; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment does not alter the Board's findings made for the original variance; and

WHEREAS, accordingly, the Board finds that the proposed variance, as amended, is appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated August 16, 2005, so that as amended this portion of the resolution shall read: "to permit amendments to the penthouse and rooftop design; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received April 7, 2011'-(6) sheets; and *on further condition*:

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

THAT all construction shall be performed and maintained in accordance with the LPC Certificate of Appropriateness # 11-5961, dated January 21, 2011;

THAT 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. 103488735)

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Adopted by the Board of Standards and Appeals, June 7, 2011.

***The resolution has been revised to correct the DOB Application No. which read: "102666394" now reads: "103488735". Corrected in Bulletin No. 26, Vol. 96, dated June 29, 2011.**

BULLETIN

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Volume 96, Nos. 27-29

July 21, 2011

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38-11-BZ	1368 East 27 th Street, Brooklyn

DOCKET

New Case Filed Up to July 12, 2011

89-11-BZ

2224 Avenue S, South west corner of Avenue S and East 23rd Street, Block 7301, Lot(s) 9, Borough of **Brooklyn, Community Board: 15**. Application filed pursuant to Section 73-622 of the Zoning Resolution of the City of New York, as amended, to request a special permit to allow the enlargement of a single family residence located in a residential R3-2 zoning district. R3-2 district.

90-11-BZ

23 Windom Avenue, Property is on the East Side of Windom Avenue, 210 feet south of Cedar Avenue, Block 3120, Lot(s) 19, Borough of **Staten Island, Community Board: 02**. Variance (§72-21) to allow for the legalization of a semi-detached home located on a zoning lot which is contrary to lot area and lot width (ZR §23-32), rear yard (ZR 23-47), parking location (ZR 25-141) and floor area (ZR 23-141). R3-1 zoning district. R3-1 district.

91-11-BZ

25 Windom Avenue, Property is on the East Side of Windom Avenue, 240 feet south Cedar Avenue, Block 3102, Lot(s) 18, Borough of **Staten Island, Community Board: 02**. Variance (§72-21) to allow for the legalization of a semi-detached home located on a zoning lot which is contrary to lot area and lot width (ZR §23-32). R3-1 zoning district. R3-1 district.

92-11-BZ

1349 East 26th Street, Located on the east side of East 26th Street, approximately 390 feet south of Avenue M, Block 7662, Lot(s) 28, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of a single-family residence located within an R2 zoning district, contrary to floor area, open space, side yard and rear yard regulations. R2 district.

93-11-BZ

1536 62nd Street, 380' northwesterly of the corner formed by the intersection of the northeasterly side of 63rd st with the northwesterly side of 16th Avenue., Block 5530, Lot(s) 19, Borough of **Brooklyn, Community Board: 11**. Special permit filed to pursue the conversion of an existing building approved from a Factory (Use Group 17) & Trade School (Use Group 16) to Retail & Warehouse (Use Group 6&16), & School (use Group 3) M1-1 district.

94-11-BZ

149-06 Northern Boulevard, Southeast of Northern Boulevard, Southeast of 149th Street, Block 5017, Lot(s) 11, Borough of **Queens, Community Board: 07**. Special Permit (§73-36) to facilitate the use of a portion of a new building as a physical culture establishment in a C2-2/R6A&R5 Zoning District. C2-2/R6A&R5 district.

95-11-A

385 Bayside Drive, Northside Bayside Drive 30 feet East of mapped beach 182nd Street, Block 16340, Lot(s) p/o 50, Borough of **Queens, Community Board: 14**. Reconstruction and enlargement of a single family dwelling located within a bed of a mapped street contrary to General City Law Section 35 in an R4 district. R4 district.

96-11-BZ

514-516 East 6th Street, Southside of East 6th Street, between Avenue A and Avenue B, Block 401, Lot(s) 17,18, Borough of **Manhattan, Community Board: 03**. Variance (§72-21) to allow for a residential building contrary to floor area (ZR 23-145) and dwelling units (ZR 23-22). R7B zoning district. R7B district.

97-11-BZ

1730 Cross Bronx Expressway, Northwest Corner of Rosedale Avenue and Cross Bronx Expressway, Block 3894, Lot(s) 28 (28,29), Borough of **Bronx, Community Board: 9**. Variance filed pursuant to ZR 72-21 for a 364 Square foot enlargement to the existing Structure and to legalize the enlargement of the zoning lot to include (8) additional parking spaces, accessory to an existing use group 16 automotive service station within R-5 district.

98-11-A

2812-2814 Voorhies Avenue, South side of Voorhies Avenue between East 28th and East 29th Streets, Block 8791, Lot(s) 5,6,tentative 106, Borough of **Brooklyn, Community Board: 15**. Appeal of the Borough Commissioner's final determination regarding a denied zoning challenge to a zoning approval of a house of worship due to no off-street parking being provided by the developer R4 district.

99-11-A

16 Brighton 7th Walk, between Brighton 7th Street and Brighton 8th Street, Block 8667, Lot(s) 774, Borough of **Brooklyn, Community Board: 13**. Application seeking to legalize an alteration of a two family residence which does not front upon a legally mapped street, contrary to General

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City Law 36. R6 Zoning District R6 district.

100-11-A

157 Ocean Avenue, Premises is situated on the east side of Ocean Avenue, 74 feet south of Oceanside Avenue, Block 16530, Lot(s) 400, Borough of **Brooklyn, Community Board: 14**. Proposed reconstruction of a single family home located within the bed of a mapped street contrary to General City Law Section 35. R4 Zoning District. Queens district.

101-11-BZ

1152 East 24th Street, W/S of East 234th Street 400' South of Avenue "K", Block 7623, Lot(s) 67, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) to permit the enlargement at the rear of an existing two story residence resulting in 3,745 sq ft of floor area and an enlargement of the attic. R2 zoning district R2 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

JULY 26, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 26, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

887-54-BZ

APPLICANT – Eric Palatnik, P.C., for Napa Realty Corporation, owner.

SUBJECT – Application July 5, 2011 – Extension of Time to obtain a Certificate of Occupancy for an existing gasoline service station (*British Petroleum*) with accessory convenience store (7-Eleven) which expired on June 15, 2011. C2-2/R6B zoning district.

PREMISES AFFECTED – 218-01 Northern Boulevard, between 218th and 219th Streets, Block 6321, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #11BK

713-55-BZ

APPLICANT – Walter T. Gorman, P.E., for East River Petroleum Realty LLC, owner; Brendan Utopia Mobil, lessee.

SUBJECT – Application–Extension of Term (§11-411) of a previously approved variance of the zoning variance for the continued operation of a gasoline service station (Mobil) which expired on December 11, 2011. C2-2/R3-1 zoning district.

PREMISES AFFECTED – 181-05 Horace Harding Expressway, north side block front between Utopia and 182nd Street, Block 7065, Lot 8, Borough of Queens.

COMMUNITY BOARD #11Q

742-70-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 830 Bay Street, LLC, owner.

SUBJECT – Application May 27, 2011 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of an automotive service station which expired on May 18, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on February 26, 2009 and waiver of the rules. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 830 Bay Street, southwest corner of Bay Street and Vanderbilt Avenue, Block 2836, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

51-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 70-50 Kissena Boulevard LLC, owner.

SUBJECT – Application May 26, 2011 – Amendment to a previously granted Variance (§72-21) to legalize the change of use from a (Use Group 6) one story retail building to a (Use Group 3) community facility with minor changes to the exterior façade and interior layout. R-4 zoning district.

PREMISES AFFECTED – 70-44/52 Kissena Boulevard, southeast corner of 70th Road and Kissena Boulevard, Block 6656, Lot 52, Borough of Queens.

COMMUNITY BOARD #8Q

JULY 26, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, July 26, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

221-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Chris Xu, owner.

SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the development of a transient hotel, contrary to district use regulations. M2-1 zoning district.

PREMISES AFFECTED – 34-08 Collins Place, north side of Collins Place, 34th Avenue, College Point Boulevard and 35th Avenue, Block 4945, Lot 34, Borough of Queens.

COMMUNITY BOARD #7Q

60-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Zvi Turk and Miriam Turk, owners.

SUBJECT – Application May 5, 2011– Special Permit (§73-622) for the enlargement of existing single family home, contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1214 East 29th Street, west side of East 29th Street and Avenue L, Block 7646, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JULY 12, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

1250-65-BZ

APPLICANT – Peter Hirshman, for 87th Street Owners Corporation, owner; Park 87th Corporation, lessee.

SUBJECT – Application April 21, 2011 – Extension of Term for transient parking in an existing multiple dwelling which expired on March 21, 2011. R8B zoning district.

PREMISES AFFECTED – 55 East 87th Street, 107.67' west of Park Avenue, Block 1499, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for a transient parking garage, which expired on March 21, 2011; and

WHEREAS, a public hearing was held on this application on June 14, 2011, after due notice by publication in *The City Record*, and then to decision on July 12, 2011; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, the subject premises is located on the north side of East 87th Street between Madison Avenue and Park Avenue, within an R8B zoning district; and

WHEREAS, the site is occupied by a 14-story residential building; and

WHEREAS, the cellar is occupied by a 57-space accessory garage; and

WHEREAS, on March 22, 1966, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law (“MDL”) to permit a maximum of 17 surplus parking spaces to be used for transient parking, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and

the term extended at various times; and

WHEREAS, most recently, on June 18, 2002, the Board granted a ten-year extension of term, which expired on March 22, 2011; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents’ right to recapture the surplus parking spaces; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution having been adopted on March 22, 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 March 22, 2011, to expire on March 22, 2021; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT this term shall expire on March 22, 2021;

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 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 Application No. 102947590)

Adopted by the Board of Standards and Appeals, July 12, 2011.

739-76-BZ

APPLICANT – Eric Palatnik, P.C. for Cord Meyer Development, LLC, owner; Peter Pan Games of Bayside; lessee.

SUBJECT – Application April 19, 2011 – Extension of Term of a Special Permit (§73-35) for the continued operation of an Amusement arcade (*Peter Pan Games*) which expired on April 10, 2011. C4-1 zoning district.

PREMISES AFFECTED – 212-95 26th Avenue, 26th Avenue and Bell Boulevard. Block 5900, Lot 2. Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on

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condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term of a special permit, which expired on April 10, 2011; and

WHEREAS, a public hearing was held on this application on June 7, 2011, after due notice by publication in *The City Record*, and then to decision on July 12, 2011; and

WHEREAS, Community Board 7, Queens, recommends approval of the application; and

WHEREAS, the subject site is located on the northwest corner of the intersection at 26th Avenue and Bell Boulevard, within a C4-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 8, 1977 when, under the subject calendar number, the Board granted an application pursuant to ZR § 73-35, to permit the conversion of a retail store in a shopping center to an amusement arcade for a term of one year; and

WHEREAS, on May 6, 1997, under the subject calendar number, the Board permitted the relocation of the arcade from 212-65 26th Avenue to 212-95 26th Avenue; and

WHEREAS, the grant was extended and amended at various other times; most recently on June 22, 2010 when the Board granted a one-year extension to the term of the special permit, to expire on April 10, 2011, and eliminated the requirement to obtain a new certificate of occupancy; and

WHEREAS, the applicant notes that the current certificate of occupancy, issued in 2000, does not have an expiration date, so it remains active; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional year; and

WHEREAS, at hearing, the Board questioned whether the relocation of certain amusement machines since the most recent grant blocked the egress and circulation for the exits; and

WHEREAS, in response, the applicant submitted photographs of the site which demonstrate that the amusement machines do not block the egress and circulation for the exits, and an affidavit stating that the amusement machines will remain placed in such a manner as to ensure that the egresses will continue to be maintained and that no exits will be blocked; and

WHEREAS, based upon the submitted evidence, the Board finds that the proposed extension of term is appropriate, 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 February 8, 1977, as later amended, so that, as amended, this portion of the resolution shall read: “to grant a one-year extension of the term of the special permit, to expire on April 10, 2012; *on condition* that the use and operation of the site shall substantially conform to the

previously approved plans; and *on further condition*:

THAT the term of this grant shall be for one year from the expiration of the prior grant, to expire on April 10, 2012;

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 operation of the arcade at the 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 12, 2011.

111-01-BZ

APPLICANT – Eric Palatnik, P.C. for Barge Realty, Incorporated, owner; Wendy's International, lessee.

SUBJECT – Application February 23, 2011 – Extension of term of a previously granted Special Permit (§73-243) for an accessory drive-thru facility at an eating and drinking establishment (*Wendy's*) which expired February 1, 2011; Amendment for minor modification to previous conditions on the site. C1-2 (R5) zoning district.

PREMISES AFFECTED – 9001 Ditmas Avenue, Corner of Ditmas Avenue and Remsen Avenue. Block 8108, Lot 6. Borough of Brooklyn.

COMMUNITY BOARD #17BK

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of the term of a special permit for a drive-through facility at an existing eating and drinking establishment, which expired on February 1, 2011, and an amendment for a modification to the previously approved plans; and

WHEREAS, a public hearing was held on this application on May 10, 2011, after due notice by publication in *The City Record*, with a continued hearing on June 14, 2011, and then to decision on July 12, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan,

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Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 17, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on a corner lot bounded by Remsen Street to the south, Ditmas Avenue to the east, and East 91st Street to the north, within a C1-2 (R5) zoning district; and

WHEREAS, the subject 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, the Board has exercised jurisdiction over the subject site since August 14, 2001 when, 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, on February 1, 2005, the grant was amended to allow for an extension of the hours of operation of the drive-through, for a term of one year; and

WHEREAS, most recently, on October 17, 2006, the Board granted a five year extension of term, which expired on February 1, 2011, and an amendment to permit a further increase in the hours of operation of the drive-through to Sunday through Wednesday, from 10:00 a.m. to 2:00 a.m., and Thursday through Saturday, from 10:00 a.m. to 3:00 a.m.; and

WHEREAS, the applicant now seeks an additional five year extension of term; and

WHEREAS, the applicant also requests an amendment to reflect minor changes to the layout of the site, as well as the addition of a second menu board on the site; and

WHEREAS, at hearing, the Board directed the applicant to provide landscaping in compliance with the previously-approved plans and to improve certain site conditions; and

WHEREAS, in response, the applicant submitted a revised site plan and photographs reflecting: (1) the planting of shrubbery along the East 19th Street side of the site and along the rear of adjacent Lot 60; (2) the trimming of the large trees along the parking area; (3) the installation of signage alerting drivers to a handicapped crossing area; and (4) the re-installation of the stop sign at the end of the drive-through; and

WHEREAS, the Board also directed the applicant to confirm that the site remains in compliance with the findings of ZR § 73-243 as well as the conditions from the previous grants; and

WHEREAS, in response, the applicant documented that the site continues to meet the requirements of ZR §73-243, and provided a table establishing the site's compliance with relevant conditions from the previous grants; and

WHEREAS, the applicant notes that the site does not comply with the condition requiring the parking lot to be closed and chained off at 11:00 p.m. each night, because compliance with this condition is not feasible due to the operation of the drive-through past 11:00 p.m. each night; 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 *reopens* and *amends* the resolution, dated 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, 2011, to expire on February 1, 2016, and to permit the noted modifications to the site; *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, 2011'-(3) sheets and 'May 31, 2011'-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on February 1, 2016;

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 in accordance with the BSA-approved plans;

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 limited to: Sunday through Wednesday, from 10:00 a.m. to 2:00 a.m.; and Thursday through Saturday, from 10:00 a.m. to 3:00 a.m.;

THAT the above conditions and all relevant conditions from prior resolutions shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by July 12, 2012;

THAT 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. 320267073)

Adopted by the Board of Standards and Appeals, July 12, 2011.

156-03-BZ

APPLICANT – Steven M. Sinacori, Esq., of Akerman Senterfitt, for RKO Plaza LLC & Farrington Avenue Developers, LLC, owner.

SUBJECT – Application November 30, 2009 – Amendment to a variance (§72-21) for a proposed 17-story mixed-use development. The amendment seeks to increase the number of dwelling units from 200 to 357, accessory parking from 229 spaces to 360 spaces, and the amount of retail space. C2-2/R6 zoning district.

PREMISES AFFECTED – 135-35 Northern Boulevard, north side of Northern Boulevard, between Prince Street and Farrington Street, Block 4958, Lot 38 & 48, Borough of

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Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Howard Goldman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted, in a C2-2 (R6) zoning district, the construction of a 17-story mixed-use residential/commercial/community facility building; and

WHEREAS, a public hearing was held on this application on May 17, 2011, after due notice by publication in The City Record, with a continued hearing on June 14, 2011, and then to decision on July 12, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application, with the condition that the applicant provide the senior center with all necessary facilities, as agreed to in the prior Board grant; and

WHEREAS, certain members of the community provided testimony in support of this application; and

WHEREAS, certain members of the community provided oral and written testimony in opposition to the applicant's proposal, citing concerns with the potential impact on neighborhood character and traffic in the surrounding area; and

WHEREAS, the subject site is located on the north side of Northern Boulevard, between Prince Street and Farrington Street, within a C2-2 (R6) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since December 13, 2005 when, under the subject calendar number, the Board granted a variance to permit the proposed development of a 200-unit, 17-story mixed-use commercial/community facility/residential building, with ground level retail, second floor community facility space, and 229 accessory parking spaces in a three-level below-grade parking garage; and

WHEREAS, on May 29, 2007, the Board issued a letter of substantial compliance permitting the following changes to the proposal: (1) the elimination of one floor, reducing the building to 16 stories with an average floor to ceiling height of 10'-2" instead of 9'-4"; (2) the expansion of the footprint of floors seven through 16 to redistribute the floor area from the floor that has been eliminated; (3) the modification of the size of certain units; and (4) the redesign of the inner courts; and

WHEREAS, most recently, on January 12, 2010, the Board granted an extension of time to complete construction for a term of two years, to expire on January 12, 2012; and

WHEREAS, the applicant now proposes the following modifications to the previously approved plans: (1) an increase in the number of dwelling units from 200 to 357; (2) a reduction in the average unit size from 1,437 sq. ft. to 787 sq. ft.; (3) an increase in the number of accessory parking spaces from 229 to 385; (4) a 6,503 sq. ft. reduction in the residential floor area (from 287,313 sq. ft. to 280,810 sq. ft.) and a corresponding 6,503 sq. ft. increase in the commercial floor area (from 10,957 sq. ft. to 17,460 sq. ft.) through the addition of a retail mezzanine between the first and second floors; (5) the relocation of the community facility space from the second floor to the third floor; (6) a reduction in the depth of the rear yard from 31'-5" to 30'-0"; and (7) a reduction in the initial setback distance from 20'-0" to 15'-0"; and

WHEREAS, the applicant states that the proposed changes will not result in any new non-compliance nor increase the degree of any non-compliance from the previous approval; and

WHEREAS, the applicant represents that, since the time of the original grant, the approved project has become financially infeasible and that the proposed amendment will enable the owner to realize a reasonable return on the site; and

WHEREAS, the applicant further represents that the proposed amendment will allow for a greater mix of one-bedroom and studio apartments, a smaller average unit size, and a change from condominium units to rental apartments, which is necessary in order to increase the marketability of the units and receive a reasonable return on the site; and

WHEREAS, at hearing, the Board questioned whether the proposed number of units could be reduced and whether proposed apartment unit mix and sizes are typical; and

WHEREAS, the applicant represents that the proposed apartment unit mix and sizes are typical for a rental project of this size, and that a reduction in the number of units could jeopardize the project's financial viability; and

WHEREAS, specifically, the applicant states that the proposed residential unit mix will consist of 40 studio units, 166 one bedroom units, 71 one bedroom plus home office units, 74 two-bedroom units, and six three-bedroom units; and

WHEREAS, the applicant submitted a letter from its architect citing four current projects in Queens with average unit sizes comparable to the 787 sq. ft. average unit size of the proposed building; and

WHEREAS, the applicant also submitted an analysis from a residential marketing firm comparing the proposed unit mix and average unit size with that of five new rental buildings throughout the City, which concluded that market demand is stronger for smaller sized units and the mix and size of the units in the proposed projects is within the normal range for large rental projects; and

WHEREAS, at hearing, the Board directed the applicant to provide an analysis of the originally approved

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condominium development and an analysis of the originally approved development with rental apartments, updated with current income, expense and development cost assumptions; and

WHEREAS, in response, the applicant submitted a financial analysis reflecting that the originally approved development with rental apartments would not realize a reasonable return, while the originally approved condominium development would result in a minimal measure of financial feasibility; and

WHEREAS, however, the financial analysis states that the originally approved condominium project could not be successfully developed because construction financing for the 200-unit condominium project could not be obtained; and

WHEREAS, in support of the claim that financing for the originally-approved 200-unit condominium project would be difficult or impossible to obtain, the applicant submitted: (1) letters from independent experts discussing the limited availability of condominium and construction financing; (2) a monthly report from the New York City Office of Management and Budget stating that condominium prices and transaction have been falling in volume; (3) examples of stalled condominium projects throughout the City; and (4) articles discussing the depressed nature of the condominium sales market; and

WHEREAS, the applicant provided an updated environmental analysis to show that the proposed changes do not alter the conclusions of the negative declaration issued by the Board in its 2005 approval; and

WHEREAS, at hearing, the Board raised concerns about the traffic impacts that would result from the increased number of units and parking spaces at the site; and

WHEREAS, in response, the applicant submitted a traffic and parking assessment which reflects that the proposed amendment would result in a maximum of 26 additional hourly vehicle trips during the PM and Saturday peak periods, which is approximately one-half of the 50-vehicle per hour threshold size that warrants further assessment pursuant to the CEQR Technical Manual, and is therefore not a significant increase; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may permit an amendment to an existing variance; and

WHEREAS, based upon its review of the evidence, the Board finds that the requested amendment does not alter the Board's findings made for the original variance; and

WHEREAS, accordingly, the Board finds that the proposed variance, as amended, continues to reflect the minimum variance and the Board has determined that it is appropriate, with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 13, 2005, so that as amended this portion of the resolution shall read: "to permit the noted modifications to the approved plans; *on condition* that all work shall substantially conform to drawings filed with this application and marked "Received April 11, 2011"- (15) 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. 401622669)

Adopted by the Board of Standards and Appeals, July 12, 2011.

161-06-BZ

APPLICANT – Eric Palatnik, P.C., for Webster Affordable Solutions, owner.

SUBJECT – Application April 25, 2011 – Extension of Time to complete construction of a Variance (§72-21) for the construction of two eight-story mixed-use residential/commercial/community facility buildings which expires on September 11, 2011. C8-2 zoning district.

PREMISES AFFECTED – 3349 Webster Avenue, Webster Avenue, south of Gun Hill Road, Block 3355, Lot 121, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

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Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit the construction of two eight-story mixed-use residential / commercial / community facility buildings, which expires on September 11, 2011; and

WHEREAS, a public hearing was held on this application on May 24, 2011, after due notice by publication in *The City Record*, with a continued hearing on June 21, 2011, and then to decision on July 12, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, the subject site is located on the west side of Webster Avenue, 200 feet south of East Gun Hill Road, within a C4-4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since September 11, 2007 when, under the subject calendar number, the Board granted a variance to permit the proposed construction of two eight-story mixed-use residential/commercial/community facility buildings, contrary to ZR § 32-10; and

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WHEREAS, substantial construction is to be completed by September 11, 2011, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to financing delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, the applicant notes that at the time of the original grant the subject site was located within a C8-2 zoning district; however, on March 23, 2011 the City Council adopted the Webster Avenue/Bedford Park/Norwood Rezoning, which rezoned the site to a C4-4 district; and

WHEREAS, the applicant notes that the proposed use conforms with the new C4-4 zoning district; however, the applicant states that it has not yet reviewed whether the rezoning has triggered additional non-compliances on the subject site, but if it is determined that additional relief is necessary as a result of the rezoning, it will file a separate application for an amendment before the Board; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction 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, dated September 11, 2007, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years, to expire on September 11, 2015; *on condition:*

THAT substantial construction shall be completed by September 11, 2015;

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. 201050469 & 201050478)

Adopted by the Board of Standards and Appeals, July 12, 2011.

281-39-BZ

APPLICANT – Eric Palatnik, P.C., for 1599 Lexington Avenue Corporation, owner.

SUBJECT – Application May 3, 2011 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) with accessory uses which expired on May 18, 2009; Waiver of the Rules. C1/R7-2 zoning district.

PREMISES AFFECTED – 1605 Lexington Avenue, southeast corner of 102nd Street, Block 1629, Lot 150, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Laid over to August 23, 2011, at 10 A.M., for continued hearing.

677-53-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for James Marchetti, owner.

SUBJECT – Application April 22, 2010 – Extension of Term (§11-411) of a Variance for the operation of a UG16 Auto Body Repair Shop (*Carriage House*) with incidental painting and spraying which expired on March 24, 2007; Extension of Time to Obtain a Certificate of Occupancy which expired on January 13, 1999; Amendment (§11-412) to enlarge the building; Waiver of the Rules. R4/C2-2 zoning district.

PREMISES AFFECTED – 61-26/30 Fresh Meadow Lane, west side of Fresh Meadow Lane, 289’ northerly of the intersection with 65th Avenue, Block 6901, Lot 48, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for continued hearing.

827-55-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products, Incorporated, owner.

SUBJECT – Application October 5, 2010 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*British Petroleum*) which expires on January 31, 2011. R3-2 zoning district.

PREMISES AFFECTED – 245-20 139th Avenue, southwest corner of Conduit Avenue, Block 13614, Lot 23, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Laid over to August 23, 2011, at 10 A.M., for adjourned hearing.

662-56-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Flatbush Holdings LLC, owner.

SUBJECT – Application April 6, 2011 – Extension of Term (§11-411) of a previously approved variance which permitted a public parking lot (UG 8), which expired on January 23, 2011; Waiver of the Rules. C1-2/R5 zoning district.

PREMISES AFFECTED – 3875 Flatbush Avenue, Northerly side of Flatbush Avenue, 100’ east of the intersection of Flatlands Avenue. Block 7821, Lots 21, 23. Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

MINUTES

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for continued hearing.

926-86-BZ

APPLICANT – Sheldon Lobel, P.C., for Manes Bayside Realty LLC, owner.

SUBJECT – Application November 1, 2010 – Extension of Term of a variance for the operation of an automotive dealership with accessory repairs (UG 16B) which expired on November 4, 2010; Extension of time to obtain a Certificate of Occupancy which expired on January 6, 2006; Waiver of the Rules. C2-2/R6-B/R3X zoning district.

PREMISES AFFECTED – 217-07 Northern Boulevard, block front on the northerly side of Northern Boulevard between 217th Street and 218th Street, Block 6320, Lot 18, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to August 23, 2011, at 10 A.M., for continued hearing.

586-87-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Frasca Real Estate Incorporated, owner; 65th Street Auto Service Center, Incorporated, lessee.

SUBJECT – Application April 5, 2011 – Extension of Term (§11-411) for the continued operation of an existing gasoline service station (*Emporium*) with lubritorium, auto repairs and the sale of new/used cars which expired on July 12, 2008; waiver of the rules. R5B/C2-3 zoning district.

PREMISES AFFECTED – 1302/12 65th Street, southeast corner of intersection of 65th Street and 13th Avenue, Block 5754, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for continued hearing.

188-96-BZ

APPLICANT – Mitchell S. Ross, Esq., for 444 Soundview Services Stations, Incorporated c/o William McCombs, owner; Scott Greco, lessee.

SUBJECT – Application June 22, 2010 – Extension of Term (§11-411) of a variance for the continued operation of a Gasoline Service Station (*Gulf*) with accessory convenience store which expired January 6, 2008; Waiver of the rules. R5 zoning district.

PREMISES AFFECTED – 444 Soundview Avenue, north side of Soundview Avenue and west of Underhill Avenue, Block 3498, Lot 51, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Mitchell S. Ross.

ACTION OF THE BOARD – Laid over to August 23, 2011, at 10 A.M., for continued hearing.

APPEALS CALENDAR

96-10-A & 97-10-A

APPLICANT – Rothkrug Rothkrug & Spector, for Hub Development Corporation, owner.

SUBJECT – Application June 1, 2010 – Proposed construction of a single family home located within the bed of a mapped street (Jay Street), contrary to General City Law Section 35. R3-1 zoning district.

PREMISES AFFECTED – 673 & 675 Hunter Avenue, north side of Hunter Avenue, bed of Jay Street, Block 3864, Lot 98 & 99, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

For Administration: John A. Yacavone, Fire Department.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated May 10, 2010, acting on Department of Buildings Application Nos. 520030680 and 520030671 reads in pertinent part:

“Proposed construction in the bed of a finally mapped street is contrary to Article III, Section 35 of the General City Law, and must be referred to the Board of Standards and Appeals;” and

WHEREAS, this is an application to permit the proposed construction of two single-family homes located within the bed of a mapped street, Jay Street, contrary to Section 35 of the General City Law; and

WHEREAS, a public hearing was held on this application on February 8, 2011, after due notice by publication in the *City Record*, with continued hearings on March 29, 2011, May 17, 2011 and June 14, 2011, and then to decision on July 12, 2011; and

WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application; and

WHEREAS, by letter dated December 16, 2010, the Department of Transportation (“DOT”) states that it has reviewed the project and has no objections; and

WHEREAS, DOT states that the applicant’s property is not included in the agency’s ten-year capital plan; and

WHEREAS, by letter dated June 24, 2010, the Department of Environmental Protection (“DEP”) states that there is an existing six-inch diameter City water main in the bed of Jay Street, north of lot 99, and an existing ditch

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(watercourse) in the bed of Jay Street between Hunter Avenue and Jefferson Avenue, and that Amended Drainage Plan No.OB-5(S-2)8 calls for a future ten-inch diameter sanitary sewer and an 83-inch by 53-inch (66-inch equivalent diameter) storm sewer in Jay Street between Hunter Avenue and Jefferson Avenue; and

WHEREAS, DEP further states that it requires the applicant to submit a survey/plan showing the following: (1) the width of the widening portion of the street between Hunter Avenue and Jefferson Avenue; (2) the vertical and horizontal distances from the limits of the ditch (watercourse) to the lot lines and the property lines of lot 99; (3) a 35-ft. wide sewer corridor in the bed of the mapped street, Jay Street, for the installation, maintenance and/or reconstruction of the future ten-inch diameter sanitary sewer and an 83-inch by 53-inch (66-inch equivalent diameter) storm sewer; and (4) the distance from the end cap of the six-inch diameter water main in the bed of Jay Street to the northerly lot line of lot 99; and

WHEREAS, in response to DEP's requests, the applicant states that there is a pending amendment to the Drainage Plan included in DEP's Mid-Island Bluebelt Storm Water Management Initiative which includes the subject site, and that as part of the amendment it is proposed to demap Jay Street north of the subject site, eliminating the future sewers referenced in the DEP letters; and

WHEREAS, by letter dated December 16, 2010, DEP states that the following information is also required: (1) the vertical and horizontal distance from the limits of the ditch (watercourse) to the lot lines and the property lines of lot 99, because DEP requires a 15-ft. wide easement from the top of the bank of the ditch for the purpose of maintenance and/or inspection of the existing watercourse; and (2) a 35-ft. wide sewer corridor in the bed of the mapped portion of Jay Street for the installation, maintenance, and/or reconstruction of the future ten-inch diameter sanitary sewer and the 83-inch by 53-inch (66-inch diameter equivalent) storm sewer; and

WHEREAS, DEP further states that the amendment of the Drainage Plan for the site in conjunction with DEP Mid-Island Bluebelt Storm Water Management Initiative is a proposal for the future, and that it cannot approve the subject application until the amendment of the Drainage Plan is complete; and

WHEREAS, in response, the applicant states that, since it is DEP policy not to issue letters of approval for applications with pending Drainage Plan amendments, it is impractical to delay the instant application for an amendment that could take a minimum of one year or more to complete; and

WHEREAS, the applicant also submitted a site plan reflecting DEP's request for a 35-ft. wide sewer corridor in the bed of Jay Street for the installation of future storm and sanitary sewers, which reflects that if such an easement were required it would render the subject lots unbuildable because the total width of the site is approximately 47 feet in width at Hunter Street, narrowing to a width of approximately 27 feet to the north, and the requested 35-ft. wide easement would result in two parcels consisting of a small approximately six-inch wide triangular parcel to the west and a narrow 12'-6" wide lot to the east; and

WHEREAS, by letter dated March 21, 2011, DEP states that (1) it requires a 15-ft. wide easement from the top of the bank on both sides of the existing watercourse plus the width of the ditch, for the purpose of maintenance, construction and/or reconstruction of the existing watercourse, and (2) it is reviewing the applicant's letter concerning the sewer corridor for future sewers; and

WHEREAS, as to the watercourse, the applicant states that there is no watercourse on the site and submitted a survey which notes that there are "no streams or watercourses in the property;" and

WHEREAS, by letter dated June 6, 2011, DEP states that a representative of the Engineering Field Investigation Unit conducted an investigation of the site to verify the existence of the watercourse but was unable to complete the investigation due to the lack of access because of heavy vegetation, and that the applicant needs to clear the vegetation in order for DEP to complete the investigation; and

WHEREAS, in response, the applicant states that it is not possible to clear the vegetation at the site without obtaining a Freshwater Wetland Permit from the New York State Department of Environmental Conservation ("DEC") due to the site's location adjacent to DEC protected wetlands, which is both time consuming and expensive, and which the applicant contends should not be required given that it already provided a survey that notes that there are "no streams or watercourses in the property;" and

WHEREAS, the Board understands that DEP has remaining concerns regarding the existence of a watercourse on the site, despite the submission of a licensed survey into the record which indicates that there is no watercourse on the site; and

WHEREAS, the Board notes that the applicant has agreed to obtain any and all necessary approvals from DEP and DEC, which will resolve the issue of the need for a sewer corridor easement and the presence of a watercourse on the site; and

WHEREAS, by letter dated July 12, 2011 the Fire Department states that it has reviewed the subject proposal and has no objection; and

WHEREAS, accordingly, the Board has determined that 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 10, 2010, acting on Department of Buildings Application Nos. 520030680 and 520030671, 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 12, 2011" – (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 all necessary DEC and DEP approvals shall be obtained prior to the issuance of DOB permits;

THAT the homes shall be sprinklered in accordance with

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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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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 12, 2011.

195-10-BZY

APPLICANT – Eric Palatnik, P.C., for Michael Batalia, owner.

SUBJECT – Application October 26, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior M1-3D zoning. M1-2/R5B zoning district.

PREMISES AFFECTED – 38-28 27th Street, between 38th and 39th Avenue, Block 387, Lot 31, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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 minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on May 3, 2011, after due notice by publication in *The City Record*, with a continued hearing on June 7, 2011, and then to decision on July 12, 2011; and

WHEREAS, the site was inspected by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez; and

WHEREAS, Community Board 1, Queens, recommends disapproval of this application; and

WHEREAS, the subject site is located on the west side of 27th Street, between 38th Avenue and 39th Avenue, in a M1-2/R5D zoning district within the Special Long Island City Mixed-Use District, Dutch Kills Sub-district; and

WHEREAS, the site has a total lot area of 11,716 sq. ft.; and

WHEREAS, the site is proposed to be developed with a 13-story hotel building (the “Building”); and

WHEREAS, the Building is proposed to have a floor area of 57,152 sq. ft. (5.0 FAR) and a total height of 126 feet; and

WHEREAS, the Building complies with the former M1-3D zoning district parameters; and

WHEREAS, however, on October 7, 2008 (hereinafter, the “Enactment Date”), the City Council voted to enact the Dutch Kills Rezoning, which rezoned the site from M1-3D to M1-2/R5D; and

WHEREAS, the Building does not comply with the current M1-2/R5D zoning district parameters as to height and floor area; and

WHEREAS, on May 29, 2008, New Building Permit No. 402632246-01-NB (the “Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the proposed 13-story hotel building; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of its foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows 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 a certificate 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 a single building which is non-complying under an amendment to the Zoning Resolution, as a “minor development”; and

WHEREAS, for a “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: “[I]n 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)

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requires: “[F]or 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, by letter dated November 22, 2010, DOB stated that the Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; 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, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of October 7, 2010 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes: 100 percent of the foundation, 100 percent of sewer and water connection installation, 94 percent of structural concrete work, 12 percent of drywell and metal work, three percent of electrical work, and the installation of exterior elevators; and

WHEREAS, in support of this statement, the applicant has submitted the following: construction tables; financial records; a list of expenditures; a detailed check register; and photographs of the site; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$4,706,782, or 39 percent, out of the approximately \$12,047,523 cost to complete; and

WHEREAS, as noted above, the applicant has submitted financial records, a list of expenditures, and a detailed check register as evidence of the payments made by the applicant; 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 initial 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 two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 402632246-01-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 development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on July 12, 2013.

Adopted by the Board of Standards and Appeals, July 12, 2011.

182-06-A thru 211-06-A

APPLICANT – Akerman Senterfitt, LLP, for Boymelgreen Beachfront Community, LLC, owners.

SUBJECT – Application April 18, 2011 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously-granted Common Law Vesting which expired March 19, 2011. R4A zoning district.

PREMISES AFFECTED – 126, 128, 130, 134, 136, 140, 146, 148, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 161, and 163 Beach 5th Street. 150, 152, 154, 156, 158, 160, and 162 Beach 6th Street and 511 SeaGirt Avenue Block 15609, Lots 1, 3, 6, 8, 10, 12, 14, 16, 18, 58, 63, 64, 65, 66, 67, and 68 and Block 15608, Lots 1, 40, 42, 45, 51, 52, 53, 57, 58, 61, 63, 65, 67, and 69. Borough of the Queens

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Jessica Loeser.

For Opposition: John A. Yacavone, Fire Department.

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for continued hearing.

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REGULAR MEETING
TUESDAY AFTERNOON, JULY 12, 2011
1:30 P.M.

94-10-A

APPLICANT – Borah, Goldstein, Altschuler, Nahins & Goidel, P.C., for Twenty-Seven-Twenty Four Realty Corporation, owner.

SUBJECT – Application May 26, 2010 – Appeal challenging the Department of Buildings’ determination that signs located on the north and south walls of the subject building are not a continuous legal nonconforming use. C2-2 Zoning district.

PREMISES AFFECTED – 27-24 21st Street, west side of 21st Street south of Astoria Boulevard, Block 539, Lot 35, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Marnie R. Kudow.

For Opposition: John Egnatos Beene.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for decision, hearing closed.

52-11-A

APPLICANT – New York City Economic Development Corporation, for Department of Small Business Services, owner.

SUBJECT – Application March 30, 2011 – Variance pursuant to NYC Building Code (Appendix G, Section G304.1.2) to allow for a portion of a structure to be located below a flood zone. C2-8 zoning district.

PREMISES AFFECTED – South Street & John Street, East South Street, at John Street, under the FDR Drive. Block 73, Lots 2 & 8. Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Nicole Dooskin and Chab Burke.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 26, 2011, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

118-10-BZ

APPLICANT – Eric Palatnik, P.C., for Arkady Nabatov, owner.

SUBJECT – Application June 28, 2010 – Reinstatement (§11-411 & §11-413) of an approval permitting the operation of an automotive service station (UG 16B), with accessory uses, which expired on December 9, 2003; amendment to legalize a change in use from automotive service station to automotive repair, auto sales and hand car washing. R4 zoning district.

PREMISES AFFECTED – 2102/24 Avenue Z, aka 2609/15 East 21st Street. Block 7441, Lot 371. 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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated January 6, 2011, acting on Department of Buildings Application No. 320151544, reads in pertinent part:

“Proposed reinstatement of previously approved variance and proposed change in use to auto repair with auto sales and other lawful accessory uses is contrary to BSA Calendar #1423-39-BZ and therefore must be referred to the BSA;” and

WHEREAS, this is an application for a reinstatement of a prior Board approval and an amendment to legalize a change in use from a gasoline service station to an automotive repair station with accessory auto sales on the site, pursuant to ZR §§ 11-411 and 11-413; and

WHEREAS, a public hearing was held on this application on March 15, 2011, after due notice by publication in *The City Record*, with continued hearings on April 5, 2011, May 10, 2011, and June 7, 2011, and then to decision on July 12, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn,

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recommends disapproval of this application; and

WHEREAS, New York State Assembly Member Steven H. Cymbrowitz recommends disapproval of this application; and

WHEREAS, certain members of the community provided testimony in opposition to the application (the "Opposition"), citing concerns with the poor maintenance of the site, the overcrowded conditions on the site, and the traffic created by the different uses on the site; and

WHEREAS, the site is an irregular-shaped lot bounded by Avenue Z to the north, East 22nd Street to the east, Jerome Avenue to the south, and East 21st Street to the west, within an R4 zoning district; and

WHEREAS, the site has a total lot area of 7,965 sq. ft., and is currently occupied by an automotive repair station with accessory auto sales; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 9, 1958 when, under BSA Cal. No. 1423-39-BZ, the Board granted a variance to permit the site to be occupied by a gasoline service station, lubricatorium, car wash, minor auto repairs, office, and sales and storage, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, most recently, on February 22, 1995, the Board granted a ten-year extension of term, which expired on December 9, 2003; and

WHEREAS, the applicant now seeks to reinstate the variance granted under BSA Cal. No. 1423-39-BZ and to amend the grant to reflect a change in use from a gasoline service station to an automotive repair station with accessory uses including auto sales; and

WHEREAS, although the term expired in 2003, the applicant represents that the automotive-related (Use Group 16) use has been continuous from 1958 to the present; 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 approve a change from one non-conforming use to another non-conforming use, under certain conditions; and

WHEREAS, as to the change in use, the applicant represents that the gasoline service station use at the site has been discontinued and submitted documentation reflecting that the gasoline pumps have been removed and sealed, and submitted a Department of Environmental Conservation ("DEC") Spill Report reflecting that a spill at the site was closed on April 4, 2006; and

WHEREAS, the applicant currently operates an automotive repair station with auto sales and other accessory uses including hand car washing, the sale of lubricants, accessories and supplies at the site; and

WHEREAS, at hearing, the Board raised concerns about the conditions on the site, including (1) the non-compliance with conditions from previous grants related to the parking of cars on the sidewalk, (2) the failure to provide landscaping in accordance with the previously-approved plans, (3) the use of the curb cut on East 22nd Street which is not on the previously-approved plans, (4) the overcrowded conditions and poor

circulation on the site, (5) the location of a portion of the fence on the sidewalk, and (6) the excessive amount of signage on the site; and

WHEREAS, in response, the applicant submitted revised plans reflecting the planting of five street trees along Jerome Avenue and two street trees along Avenue Z, the removal of the curb cut on East 22nd Street, the installation of a wrought iron fence with sliding gates along Avenue Z and a solid masonry fence with metal pickets along Jerome Avenue and East 22nd Street, and the reduction in the number of parking spaces on the site from 24 to 13; and

WHEREAS, the applicant also submitted photographs reflecting the removal of the portion of the fence located on the sidewalk, and a survey reflecting that the current fencing is located within the subject property line; and

WHEREAS, the applicant also submitted a revised signage plan reflecting the elimination of excess signage and compliance with C1 district signage regulations; and

WHEREAS, the Board notes that it has remaining concerns regarding the site's ability to accommodate the requested auto sales, given the size limitations of the site, the space constraints that may arise from including auto sales on the site, the poor maintenance of the site since the prior Board grant, and the concerns raised by the Opposition; and

WHEREAS, accordingly, the Board is not persuaded that the proposed operation of the site with auto sales would be efficient, and therefore finds it appropriate to limit the use of the site to an automotive repair station without accessory auto sales at this time; and

WHEREAS, however, the Board may reconsider the appropriateness of including auto sales on the site in the future; and

WHEREAS, based upon its review of the record, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-413, and a reinstatement and change in use are appropriate with certain conditions as set forth below.

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, as amended, 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 of a gasoline service station and the legalization of a change in use from gasoline service station to automotive repair station; *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 June 28, 2011"-(5) sheets; and *on further condition*:

THAT this grant shall be for a term of five years, to expire on July 12, 2016;

THAT fencing and landscaping shall be installed in conformance with the BSA-approved plans by July 12, 2012;

THAT no auto sales or auto painting shall take place on the site;

THAT the site shall only be accessed from Avenue Z;

THAT all lighting shall be directed downward and away

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from adjacent residences;

THAT the site shall be maintained free of debris and graffiti;

THAT all signage shall comply with C1 district zoning regulations;

THAT the hours of operation shall be Monday through Saturday, from 8:00 a.m. to 7:00 p.m., and closed on Sunday;

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

THAT a certificate of occupancy shall be obtained by July 12, 2012;

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.”

Adopted by the Board of Standards and Appeals, July 12, 2011.

19-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Brown and Yechiel Fastag, owners.

SUBJECT – Application February 24, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence, contrary to floor area and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1271 East 24th Street, east side of East 24th Street, between Avenue L and Avenue M, Block 7642, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 7, 2011, acting on Department of Buildings Application No. 320245542, 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 of 150.

Proposed plans are contrary to ZR 23-47 in that the

proposed rear yard is less than the minimum required rear yard of 30 feet.

Proposed plans are contrary to ZR 23-461 in that the proposed side yard straight-line extension is less than the 5 foot minimum side yard permitted;” 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 home, which does not comply with the zoning requirements for 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 May 17, 2011 after due notice by publication in *The City Record*, with a continued hearing on June 14, 2011, and then to decision on July 12, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 24th Street, between Avenue L and Avenue M, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 3,740 sq. ft., and is occupied by a single-family home with a floor area of 1,999 sq. ft. (0.53 FAR); 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 1,999 sq. ft. (0.53 FAR) to 3,763 sq. ft. (1.01 FAR); the maximum permitted floor area is 1,875 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 57 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard along the southern lot line with a width of 4’-2½” (a minimum width of 5’-0” is required for each side yard); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-0” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, based upon its review of the record, 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

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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, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, 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 June 1, 2011"-(11) sheets and "June 27, 2011"-(1) sheet; and on further condition:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,763 sq. ft. (1.01 FAR); an open space ratio of 57 percent; a side yard with a minimum width of 4'-2½" along the southern lot line; and a rear yard with a minimum depth of 20'-0", 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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 12, 2011.

23-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 484 Fulton Owner, LLC, owner; 490 Fulton Street Fitness Group, LLC, lessee. SUBJECT – Application March 3, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C5-4 (DB) zoning district. PREMISES AFFECTED – 490 Fulton Street, west side of Bond Street, between Fulton Street and Livingston Street, Block 159, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Brooklyn Borough Commissioner, dated April 15, 2011, acting on Department of Buildings Application No. 320238765, reads in pertinent part:

"The use of a physical culture establishment is contrary to ZR 32-10 and requires a special permit from the Board of Standards and Appeals as per ZR 73-36;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C5-4 zoning district within the Special Downtown Brooklyn District, the operation of a physical culture establishment (PCE) at portions of the first and second floors of a five-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 24, 2011, after due notice by publication in *The City Record*, with a continued hearing on June 14, 2011, and then to decision on July 12, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

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

WHEREAS, the subject site is located on a corner through lot bounded by Fulton Street to the north, Bond Street to the east, and Livingston Street to the west, in a C5-4 zoning district within the Special Downtown Brooklyn District; and

WHEREAS, the site is occupied by a five-story commercial building; and

WHEREAS, the proposed PCE will occupy 17,739 sq. ft. of floor area on portions of the first and second floor; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the proposed hours of operation for the PCE are: 24 hours a day from Monday at 12:00 a.m. through Friday at 10:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, at hearing, the Board raised concerns about the impact of the proposed 24-hour weekday operation of the PCE on the dormitory use proposed on the third through fifth floors of the subject building; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that soundproofing will be installed between the PCE's second floor ceiling and the dormitory uses on the third floor, and that tint glazing will be installed on all second floor windows to reduce light

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transmission from the PCE to the dormitory use; 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 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 617.2; 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. 11BSA066K, dated March 1, 2011; and

WHEREAS, the EAS documents 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, 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 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, on a site located in a C5-4 zoning district within the Special Downtown Brooklyn District, the operation of a physical culture establishment at portions of the first and second floors of a five-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 5, 2011"- (7) sheets and *on further condition*:

THAT the term of this grant shall expire on July 12, 2021;

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 all massages shall be performed by New York State licensed massage therapists;

THAT a soundproofing assembly shall be installed between the second floor ceiling of the PCE and the third floor, in accordance with the BSA-approved plans;

THAT tint glazing shall be installed on all second floor windows, in accordance with the BSA-approved plans;

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

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);

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 12, 2011.

34-11-BZ CEQR #11-BSA-074K

APPLICANT – Joan Humphreys/A & H Architecture PC, for Keith W. Bails/272 Driggs Avenue Corporation, owner; Adriane Stare/Caribou Baby d/b/a Stollenwerck Stare LLC, 272 Driggs Avenue, lessee.

SUBJECT – Application March 29, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Caribou Baby*). C2-4 Overlay/R6B zoning district.

PREMISES AFFECTED – 272 Driggs Avenue, north side of Driggs Avenue 85.29' west of Eckford Street, Block 2681, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Joan Humphreys.

For Administration: John Yacavone, Fire Department.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 8, 2011, acting on Department

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of Buildings Application No. 320265388, reads in pertinent part:

“ZR 32-10. Proposed physical culture establishment is not permitted in C2-4 zone and requires a special permit from the Board of Standards and Appeals per ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within C2-4 (R6B) zoning district, the operation of a physical culture establishment (PCE) at the first floor of a three-story mixed-use commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 14, 2011, after due notice by publication in *The City Record*, and then to decision on July 12, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Driggs Avenue between Leonard Street and Eckford Street, within a C2-4 (R6B) zoning district; and

WHEREAS, the site is occupied by a three-story mixed-use commercial/residential building; and

WHEREAS, the PCE will occupy a total floor area of 587 sq. ft. on the first floor, with associated retail space occupying the remaining 1,625 sq. ft. of floor area on the first floor; and

WHEREAS, the PCE will be operated as Caribou Baby; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, by letter dated June 9, 2011, the Fire Department requests that the Board require the applicant to install an interior fire alarm system both in the PCE and in the first floor retail space; and

WHEREAS, in response, the applicant agreed to install the fire safety measures requested by the Fire Department; 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 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 617.2; 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. 11BSA074K, dated May 20, 2011; and

WHEREAS, the EAS documents 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, 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 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, on a site within a C2-4 (R6B) zoning district, the operation of a physical culture establishment at the first floor of a three-story mixed-use commercial/residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 20, 2011”- (1) sheet and “Received June 28, 2011”- (2) sheets and *on further condition*:

THAT the term of this grant shall expire on July 12, 2021;

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 all massages shall be performed by New York State licensed massage therapists;

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

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);

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, July 12, 2011.

49-11-BZ

APPLICANT – Sheldon Lobel, P.C., for A & G Real Estate, LLC, owner; Barry Bootcamp, lessee.

SUBJECT – Application April 15, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Barry's Bootcamp*). C6-3A zoning district.

PREMISES AFFECTED – 135 West 20th Street, north side of West 20th Street, between 6th and 7th Avenues, Block 796, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated June 8, 2011, acting on Department of Buildings Application No. 120612774, reads in pertinent part:

“Physical culture establishment is not permitted as-of-right in C6-3A District and requires a BSA Special Permit per ZR Section 73-36 (ZR 32-10);”
and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C6-3A zoning district, the operation of a physical culture establishment (PCE) at the cellar and first floor of a six-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 14, 2011, after due notice by publication in *The City Record*, and then to decision on July 12, 2011; and

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

WHEREAS, the subject site is located on the north side of West 20th Street, between Sixth Avenue and Seventh Avenue, within a C6-3A zoning district; and

WHEREAS, the site is occupied by a six-story commercial building; and

WHEREAS, the PCE will occupy 3,561 sq. ft. of floor area on the first floor, with an additional 2,873 sq. ft. of floor space located at the cellar level; and

WHEREAS, the PCE will be operated as Barry's

Bootcamp; and

WHEREAS, the proposed hours of operation are: 5:00 a.m. to 11:00 p.m., daily; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; 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 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 617.2; 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. 11BSA084M, dated June 1, 2011; and

WHEREAS, the EAS documents 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, 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 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

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and 73-03, to permit, on a site within a C6-3A zoning district, the operation of a physical culture establishment at the first floor and cellar of a six-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 1, 2011" –(5) sheets and *on further condition*:

THAT the term of this grant shall expire on July 12, 2021;

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 above conditions shall appear on the Certificate of Occupancy;

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);

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 12, 2011.

24-09-BZ

APPLICANT – Sheldon Lobel, PC, for Meadows Park Rehabilitation and Health Care Center, LLC, owners.

SUBJECT – Application February 12, 2009 – Variance to allow the enlargement of a community facility (*Meadow Park Rehabilitation and Health Care Center*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), height (§24-521) and rear yard (§24-382) regulations. R3-2 district.

PREMISES AFFECTED – 78-10 164th Street, Located on the western side of 164th Street between 78th Avenue and 78th Road, Block 6851, Lot 9, 11, 12, 23, 24, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to July 26, 2011, at 1:30 P.M., for deferred hearing.

227-09-BZ

APPLICANT – Gerald J. Caliendo, R.A., for David Rosero/Chris Realty Holding Corporation, lessee.

SUBJECT – Application July 10, 2009 – Variance (§72-21) to allow a two-story commercial building, contrary to use regulations (§22-10). R6B zoning district.

PREMISES AFFECTED – 100-14 Roosevelt Avenue, south side of Roosevelt Avenue, 109.75' west of the corner of 102nd Street and Roosevelt Avenue, Block 1609, Lot 8, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Sandy Anagnostov.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to August 16, 2011, at 1:30 P.M., for decision, hearing closed.

95-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Raymond Kohanbash, owner.

SUBJECT – Application May 27, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2216 Quentin Road, south side of Quentin Road between East 22nd Street and East 23rd Street, Block 6805, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 26, 2011, at 1:30 P.M., for decision, hearing closed.

177-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLC, for Cee Jay Real Estate Development, owner.

SUBJECT – Application September 9, 2010 – Variance (§72-21) for the construction of a detached three-story single family home, contrary to open space (§23-141); front yard (§23-45) and side yard (§23-461). R3A zoning district.

PREMISES AFFECTED – 8 Orange Avenue, south west corner of Decker Avenue and Orange Avenue, Block 1061, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Todd Dale.

For Opposition: Jeannie Borkowski, Joanne Donnaruma, John Donnaruma and Eileen Martin.

ACTION OF THE BOARD – Laid over to August 16, 2011, at 1:30 P.M., for continued hearing.

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227-10-BZ

APPLICANT – Eric Palatnik, P.C., for Power Test Realty Company Limited Partnership, owner.

SUBJECT – Application December 14, 2010 – Reinstatement (§11-411) of a previously approved variance permitting the operation of an automotive service station (UG 16B) (*Getty*) which expired on October 11, 2000; Amendment to legalize fuel dispensing islands; Extension of Time to obtain a certificate of occupancy which expired on November 17, 1993; Waiver of the rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 204-12 Northern Boulevard, Northern Boulevard and 204th Street. Block 7301, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 23, 2011, at 1:30 P.M., for continued hearing.

230-10-BZ

APPLICANT – Eric Palatnik, P.C., for Leonid Fishman, owner.

SUBJECT – Application December 17, 2010 – Special Permit (§73-622) for the enlargement of a single family home, contrary to open space, lot coverage and floor area (§23-141(b)) and perimeter wall height (§23-631(b)). R3-1 zoning district.

PREMISES AFFECTED – 177 Kensington Street, Oriental Boulevard and Kensington Street, Block 8754, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Laura Krasner, Alfred Genlomp, Koifman Janna, Alfred Gellomp and Jerome Fox.

ACTION OF THE BOARD – Laid over to August 16, 2011, at 1:30 P.M., for continued hearing.

1-11-BZ

APPLICANT – Martyn & Don Weston Architects, for RAC LLC Realty, owner; Sahadi Importing Company, lessee.

SUBJECT – Application January 3, 2011 – Variance (§72-21) to allow a ground floor enlargement to a pre-existing non complying commercial building, contrary to floor area regulations (§53-31). C2-3/R6 zoning district.

PREMISES AFFECTED – 189-191 Atlantic Avenue, north side of Atlantic Avenue, 240' east of Clinton Street, Block 276, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Don Weston.

ACTION OF THE BOARD – Laid over to August 23, 2011, at 1:30 P.M., for continued hearing.

2-11-BZ

APPLICANT – Cozen O'Connor, for 117 Seventh Avenue South Property Company, LP, owner.

SUBJECT – Application January 4, 2011 – Variance (§72-21) to allow for a residential and community facility enlargement to an existing commercial building, contrary to setback (§33-432) and open space regulations (§23-14). C4-5 zoning district.

PREMISES AFFECTED – 117 Seventh Avenue South, southeast corner of Seventh Avenue South and West 10th Street, Block 610, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 23, 2011, at 1:30 P.M., for adjourned hearing.

24-11-BZ

APPLICANT – Jay A. Segal, Esq., Greenberg Traurig, LLP, for LaSalle New York City, Inc., owner; WCL Academy of New York LLC, lessee.

SUBJECT – Application March 8, 2011 – Variance (§72-21) to permit the construction of an elevator and vestibule in the courtyard of a school building (*WCL Academy*) contrary to floor area (§24-11), lot coverage (§24-11) and permitted obstruction requirements (§24-51). C6-2A/R8B zoning district.

PREMISES AFFECTED – 44-50 East 2nd Street, north side of East 2nd Street, between First and Second Avenues, Block 444, Lot 59, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Randell Minor.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 26, 2011, at 1:30 P.M., for decision, hearing closed.

28-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 291 Broadway Realty Associates LLC, owner; Garuda Thai Inc. dba The Wat, lessee.

SUBJECT – Application March 24, 2011 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*The Wat*). C6-4 zoning district.

PREMISES AFFECTED – 291 Broadway, northwest corner of Broadway and Reade Street, Block 150, Lot 38, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

MINUTES

Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to August 16, 2011, at 1:30 P.M., for decision, hearing closed.

31-11-BZ

APPLICANT – Goldman Harris LLC, for Bronx Sheperds Restoration Corporation, owner.

SUBJECT – Application March 28, 2011 – Variance (§72-21) to allow a mixed use community facility and commercial building, contrary to use (§32-12), floor area (§33-123), rear yard (§33-292), and height and setback (§33-432) regulations. C8-3 zoning district.

PREMISES AFFECTED – 1665 Jerome Avenue, west side of Jerome Avenue between Featherbed Lane and Clifford Lane, Block 2861, Lot 35, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Caroline Harris, Ted Jefferson, Susan MacPhearson, Victor Body Lawson, Mark London and Thomasina Bushby.

ACTION OF THE BOARD – Laid over to August 23, 2011, at 1:30 P.M., for continued hearing.

38-11-BZ

APPLICANT – Eric Palatnik, P.C., for Arveh Schimmer, owner.

SUBJECT – Application April 5, 2011 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted into a single family home, contrary to floor area and open space (§23-141(a)); side yard (§23-461(a)) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1368 East 27th Street, between Avenue M and N, Block 7662, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: John A. Yacavone, Fire Department.

ACTION OF THE BOARD – Laid over to August 16, 2011, at 1:30 P.M., for continue hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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July 27, 2011

DIRECTORY

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Tuesday, July 19, 2011**

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229-10-BZY 163 Orchard Street, Manhattan
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DOCKET

New Case Filed Up to July 19, 2011

101-11-BZ

1152 East 24th Street, W/S of East 234th Street 400' South of Avenue "K", Block 7623, Lot(s) 67, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) to permit the enlargement at the rear of an existing two story residence resulting in 3,745 sq ft of floor area and an enlargement of the attic. R2 zoning district R2 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

AUGUST 16, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 16, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

593-69-BZ

APPLICANT – Eric Palatnik, P.C., for Metro New York Dealer Stations, LLC, owner.

SUBJECT – Application May 27, 2011 – Amendment pursuant to §11-413 to convert the automotive repair bays to an accessory convenience store at an existing gasoline service station (Shell). C2-2/R5 zoning district.

PREMISES AFFECTED – 108-01 Atlantic Avenue, Between 108th and 109th Street. Block 9315, Lot 23, Borough of Queens.

COMMUNITY BOARD #9Q

58-99-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owner.

SUBJECT – Application May 19, 2011 – Extension of Term (§11-411) for the continued operation of a gasoline service station (Gulf) which expired on October 26, 2009; an Amendment to the previously approved plans to remove the canopy and Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 18-10 Utopia Parkway, Entire block is bounded by utopia Parkway, 18th Avenue, 169th Street and 19th Avenue. Block 5743, Lot 75. Borough of Queens.

COMMUNITY BOARD #7Q

185-05-BZ

APPLICANT – John C. Chen for 62-02 Roosevelt Avenue Corporation, owner; Lapchi, Incorporated, lessee.

SUBJECT – Application April 20, 2011 – Extension of Term to a previously granted Variance (§72-21) for the continued operation of an eating and drinking establishment with dancing (UG12A) which expired on January 10, 2008; Amendment to permit the enlargement of the dance floor and kitchen; Extension of Time to complete construction which expired on January 10, 2009 and waiver of the rules. C1-2/R6 zoning district.

PREMISES AFFECTED – 62-02 Roosevelt Avenue, south side of Roosevelt Avenue 192.59' west side of intersection of 63rd Street/Roosevelt Avenue. Block 1294, Lot 58. Borough of Queens.

COMMUNITY BOARD #2Q

259-06-BZ

APPLICANT – Fredrick A. Becker, for Ahi Ezer Congregation, owner.

SUBJECT – Application July 11, 2011 – Extension of Time to Complete Construction of a previously granted Variance (72-21) for the enlargement of an existing one and two-story synagogue which expired on June 12, 2011. R-5 (OP) zoning district.

PREMISES AFFECTED – 1885-1891 Ocean Parkway, northeast corner of Ocean Parkway and Avenue S, Block 682, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #15BK

302-06-BZ

APPLICANT – Harold Weinberg, for Mirrer Yeshiva, owner.

SUBJECT – Application July 8, 2011 – Extension of Time to Complete Construction of a previously granted Variance (72-21) for the construction of a mezzanine and a two-story enlargement over the existing two-story community facility building which expired on June 12, 2011. R6A in OP zoning district.

PREMISES AFFECTED – 1791 Ocean Parkway, between Ocean Parkway, Avenue R and East 7th Street, Block 6663, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEALS CALENDAR

224-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative, Incorporated, owners, John & Daniel Lynch, lessee.

SUBJECT – Application December 7, 2010 – Proposed reconstruction and enlargement not fronting on a legally mapped street contrary to General City Law Section 36 and the building and private disposal system is located within the bed of a mapped street contrary to General City Law Section 35 and Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 173 Reid Avenue, east side of Reid Avenue 245.0 north of Breezy Point Boulevard. Block 16359, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

232-10-A

APPLICANT – OTR Media Group, Incorporated, for 4th Avenue Loft Corporation, owner;

SUBJECT – Application December 23, 2010 – An appeal challenging Department of Buildings determination to deny the issuance of a sign permit on the basis that a lawful advertising sign has not been established and not discontinued as per ZR Section 52-83. C1-6 Zoning District. PREMISES AFFECTED – 59 Fourth Avenue, 9th Street &

CALENDAR

Fourth Avenue. Block 555, Lot 11. Borough of Manhattan.
COMMUNITY BOARD #3M

AUGUST 16, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 16, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

48-11-BZ

APPLICANT – Richard C. Bonsignore, for Joseph Moinian, owner; Mendez Boxing New York, lessee.

SUBJECT – Application April 13, 2011– Special Permit (§73-36) to allow the operation of a physical culture establishment (Mendez Boxing). C5-2 zoning district.

PREMISES AFFECTED – 60 Madison Avenue, aka 54-60 Madison Avenue, aka 23-25 East 26th Street, aka 18-20 East 27th Street, North side of Madison Avenue at East 26th Street and the north east corner to East 27th Street. Block 856, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #5M

54-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Bay Parkway Group LLC, owner.

SUBJECT – Application April 21, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory diagnostic or treatment facility building. R6/C1-3 zoning district.

PREMISES AFFECTED – 6010 Bay Parkway, west side of Bay Parkway between 60th Street and 61st Street, Block 5522, Lot 36 & 32, Borough of Brooklyn.

COMMUNITY BOARD #12BK

65-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Vornado Gun Hill Road LLC, for Gun Hill Road Fitness Group, lessee.

SUBJECT – Application May 12, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) in portion of an existing one-story building. The premises is located in a C2-1/R3-2 zoning district. The proposal is contrary to Section 32-31.

PREMISES AFFECTED – 1750 East Gun Hill Road, frontage on East Gun Hill Road, Gunther Avenue, and Bergen Avenue, Block 4494, Lot 1, Borough of Bronx.

COMMUNITY BOARD #11BX

68-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Rivkie Weingarten and Nachum Weingarten, owners.

SUBJECT – Application April 16, 2011 – Special Permit (§73-622) for enlargement of existing single family home, contrary to floor area, lot coverage and open space (§23-141); rear yard (§23-47) and side yard (§23-461). R3-2 zoning district.

PREMISES AFFECTED – 1636 East 23rd Street, between Avenue P and Quentin Road, Block 6785, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JULY 19, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

982-83-BZ

APPLICANT – H Irving Sigman, for Barone Properties, Inc., owner.

SUBJECT – Application February 22, 2011 – Extension of Term (§11-411) of a previously approved variance permitting retail and office use (UG 6), which expired on March 6, 2009; Extension of Time to obtain a Certificate of Occupancy which expired on May 25, 2006; Amendment (§11-412) to increase number of stores/offices from five to six; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 191-20 Northern Boulevard, southwest corner of 192nd Street, Block 5513, Lot 27, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: H. Irving Sigman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued use of a retail and office building, an extension of time to obtain a certificate of occupancy, and an amendment to permit certain modifications to the site; and

WHEREAS, a public hearing was held on this application on April 12, 2011, after due notice by publication in *The City Record*, with continued hearings on May 24, 2011 and June 21, 2011, and then to decision on July 19, 2011; and

WHEREAS, Community Board 11, Queens, recommends approval of this application, with the following conditions: (1) the applicant comply with all conditions from prior Board grants; (2) the 19 feet of concrete on the corner of 192nd Street and Northern Boulevard be removed and replaced with landscaping; (3) no physical culture establishment (“PCE”) be permitted to operate at the site; and (4) the term be limited to five years; and

WHEREAS, representatives of the Auburndale Improvement Association, Inc., and certain members of the community provided oral and written testimony in opposition to this application, citing concerns that the applicant has not complied with certain conditions from prior grants, and

requesting that the following restrictions be placed on the site: (1) deliveries and commercial garbage collection must be done only during regular business hours; (2) the plot located on the southwest corner of 192nd Street and Northern Boulevard be landscaped and fenced; (3) no PCE be permitted to operate at the site; and (4) the term be limited to five years; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the premises is located on the southwest corner of Northern Boulevard and 192nd Street, within an R3-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 23, 1946 when, under BSA Cal. No. 322-46-BZ, the Board granted a variance to permit the construction of a showroom and accessory sales of motor vehicles also to be used in the servicing of cars, for a term of ten years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, on March 6, 1984, under the subject calendar number, the Board granted a change in use to retail stores and offices for a term of 15 years; and

WHEREAS, on December 7, 1999, the grant was extended for a term of ten years, which expired on March 6, 2009; and

WHEREAS, most recently, on May 25, 2004, the Board granted an amendment to permit changes to the interior layout of the site, including the construction of demising walls increasing the number of stores/offices from three to four and the addition of an exterior canopy fronting Northern Boulevard; and

WHEREAS, the applicant now requests an additional ten-year term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, the applicant also seeks an amendment to the previously approved plans to permit the construction of a new demising wall in order to increase the number of stores/offices at the first floor from four to five, and to remove the exterior canopy fronting Northern Boulevard; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for changes to the site; and

WHEREAS, at hearing, the Board directed the applicant to establish that it complies with the conditions from previous Board grants; and

WHEREAS, in response, the applicant submitted evidence documenting that the site complies with or is in the process of complying with all conditions from previous Board grants; and

WHEREAS, specifically, the applicant states that 50 off-site parking spaces are provided at 190-02 Northern Boulevard, submitted photographs showing that signs have been installed in the stores and offices at the site directing customers to the availability of these spaces, and submitted a service agreement reflecting that a private towing service has been engaged to

MINUTES

remove any illegally parked vehicles, including trucks, from the accessory parking lot and to lock the gates to the parking facility at night; and

WHEREAS, the applicant also submitted revised plans reflecting that the easternmost curb cut on Northern Boulevard will be removed, and that landscaping will be provided along the 192nd Street frontage; and

WHEREAS, in response to the other concerns raised by the Community Board and other members of the community, the applicant states that it will require that deliveries and garbage pickup at the site only occur during business hours, Monday through Friday, from 8:00 a.m. to 5:00 p.m., and that PCE use will not be permitted to occupy the site; and

WHEREAS, as to the request that the term be limited to five years, the applicant submitted a letter from the owner stating that such a short term would cause difficulty in negotiating long term leases, acquiring quality tenants, and obtaining conventional financing for the site, and therefore requests that the Board grant a ten-year extension of term; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term, extension of time to obtain a certificate of occupancy, and the proposed 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, *reopens*, and *amends* the resolution, as adopted on March 6, 1984, so that as amended this portion of the resolution shall read: “to extend the term for ten years from March 6, 2009, to expire on March 6, 2019, to grant an extension of time to obtain a certificate of occupancy to July 19, 2012, and to permit the noted site modifications *on condition* that all work and the site layout shall substantially conform to drawings as filed with this application, marked ‘Received May 10, 2011’-(2) sheets and ‘June 9, 2011’-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on March 6, 2019;

THAT deliveries and garbage pickup shall only occur during business hours, Monday through Friday, from 8:00 a.m. to 5:00 p.m.;

THAT the easternmost curb cut on Northern Boulevard shall be removed and the curb restored in accordance with the BSA-approved plans;

THAT landscaping and fencing shall be provided along 192nd Street in accordance with the BSA-approved plans;

THAT the use and occupancy of the site shall not include physical culture establishments;

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

THAT a new certificate of occupancy shall be obtained by July 19, 2012;

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 App. No. 420054540)

Adopted by the Board of Standards and Appeals, July 19, 2011.

49-06-BZ

APPLICANT – Sheldon Lobel, P.C., for JZB Holdings LLC, owner.

SUBJECT – Application June 7, 2011 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the construction of a two-story commercial building which expired on May 8, 2011. R3-2/C1-2 zoning district.

PREMISES AFFECTED – 2041 Flatbush Avenue, Southeastern corner of the intersection of Flatbush Avenue and Baughman Place. Block 7868, Lot 18. Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Nora Martins.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit, within a C1-2 (R3-2) zoning district, the construction of a two-story commercial building, which expired on May 8, 2011; and

WHEREAS, a public hearing was held on this application on June 21, 2011, after due notice by publication in *The City Record*, and then to decision on July 19, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, the subject site is located on the southeast corner of Flatbush Avenue and Baughman Place within a C1-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since May 8, 2007 when, under the subject calendar number, the Board granted a variance to permit the proposed construction of a two-story commercial building, which does not comply with applicable zoning requirements concerning FAR and parking, contrary to ZR §§ 33-121 and 36-21; and

WHEREAS, substantial construction was to be completed by May 8, 2011, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to financing delays, construction has not yet commenced on the site and additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete

MINUTES

construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction 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, dated May 8, 2007, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction for a term of four years, to expire on May 8, 2015; on condition:

THAT substantial construction shall be completed by May 8, 2015;

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. 301997258)

Adopted by the Board of Standards and Appeals, July 19, 2011.

1045-67-BZ

APPLICANT – Michael A. Cosentino, for Thomas Abruzzi, owner.

SUBJECT – Application June 14, 2011 – Extension of Time to obtain a Certificate of Occupancy for a previously approved Variance (§72-01 & §72-22) for an accessory parking lot to be used for adjoining commercial uses which expired on May 18, 2011. C2-2/R-2 zoning district.

PREMISES AFFECTED – 160-10 Cross Bay Boulevard, between 160th and 161st Avenue, Block 14030, Lots 6 & 20, Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Michael A. Cosentino and Tony Cosentino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for decision, hearing closed.

172-96-BZ

APPLICANT – Law Office of Mitchell Ross, for Don Mitchell, owner; D/B/A Mitchell Iron Works, lessee.

SUBJECT – Application June 29, 2011 – Extension of Time to obtain a Certificate of Occupancy for an existing (UG 16) welding shop which expired on May 17, 2010; Waiver of the Rules. C1-3/R6 zoning district.

PREMISES AFFECTED – 597/599 Marcy Avenue, southeast corner of March and Vernon Avenue, Block 1759, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 26, 2011, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

229-10-BZY

APPLICANT – Akerman Senterfitt, for 163 Orchard Street, LLC, owner.

SUBJECT – Application December 17, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior C6-1 zoning district. C4-4A zoning district.

PREMISES AFFECTED – 163 Orchard Street, Orchard and Houston Streets, between Sytanton and Rivington Street, Block 416, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Calvin Wong.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for decision, hearing closed.

77-11-A

APPLICANT – Akerman Senterfitt LLP, for 3516 Development LLC, owner.

SUBJECT – Application May 27, 2011 – Appeal seeking a determination that the property owner has acquired a common law vested right to continue development under the prior R6 zoning regulations. R6B zoning district.

PREMISES AFFECTED – 35-16 Astoria Boulevard, South side of Astoria Boulevard between 35th and 36th Streets. Block 633, Lots 39 & 140, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for continued hearing.

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, JULY 19, 2011
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

ZONING CALENDAR

61-10-BZ

CEQR #10-BSA-068M

APPLICANT – James Chin & Associates, LLC, for Norman Wong, owner.

SUBJECT – Application April 26, 2010 – Variance (§72-21) to legalize an existing building contrary to height (§23-692), lot coverage (§23-245), rear yard (§23-532) and floor area (§23-145) regulations. R7-2/C1-5 zoning district.

PREMISES AFFECTED – 183 East Broadway, 43.5’ frontage on Henry Street and 26.1 frontage on East Broadway, Block 284, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: James Chin

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated May 17, 2011, acting on Department of Buildings Application No. 104314939, reads, in pertinent part:

Proposed building exceeds the maximum building height permitted in R7-2 zoning district as per ZR 23-633 & 23-692

Proposed lot coverage does not comply with ZR 23-145 (max. lot coverage). Maximum lot coverage permitted in a R7-2 is 65%. Under this application the proposed lot coverage is 67.7%

Proposed rear yard (through lot) does not comply with the requirement of section ZR 23-532(a),(b),(c); ZR 23-543(a); ZR 23-47; and ZR 24-393(a); and

WHEREAS, this is an application under ZR § 72-21, to permit, partially within a C1-5 (R7-2) zoning district and partially within an R7-2 zoning district, the construction of a six-story mixed-use building with ground floor retail and community facility use and residential above, which does not comply with the underlying zoning regulations for height, lot coverage, and rear yard, contrary to ZR §§ 23-633, 23-692, 23-145, 23-532, 23-543, 23-47 and 24-393; and

WHEREAS, a public hearing was held on this application on March 8, 2011, after due notice by publication in the *City Record*, with continued hearings on May 3, 2011 and June 21, 2011, and then to decision on July 19, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Manhattan, recommends approval of this application; and

WHEREAS, certain members of the community provided testimony in support of this application; and

WHEREAS, certain members of the community provided testimony in opposition to this application, citing concerns with the impact of the proposed building on the surrounding neighborhood character; and

WHEREAS, the site is located on an irregular bottleneck-shaped lot with 43’-10” of frontage on Henry Street, 26’-1” of frontage on East Broadway, a depth of 175 feet, and a total lot area of 5,873 sq. ft., partially within a C1-5 (R7-2) zoning district and partially within an R7-2 zoning district; and

WHEREAS, the portion of the lot bordering on East Broadway, with a width of 26’-1”, is a through lot that extends 175 feet from East Broadway to Henry Street; and

WHEREAS, however, two portions of the lot qualify as interior lots: (1) the 4’-9” wide by 75’-0” deep portion of the lot bordering the west side of Henry Street; and (2) the 12’-8” wide by 75’-0” deep portion of the lot bordering the east side of Henry Street; and

WHEREAS, the site was formerly occupied by an 81-year-old mixed-use residential/ commercial building which ranged in height from one-story to five stories with a legal non-complying rear yard of 9’-11” on the Henry Street portion of the building (the “Pre-Existing Building”), which was demolished in anticipation of construction on the site; and

WHEREAS, the site is currently occupied by the structural steel and concrete shell for a seven-story building with a height of 91 feet (the “Current Building”), which was constructed as part of a proposed 12-story mixed-use residential/commercial/community facility building which the Department of Buildings (“DOB”), after initially approving the plans associated with the building and issuing a New Building Permit, determined did not comply with ZR § 23-692 (the “sliver rule”) due to the narrowness of the lot, and revoked the permit; and

WHEREAS, the applicant now proposes to demolish a portion of the Current Building in order to develop a six-story mixed-use residential/commercial/community facility building with first floor retail space fronting East Broadway, first floor community facility space fronting Henry Street, and 25 residential apartments on the second through sixth floors; and

WHEREAS, the proposed building will have a total floor area of 23,724 sq. ft. (4.04 FAR), including a residential floor area of 20,203 sq. ft. (3.44 FAR) (the maximum permitted residential floor area is 20,203 sq. ft.

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(3.44 FAR)); a commercial floor area of 2,236 sq. ft. (0.86 FAR) (the maximum permitted commercial floor area is 5,216 sq. ft. (2.0 FAR)); and a community facility floor area of 1,285 sq. ft. (0.22 FAR) (the maximum permitted community facility floor area is 38,175 sq. ft. (6.5 FAR)); and

WHEREAS, the proposal will have the following non-complying parameters: lot coverage of 68 percent (65 percent is the maximum permitted lot coverage); a total height of 80'-8" (a maximum building height of 75'-0" is permitted); and intrusion into the rear yard equivalent, which requires a 60'-0" open area centered at the midpoint of the length of the lot; and

WHEREAS, the applicant states that the non-compliances related to building height, lot coverage, and the required rear-yard equivalent are related to the application of ZR § 23-692; and

WHEREAS, as to the required rear-yard equivalent, because the subject lot is a through lot, ZR § 23-692 prohibits the applicant from providing the rear-yard equivalent by means of yards fronting each street, which is the method employed by the Current Building, and requires instead that the rear-yard equivalent be taken at the midpoint of the lot, where the bulk of the Current Building is concentrated; and

WHEREAS, the applicant notes that although the building was not initially proposed under the Quality Housing Program, the residential portion of the building is now proposed as Quality Housing; and

WHEREAS, the applicant further notes that, pursuant to ZR § 23-633, Quality Housing buildings have a maximum building height of 75'-0", which is more restrictive than the maximum building height of 78'-0" permitted under ZR § 23-692; therefore, the more restrictive height provision of the ZR § 23-633 applies to the subject building; and

WHEREAS, the applicant initially proposed to retain all of the Current Building and construct a seven-story mixed-use building with a total height of 91 feet, a total floor area of 26,009 sq. ft. (4.43 FAR), and a residential floor area of 22,488 sq. ft. (3.83 FAR); and

WHEREAS, at the Board's direction, the applicant submitted revised plans reflecting the removal of the seventh floor of the building, resulting in the reduced building height of 80'-8" and a complying residential FAR of 3.44; and

WHEREAS, because relief from the bulk requirements of the underlying zoning district is necessary, the applicant requests the subject variance; 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 the underlying district regulations: (1) the narrow, irregular-shaped lot; (2) the poor soil conditions; (3) the need to demolish the Pre-Existing Building and remove the existing foundations; and (4) the poor structural stability of the adjacent buildings; and

WHEREAS, the applicant initially also included an assertion that the practical difficulty and unnecessary hardship in developing the site arise from the reliance in

good faith on DOB's approval of its plans and subsequent issuance of a building permit for the construction of a 12-story mixed-use building at the site; and

WHEREAS, the applicant set forth a timeline for the approval and construction process, which includes multiple meetings with plan examiners until DOB ultimately approved plans and issued a New Building Permit for the 12-story mixed-use building; subsequently, DOB responded to complaints about the building's zoning compliance and initially determined that the building complied, however, as the result of further review, DOB issued objections which led to the permit revocation; and

WHEREAS, the Board identifies the key questions that have emerged in the good faith reliance inquiry as: (1) whether the permit was void on its face; (2) whether there was any way the applicant could have known about the invalidity of the permit; and (3) whether there were multiple municipal assurances of validity; and

WHEREAS, at the beginning of the hearing process the Board raised concerns regarding the applicant's claim of good faith reliance, given that the text of ZR § 23-692 (the "sliver rule") was unambiguous and therefore the applicant had constructive notice that the text applied to the subject site; and

WHEREAS, the applicant asserted that the site is constrained by unique physical conditions and suffers an unnecessary hardship such that the requested variance is warranted even without a claim based on good faith reliance; and

WHEREAS, accordingly, the applicant revised its papers to reflect the noted unique site conditions as the basis for its hardship claim; and

WHEREAS, subsequently, the applicant did not pursue its argument that the variance be granted based on its reliance in good faith on DOB's approval of its plans and subsequent issuance of a building permit; and

WHEREAS, thus, the Board did not fully consider the initial claims of good faith reliance; and

WHEREAS, as to the irregular shape of the lot, the applicant states that because of the unusual configuration of the lot, including differing widths from one side of the lot to the other, and the combination of a narrow through lot and shallow interior lots, development on the site is constrained; and

WHEREAS, specifically, the applicant states that the narrow width triggers ZR § 23-692, which limits the height of the building to the width of the fronting street; and

WHEREAS, however, the applicant states that as opposed to interior lots, when ZR § 23-692 is applied to a through lot the zoning requires the construction of two buildings on the lot because it requires the rear-yard equivalent to be provided in the center of the lot; and

WHEREAS, the applicant further states that the need to provide two residential towers creates the need for a second building core, a second lobby, and additional stairs, exterior wall length, plumbing, and other systems, resulting in additional costs estimated at \$525,000; and

WHEREAS, specifically, the applicant states that if it

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complied with the 60'-0" open area rear yard equivalent requirement and the additional 30'-0" rear yard requirements (measured from the lot line of each of the shallow interior portions of the lot), the applicant would be left with a non-uniform tri-sectional yard area, and would have to construct two dissimilar residential towers, one at each of the two street frontages; and

WHEREAS, the applicant states that the narrowness of the lot also causes difficulty in construction equipment staging, as it requires the staging of excavation and foundation work in numerous small sectional areas rather than one or two large areas, and limits the size of the excavation and concrete equipment that could be used on the site, thereby increasing the cost of construction; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a radius diagram reflecting that there is no other through lot within 400 feet of the subject site, and that of the seven other through lots within 800 feet of the subject site, four have larger frontages and are therefore not subject to ZR § 23-692, and the three other lots that are less than 45 feet wide are all located within a C6-2 zoning district, and are therefore not subject to the height and rear yard restrictions of ZR § 23-692; and

WHEREAS, as to the poor soil conditions, the applicant states that the soil at the site has a low bearing capacity of only 1.5 tons per sq. ft.; and

WHEREAS, the applicant submitted reports from the project engineer and the contractor stating that a spread footing foundation system would normally be used for the subject site, but due to the low bearing capacity of the soil, a more costly concrete mat foundation is required for the site; and

WHEREAS, as to the uniqueness of this condition, the engineer's report states that the normal soil capacity for sites in the surrounding area is at least 2.0 tons per sq. ft., which is sufficient to support a spread footing foundation system, and that the poor soil capacity at the subject site may be explained by a localized pocket of such soil; and

WHEREAS, as to the Pre-Existing Building, the applicant states that it was an obsolete 81-year-old building with no elevators, a deficient, non-complying rear yard, no ADA accessibility, and combustible framing, which could not have feasibly been re-used to construct an as-of-right building on the site and therefore had to be demolished; and

WHEREAS, the applicant further states that the old foundation was of a rubble stone foundation which could not be re-used for a new building, incorporated into a new foundation, or left in place to be worked around because of a history of structural problems due to settlement and movement as a result of the poor soil conditions on the site; and

WHEREAS, the applicant states that it also needed to remove a heavy foundation bed that formerly supported industrial equipment and included a number of concrete grade beams tied into the foundations of the Pre-Existing Building walls; and

WHEREAS, as to the structural stability of the adjacent buildings, the applicant states that the adjoining

building to the east of the site shared party walls with the Pre-Existing Building and required extensive rebuilding and repair of the walls and foundation so as to not damage the adjacent building or cause shift, and the foundation walls of the adjacent building to the west were integrated and adhered by mortar to the walls of the Pre-Existing Building; and

WHEREAS, the applicant further states that the two adjacent buildings were sitting upon rubble stone foundations which necessitated that the applicant perform extensive underpinning, and the overall instability of the adjacent buildings required the installation of lateral bracing across both sides of the subject site to prevent the adjacent buildings from shifting or sliding; and

WHEREAS, the Board notes that the constraints related to the condition of the Pre-Existing Building, the removal of existing foundations, and the poor structural stability of the adjacent buildings are not unique to the site and are conditions generally faced by sites in the surrounding area; and

WHEREAS, the Board further notes that the applicant did not establish a basis for relief based on its good faith reliance on DOB's approval of its plans and subsequent issuance of a building permit, and the applicant did not pursue its good faith reliance claim after initially raising it; and

WHEREAS, however, the Board finds that certain of the unique conditions mentioned above, namely the narrowness of the lot and the shallowness of certain portions of the lot, as well as the poor load bearing capacity of the soil, 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 initially submitted a feasibility study analyzing the following scenarios: (1) the hypothetical as-of-right re-development and enlargement of the Pre-Existing Building, had the exterior walls been kept in place and retail and community facility use incorporated at the cellar and basement levels, with 26 residential units on the first through sixth floors; (2) the demolition of the Current Building and the construction of an as-of-right mixed-use building; (3) the demolition of the Current Building and the construction of an as-of-right community facility building; (4) a lesser variance scenario consisting of the completion of the Current Building as a seven-story mixed-use building with community facility space on the first and second floors, and with 25 residential apartments on the third through seventh floors; and (5) the initial proposal consisting of the completion of the Current Building as a seven-story mixed-use building with ground floor retail and community facility use, with 28 residential apartments above; and

WHEREAS, the applicant concluded that only the initial proposal resulted in a reasonable return; and

WHEREAS, the Board directed the applicant to analyze several other alternatives, including the current proposal which does not require a residential FAR waiver and consists of the demolition of the seventh floor of the

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Current Building and the re-use of the remaining six floors for a mixed-use building with ground floor retail and community facility use, with 25 residential apartments above; and

WHEREAS, the applicant submitted a revised feasibility analysis reflecting that the proposed building would also generate a reasonable return; and

WHEREAS, because the Board does not give any credit towards any costs associated with the construction or demolition of the Current Building, the Board also requested that the applicant analyze the following “clean slate” scenarios which assume that the Current Building does not exist and that new construction of a mixed-use building would require the demolition of the Pre-Existing Building: (1) the new construction of an as-of-right six- and seven-story mixed-use building, with two residential towers and a second building core; and (2) the new construction of the proposed building; and

WHEREAS, the applicant submitted a revised feasibility analysis which reflects that, even assuming the Current Building did not exist, only the proposed building would have generated a reasonable return as new construction; 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 bulk 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 neighborhood, or impact adjacent uses; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by a mix of residential, commercial, and community facility uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that a 14-story hospital building is located one block to the southeast of the site, at the corner of Henry Street and Jefferson Street, and a 21-story residential building is located one block to the northeast of the site, along East Broadway; and

WHEREAS, the radius diagram submitted by the applicant further reflects that the majority of residential buildings in the surrounding area range in height between five and ten stories; and

WHEREAS, the applicant states that the non-complying rear yard for the proposed building will not alter the character of the surrounding neighborhood because none of the lots on the subject block have a complying rear yard; and

WHEREAS, the applicant further states that, taken as an aggregate, the yards on the East Broadway side of the building and the Henry Street side of the building (which would satisfy the rear-yard equivalent requirement if ZR § 23-692 did not apply), 29 percent of the total lot area on the subject site is dedicated to rear yards; and

WHEREAS, the applicant provided a table reflecting that the subject site has a greater portion of the lot dedicated to rear yards than any other lot on the block; and

WHEREAS, the applicant notes that the residential

portion of the building will comply with all applicable Quality Housing requirements, other than building height and lot coverage; 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 initially proposed to retain all of the Current Building and construct a seven-story mixed-use building with a total height of 91 feet, a total floor area of 26,009 sq. ft. (4.43 FAR), and a residential floor area of 22,488 sq. ft. (3.83 FAR); and

WHEREAS, at the Board’s direction, the applicant submitted revised plans reflecting the removal of the seventh floor of the building, which results in a complying residential FAR of 3.44, and a reduced height of 80’-8”;

WHEREAS, the Board notes that if the proposed building were not being constructed as a Quality Housing building, ZR § 23-692 would allow a maximum height of 78’-0” along East Broadway and 78’-6” along Henry Street, based on the height of the adjacent neighbor; 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) 10BSA068M, dated December 18, 2009; 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

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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, partially within a C1-5 (R7-2) zoning district and partially within an R7-2 zoning district, the construction of a six-story mixed-use building with ground floor retail and community facility use and residential above, which does not comply with the underlying zoning regulations for height, lot coverage, and rear yard, contrary to ZR §§ 23-633, 23-692, 23-145, 23-532, 23-543, 23-47 and 24-393; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received June 7, 2011” – fifteen (15) sheets; and *on further condition*:

THAT the bulk parameters of the proposed building shall be as follows: a maximum total floor area of 23,724 sq. ft. (4.04 FAR); a maximum residential floor area of 20,203 sq. ft. (3.44 FAR); a maximum building height of 80’-8”; and a maximum lot coverage of 68 percent, 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 substantial construction shall be completed in accordance with ZR § 72-23;

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, July 19, 2011.

10-11-BZ & 11-11-BZ

APPLICANT – Rampulla Associates Architects, for Charles Cannizaro, owner.

SUBJECT – Application February 3, 2011 – Variance (§72-21) to allow two, single family homes contrary to front yard (§23-45) and rear yard regulations (§23-47). R3-1 zoning district.

PREMISES AFFECTED – 115, 121 Finely Avenue, north of Finely Avenue, 100’ southwest of Marine Way, Block 4050, Lot 53, 56, 59, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Staten Island Borough Commissioner, dated January 4, 2011, acting on Department of Buildings Application Nos. 510028140 and 510028159, reads in pertinent part:

“The subject front yard setback is shown being measured from the record line and not the widening line and is contrary to Section 23-45 (ZR). . .

The subject rear yard is less than the prescribed (30’-0”) rear yard and is contrary to Section 23-47 (ZR);” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-1 zoning district within a Lower Density Growth Management Area, the construction of two two-story single-family homes that do not provide the required front and rear yards, contrary to ZR §§ 23-45 and 23-47; and

WHEREAS, a public hearing was held on this application on May 17, 2011, after due notice by publication in *The City Record*, with a continued hearing on June 21, 2011, and then to decision on July 19, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application; and

WHEREAS, certain community members provided written and oral testimony in opposition to the application, citing concerns about whether the site could accommodate the proposal and whether the proposal fits within the context of the neighborhood; and

WHEREAS, the site is located on the north side of Finley Avenue, between Ebbitts Street and Marine Way, within an R3-1 zoning district within a Lower Density Growth Management Area; and

WHEREAS, the site consists of a single zoning lot comprising two separate tax lots: Lot 49 and Lot 52, which are planned to be established as separate zoning lots; and

WHEREAS, the applicant states that the lots were created in 1889 and formerly configured as three lots known as Lots 53, 56, and 59; and

WHEREAS, the applicant provided a historic map to support its assertion that the shallow depth of the site has remained unchanged and was not created by the reconfiguration; and

WHEREAS, the applicant notes that because the lots have been reconfigured and did not exist in separate ownership as set forth at ZR § 23-52 (Special Provisions for Shallow Interior Lots), they do not qualify for a reduction in the required rear yard; and

WHEREAS, the applicant notes that because the three historic lots were shallow, it sought to have DOB accept the shifting of the lot lines to create two new shallow lots as satisfying the shallow lot provision, but the request was denied; and

WHEREAS, the applicant notes that the new lots comply with requirements for lot area and lot width; and

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WHEREAS, the applicant notes that there is also a street widening line with a depth of 5'-0" along the Finley Avenue frontage, but that Finley Avenue is a final mapped street with a width of 60'-0" and, thus, lot measurements are taken from Finley Avenue; and

WHEREAS, the individual lots have areas of 3,875 sq. ft. (Lot 49) and 3,961.5 sq. ft. (Lot 52); each has a width of 85 feet and depths ranging from approximately 45 feet to approximately 47 feet; and

WHEREAS, the proposed homes will have the following complying parameters each: a total floor area of 1,617 sq. ft. (0.40 or 0.41 FAR); open space ratio of 77 percent; lot coverage of 22 percent; a wall height of 20'-5"; a total height of 26'-0"; side yards with widths of 5'-0" (along the eastern lot lines) and 21'-8" (along the western lot lines); and

WHEREAS, however, the applicant proposes to provide front yards with depths of 5'-0" (a front yard with a minimum depth of 15'-0" is required), and rear yards with depths of 20'-0" (Lot 49) and 21'-0" (Lot 52) (a rear yard with a minimum depth of 30'-0" is required); and

WHEREAS, the applicant states that the requested yard relief is necessary, for reasons stated below; thus, the instant application was filed; 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's shallow depth; and

WHEREAS, the applicant states that if the required front yard with a depth of 15'-0" and rear yard with a depth of 30'-0" were provided, the site, with a depth ranging from 45'-0" to 47'-0" would be unbuildable; and

WHEREAS, accordingly, the applicant represents that the yard waivers are necessary to create a development with reasonable floor plates; and

WHEREAS, as to the uniqueness of the condition, the applicant states that there is only one other similarly shallow vacant interior lot along Finley Avenue, to the west of the site and that it is in common ownership with another lot on the block and used in conjunction with it; and

WHEREAS, the applicant submitted a radius diagram indicating that the majority of lots within a 400-ft. radius are at least 90 feet in depth; and

WHEREAS, the radius diagram further reflects that the subject site is one of only three sites of any size that are vacant within a 400-ft. radius of the site; and

WHEREAS, the applicant identified another vacant lot beyond the 400-ft. radius of the site, which is used as a parking lot for a townhouse development; and

WHEREAS, the applicant states that two sites to the west, which are also shallow are occupied by buildings built prior to December 15, 1961 and a third site, which is somewhat deeper is also occupied by a home; and

WHEREAS, accordingly, the applicant represents that the front yard waiver is necessary to create a home of a reasonable 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 front yard regulations; and

WHEREAS, the Board has determined that because of the subject site'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 asserts that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant submitted a radius diagram reflecting that the surrounding neighborhood is characterized predominantly by two-story semi-detached and detached homes; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development and that that it complies with all relevant bulk regulations other than front and rear yards; and

WHEREAS, specifically, the applicant notes that the proposed home complies with the R3-1 zoning district regulations for FAR, side yards, open space, lot coverage, height, and parking; and

WHEREAS, the applicant states that many single-family homes in the area do not provide the required front and rear yards; and

WHEREAS, the applicant notes that the two homes across Finley Avenue from the site have front yards with depths 17.5 feet and 8.2 feet, which reflects that there is not an established front yard context along Finley Avenue; and

WHEREAS, the applicant initially proposed front yards with depths of 10 feet and rear yards with depths of 16 feet, but, based on concerns raised by the neighbors at the rear, the Board directed the applicant to increase the depth of the rear yards and reduce the depth of the front yards, accordingly; and

WHEREAS, as to the adjacent neighbors' concerns about the proposed homes compromising their access to light and air, the Board notes that the revised proposal results in a depth ranging from 45'-0" for a small portion of the site to 65'-0" between the subject homes and adjacent homes at the rear; and

WHEREAS, the applicant notes that if the individual lots had been owned separately and apart from each other on the dates required by ZR § 23-52, rear yards with depths of 10'-0" would be permitted as-of-right; the applicant proposes rear yards with depths of at least 20'-0"; and

WHEREAS, the applicant asserts that the buildings' heights are comparable to those in the area and that due to the site's inclusion in a Federal Emergency Management Area (FEMA) Flood Hazard District (Zone AE), the minimum first floor elevation permitted is 7.8 feet and a cellar is not permitted; and

WHEREAS, accordingly, the applicant represents that the height of the homes cannot be reduced any further; and

WHEREAS, 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, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning

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regulations is inherent to the site's shallow depth; 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 historic site dimensions; and

WHEREAS, the Board notes that the shallowness of the site is a historic condition and was not created by the applicant's reconfiguration of the length of the individual lots; and

WHEREAS, the Board notes that the proposal complies with all R3-1 zoning district regulations except front and rear yards and that the proposed width of the homes are 15 feet, which reflects 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, in an R3-1 zoning district within a Lower Density Growth Management Area, the construction of two two-story single-family homes that do not provide the required 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 June 28, 2011"– four (4) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: floor area of 1,617 sq. ft. (0.40 or 0.41 FAR) for each home; open space ratio of 77 percent; lot coverage of 22 percent; a wall height of 20'-5"; a total height of 26'-0"; side yards with widths of 5'-0" (along the eastern lot lines) and 21'-8" (along the western lot lines); front yards with depth of 5'-0" and rear yards with a depth of 20'-0" (Lot 49) and 21'-0" (Lot 52), as per the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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;

THAT substantial construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance 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 19, 2011.

36-11-BZ

CEQR #11-BSA-076M

APPLICANT – Francis R. Angelino, Esq., for 270 Greenwich Street Associates LLC, owner; SoulCycle Tribeca, LLC, lessee.

SUBJECT – Application April 1, 2011 – Special Permit (§73-36) to permit the legalization of a Physical Culture Establishment (*SoulCycle*). C6-3 zoning district.

PREMISES AFFECTED – 270 Greenwich Street/103 Warren Street, west side of Joe DiMaggio Highway, Block 142, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Francis R. Angelino.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated May 19, 2011, acting on Department of Buildings Application No. 120231677, reads in pertinent part:

"Proposed Physical Culture Establishment is not permitted as of right in a C6-4 district as per ZR section 32-10 and requires a BSA Special Permit per ZR Section 73-36;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C6-4 zoning district, the legalization of a physical culture establishment (PCE) at the first floor and first floor mezzanine of a 32-story mixed-use commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 21, 2011, after due notice by publication in *The City Record*, and then to decision on July 19, 2011 and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on an irregular-shaped lot bounded by Warren Street to the north, Greenwich Street to the east, Murray Street to the south, and West Street to the west, within a C6-4 zoning district; and

WHEREAS, the site is occupied by a 32-story mixed-use commercial/residential building; and

WHEREAS, the PCE will occupy 6,176 sq. ft. of floor area on the first floor and first floor mezzanine; and

WHEREAS, the PCE will be operated as Soul Cycle; and WHEREAS, the proposed hours of operation are: 5:30 a.m. to 9:30 p.m., daily; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; and

WHEREAS, the Board finds that this action will

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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 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 Board notes that the PCE has been in operation since January 15, 2010, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between January 15, 2010 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; 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. 11BSA076M, dated March 22, 2011; and

WHEREAS, the EAS documents 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, 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 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, on a site within a C6-4 zoning district, the legalization of a physical culture establishment at the first floor and first floor mezzanine of a 32-story mixed-use

commercial/residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 7, 2011" – 5 sheets and *on further condition*:

THAT the term of this grant shall expire on January 15, 2020;

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 above conditions shall appear on the Certificate of Occupancy;

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);

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 19, 2011.

201-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for For Our Children, Inc., owner.

SUBJECT – Application August 1, 2008 – Variance (§72-21) to allow a one story commercial building (UG 6); contrary to use regulations (§22-00). R3X zoning district. REMISES AFFECTED – 40-38 216th Street, between 215th Place and 216th Street, 200' south of 40th Avenue, Block 6290, Lot 70, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 23, 2011, at 1:30 P.M., for deferred decision.

169-09-BZ

APPLICANT – Sheldon Lobel, for Saint Georges Crescent, LLC, owner.

SUBJECT – Application June 8, 2009 – Variance (§72-21) to allow a multi-family residential building, contrary to floor area (§23-145), rear yard (§23-47), height and setback (§23-633), rear setback (§23-663), minimum distance between windows and lot lines (§23-861), and maximum number of dwelling units (§23-22) regulations. R8 zoning district.

PREMISES AFFECTED – 186 Saint George's Crescent, east side of St. George's Crescent, 170' southeast of the corner formed by the intersection of Van Cortland Avenue, and Grand Concourse, Block 3312, Lot 12, Borough of Bronx.

COMMUNITY BOARD #7BX

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APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to August 23, 2011, at 1:30 P.M., for deferred decision.

230-09-BZ

APPLICANT – Peter Hirshman, for Mr. Filipp T Tortora, owner.

SUBJECT – Application July 20, 2009 – Variance (§72-21) for the construction of a three story, three family residence, contrary to front yard regulations (§23-45). R-5 zoning district.

PREMISES AFFECTED – 1700 White Plains Road, northeast corner of White Plains and Van Nest Avenue, Block 4033, Lot 31, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Giuliano Penna.

ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for continued hearing.

4-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 1747 East 2nd Street, LLC, owner.

SUBJECT – Application January 10, 2011 – Variance (§72-21) to allow a three-story synagogue, contrary to lot coverage (§24-11), floor area (§113-51), wall height and total height (§113-55), front yard (§113-542), side yards (§113-543), encroachment into required setback and sky exposure plane (§113-55), and parking (§25-18, §25-31, and §113-561). R5 zoning district.

PREMISES AFFECTED – 1747-1751 East 2nd Street, aka 389 Quentin Road, northeast corner of East 2nd Street and Quentin Road, Block 6634, Lot 49, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to August 16, 2011, at 1:30 P.M., for continued hearing.

51-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Susan Sherer and Shimishon Sherer, owners.

SUBJECT – Application April 18, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence, contrary to floor area and open space (§23-141); and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1226 East 26th Street, west side of 26th Street, between Avenue L and Avenue M, Block 7643, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra A. Altman.

ACTION OF THE BOARD – Laid over to August 16, 2011, at 1:30 P.M., for continued hearing.

55-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Acadia 2914 Third Avenue LLC, owner; Third Avenue Bronx Fitness Group, LLC, lessee.

SUBJECT – Application April 25, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C4-4 zoning district.

PREMISES AFFECTED – 2914 Third Avenue, south of East 152nd Street, Third Avenue and Bergen Avenue, Block 2362, Lot 13, Borough of Bronx.

COMMUNITY BOARD #1BX

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to August 16, 2011, at 1:30 P.M., for decision, hearing closed.

56-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Adam Cohen, owner.

SUBJECT – Application April 25, 2011 – Variance (§72-21) for the enlargement of an existing one-family semi-detached residence, contrary to use (§ 22-11) and (§52-22); side yard (§23-461(a)) and floor area (§ 23-141). R2X zoning district.

PREMISES AFFECTED – 957 East 7th Street, East side of East 7th Street, approximately midblock between Avenue and Avenue I. Block 6510, Lot 68. Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to August 23, 2011, at 1:30 P.M., for continued hearing.

57-11-BZ

APPLICANT – Sheldon Lobel, P.C., for 208 West 125th Street Associates, LLC, owner; 208 West 125th Street Fitness Group, LLC, lessee.

SUBJECT – Application May 2, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C6-3/C4-4D.

PREMISES AFFECTED – 208 West 125th Street and West 124th Street, west of Adam Clayton Powell Boulevard, Block 1930, Lot 37, Borough of Manhattan.

COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

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Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to August 16, 2011, at 1:30 P.M., for continued hearing.

59-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 156 South Avenue Corporation, owner; Community Health Center, lessee.

SUBJECT – Application May 5, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory diagnostic facility building. C8-1 zoning district.

PREMISES AFFECTED – 439 Port Richmond Avenue, southwest corner of Port Richmond Avenue and Homestead Avenue, Block 1048, Lot 9, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 26, 2011, at 1:30 P.M., for continued hearing.

Adjourned: P.M.

MINUTES

*CORRECTION

This resolution adopted on June 5, 2007, under Calendar No. 173-06-A and printed in Volume 92, Bulletin No. 22, is hereby corrected to read as follows:

173-06-A

APPLICANT – Adam Rothkrug, Esq., for Hamid Kavian, owner.

SUBJECT – Application August 11, 2006 – Proposed construction of a single family home to be located within the bed of mapped street (Hook Creek Boulevard) contrary to General City Law Section 35. R2 Zoning District.

PREMISES AFFECTED – 240-28 128th Avenue, southwest corner 128th Avenue and Hook Creek Boulevard, Block 12867, Lot 32, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam W. Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown and Commissioner Hinkson.....3

Negative:.....0

Absent: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 17, 2006, acting on Department of Buildings Application No. 402386431, which reads in pertinent part:

“Proposed building is in the bed of Mapped Street. No permit shall be issued for any building in the bed of any street mapped street, contrary to General City Law Section 35.”; and

WHEREAS, a public hearing was held on this application on June 5, 2007 after due notice by publication in the *City Record*, and then to decision on June 5, 2007; and

WHEREAS, by letter dated November 20, 2006, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated April 26, 2007, the Department of Environmental Protection (DEP) states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated November 13, 2006, the Department of Transportation (DOT) states that it has reviewed the application and has no objections; and

WHEREAS, the Board notes that by its November 13, 2006 letter, DOT did not indicate that it intends to include the applicant’s property in its ten-year capital plan; 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, dated July 17, 2006, acting on Department of Buildings Application No. 402386431, 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 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 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 5, 2007.

***The resolution has been revised to correct the Block number, which read “Block 12857” now reads: “Block 12867”. Corrected in Bulletin No. 30, Vol. 96, dated July 27, 2011.**

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*CORRECTION

This resolution adopted on July 12, 2011, under Calendar No. 19-11-BZ and printed in Volume 96, Bulletin Nos. 27-29, is hereby corrected to read as follows:

19-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Brown and Yechiel Fastag, owners.

SUBJECT – Application February 24, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence, contrary to floor area and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1271 East 24th Street, east side of East 24th Street, between Avenue L and Avenue M, Block 7642, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 7, 2011, acting on Department of Buildings Application No. 320245542, 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 of 150.

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard of 30 feet.

Proposed plans are contrary to ZR 23-461 in that the proposed side yard straight-line extension is less than the 5 foot minimum side yard permitted;”

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 home, which does not comply with the zoning requirements for 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 May 17, 2011 after due notice by publication in *The City Record*, with a continued hearing on June 14, 2011, and then to decision on July 12, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and

Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 24th Street, between Avenue L and Avenue M, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 3,750 sq. ft., and is occupied by a single-family home with a floor area of 1,999 sq. ft. (0.53 FAR); 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 1,999 sq. ft. (0.53 FAR) to 3,764 sq. ft. (1.0 FAR); the maximum permitted floor area is 1,875 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 57 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard along the southern lot line with a width of 4’-2½” (a minimum width of 5’-0” is required for each side yard); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-0” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, based upon its review of the record, 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, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, 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

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marked "Received June 1, 2011"-(11) sheets and "June 27, 2011"-(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,764 sq. ft. (1.0 FAR); an open space ratio of 57 percent; a side yard with a minimum width of 4'-2½" along the southern lot line; and a rear yard with a minimum depth of 20'-0", 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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 12, 2011.

***The resolution has been revised to correct the 7th WHEREAS, which read "...3740 sq. ft..." now reads: "...3,750 sq. ft..." ; and the 9th WHEREAS and the 1st condition, which read "...3,763 sq. ft. (1.01 FAR)..." now reads "...3,764sq. ft. (1.0 FAR)..." . Corrected in Bulletin No. 30, Vol. 96, dated July 27, 2011.**

*CORRECTION

This resolution adopted on July 12, 2011, under Calendar No. 34-11-BZ and printed in Volume 96, Bulletin Nos. 27-29, is hereby corrected to read as follows:

34-11-BZ

CEQR #11-BSA-074K

APPLICANT – Joan Humphreys/A & H Architecture PC, for Keith W. Bails/272 Driggs Avenue Corporation, owner; Adriane Stare/Caribou Baby d/b/a Stollenwerck Stare LLC, 272 Driggs Avenue, lessee.

SUBJECT – Application March 29, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Caribou Baby*). C2-4 Overlay/R6B zoning district.

PREMISES AFFECTED – 272 Driggs Avenue, north side of Driggs Avenue 85.29' west of Eckford Street, Block 2681, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Joan Humphreys.

For Administration: John Yacavone, Fire Department.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 8, 2011, acting on Department of Buildings Application No. 320265388, reads in pertinent part:

"ZR 32-10. Proposed physical culture establishment is not permitted in C2-4 zone and requires a special permit from the Board of Standards and Appeals per ZR 73-36;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within C2-4 (R6B) zoning district, the operation of a physical culture establishment (PCE) at the first floor of a three-story mixed-use commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 14, 2011, after due notice by publication in *The City Record*, and then to decision on July 12, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Driggs Avenue between Leonard Street and Eckford Street, within a C2-4 (R6B) zoning district; and

WHEREAS, the site is occupied by a three-story mixed-

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use commercial/residential building; and

WHEREAS, the PCE will occupy a total floor area of 587 sq. ft. on the first floor, with associated retail space occupying the remaining 1,625 sq. ft. of floor area on the first floor; and

WHEREAS, the PCE will be operated as Caribou Baby; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, by letter dated June 29, 2011, the Fire Department approves of the installation of hard-wired smoke detectors in the subject PCE space and first floor retail space; 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 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 617.2; 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. 11BSA074K, dated May 20, 2011; and

WHEREAS, the EAS documents 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, 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 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, on a site within a C2-4 (R6B) zoning district, the operation of a physical culture establishment at the first floor of a three-story mixed-use commercial/residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 20, 2011"- (1) sheet and "Received June 28, 2011"- (2) sheets and *on further condition*:

THAT the term of this grant shall expire on July 12, 2021;

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 all massages shall be performed by New York State licensed massage therapists;

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

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);

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 12, 2011.

***The resolution has been revised to correct the 11th WHEREAS and to delete the 12th WHEREAS. Corrected in Bulletin No. 30, Vol. 96, dated July 27, 2011.**

BULLETIN

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New Case Filed Up to July 26, 2011

102-11-BZ

131-23 31st Avenue, northwest corner of the intersection of 31st Avenue & Whitestone Expressway. (West Service Road), Block 4361, Lot(s) 27, Borough of **Queens, Community Board: 07**. Special Permit (ZR §73-36) to allow the operation of a physical culture establishment (Planet Fitness). C4-4 zoning district. M1-1 (CP) district.

103-11-A

329 East 9th Street, north side of East 9th Street between 1st and 2nd Avenue, Block 451, Lot(s) 47, Borough of **Manhattan, Community Board: 03**. Application filed pursuant to Section 310 of the Multiple Dwelling Law (MDL) requesting that the Board vary MDL sections 51, 143, 146, 148 and 149 to allow the enlargement of the subject building. R8B district.

104-11-BZ

1936 East 26th Street, Between Avenues S and T, Block 7304, Lot(s) 21, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141(b)); open space (§23-141(b)); lot coverage (§23-141(b)) and less than the required rear yard (§23-47). R3-2 zoning district. R3-2 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

AUGUST 23, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 23, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

1045-64-BZ

APPLICANT – Hal Dorfman, R.A., for Kips Bay Tower Associates, owner.

SUBJECT – Application June 10, 2011 – Extension of Term permitting the use of no more than 120 unused and surplus tenant parking spaces, within an accessory garage, for transient parking granted by the Board pursuant to §60(1)(b) of the Multiple Dwelling Law (MDL) which expired on June 21, 2011. R8 zoning district.

PREMISES AFFECTED – 300-330 East 33rd Street, Northwest corner of East 33rd Street and First Avenue. Block 936, Lot 7501. Borough of Manhattan.

COMMUNITY BOARD #6M

86-92-BZ

APPLICANT – Randy M. Gulkis, DDS, owner.

SUBJECT – Application April 29, 2011 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a UG6B dental office which expired on June 11, 2011. R3X zoning district.

PREMISES AFFECTED – 15 First Street, a triangle formed by First Street to the east, Richmond to west and Rose Street to the south, Block 4190, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

201-02-BZ

APPLICANT – Eric Palatnik, P.C., for Papa Page, LLC, owner.

SUBJECT – Application July 20, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a new automotive service station with accessory convenience store which expired on May 22, 2011 and a waiver of the rules. C1-1/R3X (SRD) zoning district.

PREMISES AFFECTED – 6778 Hylan Boulevard, between Page Avenue and Culotta. Block 7734, Lot 13 & 20, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEALS CALENDAR

15-11-A

APPLICANT – Slater & Beckerman, LLP., for 1239 Operating Corporation, owner.

SUBJECT – Application February 10, 2011 – An appeal challenging the Department of Building's interpretation that a non-illuminated advertising sign and sign structure is not a legal non-conforming advertising sign pursuant to ZR §52-00. C6 zoning district.

PREMISES AFFECTED – 860 Sixth Avenue, through lot on the north side of West 30th Street, between Broadway and Avenue of the Americas, Block 832, Lot 1. Borough of Manhattan.

COMMUNITY BOARD #5M

40-11-A

APPLICANT – Bryan Cave LLP, Margery Perlmutter, Esq., for CPW Retail, LLC c/o American Continental Properties, LLC, owner.

SUBJECT – Application April 8, 2011 – Appeal challenging a determination by the Department of Building that the non-conforming commercial use of a Condominium retail space was discontinued pursuant to §52-61. C1-1, C-2 & C-3 Zoning district.

PREMISES AFFECTED – 25 Central Park West, West 62nd and West 63rd Streets, Block 1115, Lot 7501(2) Borough of Manhattan.

COMMUNITY BOARD #7M

AUGUST 23, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 23, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

235-10-BZ

APPLICANT – Paul J. Proulux, Esq., c/o Cozen O'Connor, for Avenue K Corporation, owner; TD Bank c/o Facilities Department, lessees.

SUBJECT – Application December 30, 2010 – Variance (§72-21) to allow a commercial use in a residential zone, contrary to ZR §22-00. R3-2 zoning district.

PREMISES AFFECTED – 2363 Ralph Avenue, corner of Ralph Avenue and Avenue K, Block 8339, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

CALENDAR

17-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. David Mizrachi, owners.

SUBJECT – Application February 23, 2011 – Special Permit (§73-622) for the enlargement of an existing two family residence, to be converted to a single family residence, contrary to floor area, lot coverage and open space §23-141(b) and less than the required rear yard §23-47. R4/OP zoning district.

PREMISES AFFECTED – 2255 East 2nd Street, East side of East 2nd Street, approximately 145 feet south of Gravesend Neck Road. Block 7154, Lots 71 & 72, Borough of Brooklyn.

COMMUNITY BOARD #15BK

18-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for ZTI Corporation, owner.

SUBJECT – Application February 24, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space §23-141; side yards §23-461 and less than the required rear yard §23-47. R-2 zoning district.

PREMISES AFFECTED – 1025 East 22nd Street, between Avenue I and Avenue J, Block 7586, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #14BK

64-11-BZ

APPLICANT – Rampulla Associates Architects, for 3232 49th Realty, LLC, owner; K & G Fitness Group, LLC, lessee.

SUBJECT – Application May 12, 2011 – Special Permit (§73-36) to allow the operation of a physical cultural establishment (*Retro Fitness*) in a C8-1 zoning district.

PREMISES AFFECTED – 32-28 49th Street, between Northern Boulevard and New Town Road, Block 734, Lot 47, Borough of Queens.

COMMUNITY BOARD #1Q

72-11-BZ

APPLICANT – Walter t. Gorman, P.E., for Tannor and Rothafel Partnership, owner; Lukoil (Getty Service Station), lessee.

SUBJECT – Application May 24, 2011 – Re-Instatement (§11-411) of a previously approved variance permitting the operation of an automotive service station (UG 16B) which expired on October 8, 1994. R3-2 zoning district.

PREMISES AFFECTED - 101-06 Astoria Boulevard, south east corner of 101st Street. Block 1688, Lot 30. Borough of Queens.

COMMUNITY BOARD #3Q

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JULY 26, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

887-54-BZ

APPLICANT – Eric Palatnik, P.C., for Napa Realty Corporation, owner.

SUBJECT – Application July 5, 2011 – Extension of Time to obtain a Certificate of Occupancy for an existing gasoline service station (*British Petroleum*) with accessory convenience store (*7-Eleven*) which expired on June 15, 2011. C2-2/R6B zoning district.

PREMISES AFFECTED – 218-01 Northern Boulevard, between 218th and 219th Streets, Block 6321, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to August 23, 2011, at 10 A.M., for decision, hearing closed.

713-55-BZ

APPLICANT – Walter T. Gorman, P.E., for East River Petroleum Realty LLC, owner; Brendan Utopia Mobil, lessee.

SUBJECT – Application May 3, 2011 – Extension of Term (§11-411) of a variance for the continued operation of a gasoline service station (*Mobil*) which expired on December 11, 2011. C2-2/R3-1 zoning district.

PREMISES AFFECTED – 181-05 Horace Harding Expressway, north side block front between Utopia and 182nd Street, Block 7065, Lot 8, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Zaheer Khanzada

ACTION OF THE BOARD – Laid over to August 23, 2011, at 10 A.M., for continued hearing.

502-60-BZ

APPLICANT – Patrick O' Connell P.E. for Raymond Edwards, owner; Angel R. Hernandez, lessee.

SUBJECT – Application February 23, 2011 – Extension of Term (§11-411) of a variance permitting the use of a parking

lot (UG 8) for parking and storage of more than five (5) motor vehicles which expired on January 20, 2011. C2-4/R7-2 zoning district.

PREMISES AFFECTED – 4452 Broadway, Broadway & Fairview Avenue. Block 2170, Lot 62 & 400. Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Glendon Dockery.

ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for continued hearing.

742-70-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 830 Bay Street, LLC, owner.

SUBJECT – Application May 27, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of an automotive service station which expired on May 18, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on February 26, 2009 and waiver of the rules. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 830 Bay Street, southwest corner of Bay Street and Vanderbilt Avenue, Block 2836, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for continued hearing.

93-95-BZ

APPLICANT – Akerman Senterfeit, for 149-58 Realty Company, owner.

SUBJECT – Application April 18, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of a (UG 6a) eating and drinking establishment and (UG 9) catering establishment which expired on June 10, 2007 and waiver of the rules. R3A zoning district.

PREMISES AFFECTED – 149-56/58 Cross Island Parkway, between 149th and 150th Streets, Block 4662, Lot 36 & 38, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Jessica Loeser.

ACTION OF THE BOARD – Laid over to August 23, 2011, at 10 A.M., for continued hearing.

118-95-BZ

APPLICANT – Carl A Sulfaro, for White Castle System, Incorporated, owner.

SUBJECT – Application April 11, 2011 – Extension of Term of a previously granted Special Permit (§73-243) for the continued operation of a drive-thru facility at an eating and drinking establishment (*White Castle*) which expires on July 25, 2011; Extension of Time to obtain a Certificate of

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Occupancy which expired on May 22, 2008; Waiver of the rules. C1-2/R6 zoning district.

PREMISES AFFECTED – 89-03 57th Avenue, southeast corner of Queens Boulevard and 57th Avenue, Block 1845, Lot 45, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for continued hearing.

172-96-BZ

APPLICANT – Law Office of Mitchell Ross, for Don Mitchell, owner; D/B/A Mitchell Iron Works, lessee.

SUBJECT – Application June 29, 2011 – Extension of Time to obtain a Certificate of Occupancy for an existing (UG 16) welding shop which expired on May 17, 2010; Waiver of the Rules. C1-3/R6 zoning district.

PREMISES AFFECTED – 597/599 Marcy Avenue, southeast corner of March and Vernon Avenue, Block 1759, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 16, 2011, at 10 A.M., for postponed hearing.

51-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 70-50 Kissena Boulevard LLC, owner.

SUBJECT – Application May 26, 2011 – Amendment to a Variance (§72-21) to legalize the change of use from a (UG6) one-story retail building to a (UG3) community facility with changes to the exterior façade and interior layout. R4 zoning district.

PREMISES AFFECTED – 70-44/52 Kissena Boulevard, southeast corner of 70th Road and Kissena Boulevard, Block 6656, Lot 52, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for continued hearing.

APPEALS CALENDAR

52-11-A

APPLICANT – New York City Economic Development Corporation, for Department of Small Business Services, owner.

SUBJECT – Application March 30, 2011 – Variance pursuant to NYC Building Code (Appendix G, Section G304.1.2) to allow for a portion of a structure to be located below a flood zone. C2-8 zoning district.

PREMISES AFFECTED – South Street & John Street, East South Street, at John Street, under the FDR Drive. Block

73, Lots 2 & 8. Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Small Business Services, dated June 1, 2011, acting on Application No. 20110686, reads, in pertinent part:

“The design of the Pavilion does not comply with Section G304.1.2 of the NYC Building Code, because the lowest floor level is below the Base Flood Elevation;” and

WHEREAS, this is an administrative appeal filed pursuant to Section 666(7) of the New York City Charter by the NYC Economic Development Corporation (“EDC”) and Appendix G, Section BC G107 of the New York City Administrative Code (the “Building Code”) to permit a proposed pavilion building in a flood hazard area which does not comply with floodproofing requirements of Appendix G, Section G304.1.2 of the Building Code; and

WHEREAS, Section 666(c) of the New York City Charter authorizes the Board of Standards and Appeals to rule upon any decision regarding the Building Code issued by the Commissioner of the Department of Ports and Trade (now the Department of Small Business Services) in relation to structures on waterfront property; and

WHEREAS, a public hearing was held on this application on July 12, 2011, after due notice by publication in *The City Record*, and then to decision on July 26, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan recommends approval of this application; and

WHEREAS, the subject site is located underneath the FDR Drive at the corner of South Street and John Street, along the East River waterfront; and

WHEREAS, the subject site is part of the two-mile East River Waterfront Esplanade proposed by the City of New York for Manhattan’s East Side from the Battery Maritime Building to Pier 35, which will include five leasable pavilion buildings, as well as furniture, plantings, lighting, and the rehabilitation of two piers; and

WHEREAS, the subject site is proposed to be occupied by a pavilion which will house park utilities, leasable bicycle storage space, and public restrooms (the “John Street Service Building” and “the building”); and

WHEREAS, the building is proposed to have a floor area of approximately 1,045 sq. ft.; and

WHEREAS, the building is proposed to be located beneath the deck of the FDR Drive; and

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WHEREAS, EDC states that the subject site is located within a Special Flood Hazard Area as determined by the Federal Emergency Management Agency (“FEMA”), as indicated on the Flood Insurance Rate Maps for the City of New York; and

WHEREAS, Appendix G, Section G304 of the Building Code establishes general limitations on occupancy and construction within Special Flood Hazard Areas; and

WHEREAS, specifically, Section G304.1.2 requires that nonresidential buildings comply with either an “elevation option,” in which the lowest floor is elevated at or above the design flood elevation, or a “dry floodproofing option,” in which the building is made water-tight to a level at or above the design flood elevation; and

WHEREAS, the applicant states that the restrooms and bicycle storage portions of the proposed John Street Service Building are below the base flood elevation and do not use dry floodproofed construction; and

WHEREAS, the instant appeal was thus filed seeking relief from Appendix G, Section G304.1.2 of the Building Code; and

WHEREAS, under Building Code Appendix G Section G107.2.3, the Board may grant a variance to the provisions of Section G304 upon finding that: (1) the proposed construction is located on a tax lot no larger than one-half acre in size, and where the tax lot is larger than one-half acre in size, the technical justification required for the variance increases with the lot size; (2) there is good and sufficient cause for the variance; (3) a denial of the variance would result in exceptional hardship to the applicant; (4) the grant of the variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws or ordinances; burden the public, expose it to harm, or conflict with existing laws or ordinances; and (5) the variance is the minimum necessary, considering the flood hazard, to afford relief to the applicant; and

WHEREAS, with respect to the first finding, the applicant states that the John Street Service Building is proposed on a tax lot that is greater than one-half acre in size; however, the applicant represents that the site has a number of unique conditions that limit the options for locating the pavilion; and

WHEREAS, specifically, the applicant states that the John Street Service Building services the utility needs of both Pier 15 and the Maiden Lane Pavilion, and therefore must remain in close proximity to these sites; and

WHEREAS, the applicant further states that the City’s objective is to maintain a minimum open circulation path of 20 feet at the water’s edge, and since the entire East River Esplanade project is bracketed by South Street to the west and the East River to the east, the clearance mandate further limits the availability of alternative sites for the John Street Service Building; and

WHEREAS, the Board therefore finds that the location of the proposed construction on a tax lot greater than one-half acre in size is justified based on the unique conditions

that limit the options for locating the pavilion; and

WHEREAS, with respect to the second variance finding, the applicant states that the John Street Service Building is a necessary component to the East River Waterfront Esplanade which serves a public service by providing restrooms for visitors to the esplanade, and provides most of the utility needs to the revenue-generating pavilions at the south end of the project, which supports long-term park maintenance; and

WHEREAS, the applicant further states that the proposed bicycle storage provides the public with an active recreational use and will enhance visitors’ overall experience at the park; and

WHEREAS, the applicant states that constructing the building without the variance would require the construction of a series of ramps and stairs connected to the adjoining esplanade walkway to make the restrooms and bicycle storage accessible; and

WHEREAS, the applicant represents that, given the narrow width of the subject site, these stairs and ramps would be a major obstacle that would intrude into the primary circulation path, as well as being economically infeasible to construct and highly detrimental to the design of the building; and

WHEREAS, the Board finds that the applicant has established good and sufficient cause for the variance to allow construction of the building below the mandated flood elevation; and

WHEREAS, the applicant states that the failure to grant the variance will result in exceptional hardship; and

WHEREAS, as discussed above, pursuant to Appendix G Section G304.1.2, construction of the building must comply with either the elevation option or the dry waterproofing option; and

WHEREAS, the applicant states that compliance with the elevation option would require: (1) additional ramping and a raised deck that matches the design of the esplanade project; (2) 40 cubic yards of reinforced ramp, steps and platforms; (3) engineered fill directly under and around the restroom to raise its finish floor elevation, adding approximately 74 cubic yards of structural fill; and (4) additional railing at the front ramp/stairs; and

WHEREAS, based upon the above, the applicant represents that compliance with the elevation option would result in a 46 percent cost increase (\$278,765) to the project, not including design fees and the cost of delays, which would render both the bicycle storage and public restrooms portion of the John Street Service Building infeasible; and

WHEREAS, the applicant states that compliance with the dry floodproofing option would require: (1) manually installed temporary flood shields consisting of a series of stainless steel base plates mounted to an enlarged foundation around the entire perimeter of the building; (2) storage of the flood shields at the site, which has minimal existing storage space; (3) dedication of 139 sq. ft. of elevated interior building space to support fire and emergency personnel during a flood; (4) the construction of a total of four entrances to the building; (5) emergency access at or above

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the Design Flood Elevation with steps both interior and exterior for fire department and emergency services to enter the building over the dry floodproofing, which would eliminate the bicycle storage component of the project entirely; and

WHEREAS, based upon the above, the applicant represents that compliance with the dry floodproofing option would result in a 22 percent cost increase (\$134,000) to the project, and would eliminate the possibility of adding leasable bicycle storage space to the site; and

WHEREAS, the Board finds that the applicant has established that failure to grant the variance will result in exceptional hardship; and

WHEREAS, with respect to the fourth finding to be made by the Board, the applicant represents that the grant of the variance would not result in: increased flood heights, additional threats to public safety, extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws or ordinances; and

WHEREAS, the applicant states that the variance will not result in increased flood heights because the proposed building is small compared to the immediate esplanade area of 94,000 sq. ft. and the adjoining streets and, therefore, the impact of the variance on a flood height would be insignificant; and

WHEREAS, the applicant further states that the variance will not result in additional threats to public safety or life because all critical building elements that could be damaged during flooding will be raised above the base flood elevation, and items that could otherwise float and cause damage will be secured; and

WHEREAS, the applicant further states that all building utilities will either be raised out of the base flood elevation or designed according to the American Society of Civil Engineers ("ASCE") 24 Standards for Flood Resistant Design and Construction to prevent flood waters from entering or accumulating within the utility; and

WHEREAS, the applicant states that the variance would result in reduced public expense because costly ramping and sloping of the paved surfaces in the vicinity will be avoided; and

WHEREAS, the applicant states that the variance would not result in any nuisance, fraud on or victimization of the public, and would conflict with no local law or ordinances, other than the Building Code; and

WHEREAS, based on the small size of the John Street Service Building as compared to the immediate esplanade area and the adjoining streets, adherence of the building design to ASCE wet floodproofing standards, and the raising of utilities and large objects out of the flood plane, the Board finds that the proposed variance to Appendix G Section G304.1.2 will not result in increased flood heights or additional threats to public safety or life; and

WHEREAS, the Board finds that the variance will not result in extraordinary public expense, nuisance, fraud on or victimization of the public, and would conflict with no local law or ordinances, other than the Building Code; and

WHEREAS, the applicant states that the variance is

the minimum necessary to afford relief because the building will be designed to allow the water to enter and exit without damage, and the building systems and finishes will be chosen to ensure flood resistant standards, and where applicable, the design will generally follow the National Flood Insurance Program's Wet Floodproofing Requirements approved by FEMA or ASCE 24 Standards for Flood Resistant Design and Construction; and

WHEREAS, the Board finds that, based on the applicant's representations, the variance is the minimum necessary to afford relief; and

WHEREAS, in addition to the specific findings the Board must make pursuant to Appendix G Section G107.2.3, the Board must also evaluate the affect of the proposed variance on the following factors: (1) the danger that material and debris may be swept onto other lands resulting in damage or injury; (2) the danger to life or property due to flooding or erosion damage; (3) the susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners; (4) the importance of the services provided by the proposed development to the community; (5) the availability of alternative locations for the proposed development that are not subject to flooding or erosion; (6) the relationship of the proposed development to comprehensive plan and flood plain management program for that area; (7) the safety of access to the property in times of flood for ordinary and emergency vehicles; (8) the expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and (9) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges; and

WHEREAS, the applicant represents that the proposed variance would create no danger of damage or injury to other properties due to flooding or from materials or debris swept on to them because the building is designed to withstand flooding, with water being able to enter and exit the building, and because large equipment, including all equipment in the bicycle storage portion of the building, will be raised above the base flood elevation or secured to prevent floating away and causing damage; and

WHEREAS, the applicant further represents that the proposed variance would not increase danger to life or property due to flooding because the building will be vacated upon notice of a storm, it will be designed to allow the water to enter and exit without causing damage, the building systems and finishes will be determined upon a technical review by the design team to ensure flood resistant standards, and the building electrical and mechanical systems will be designed to survive the flooding, with equipment either raised above the maximum flood elevation or designed to withstand occasional flooding and not allow water to accumulate; and

WHEREAS, the applicant states that flood damage to the proposed development and its contents would be limited

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because the project requires that critical building elements that could be damaged during flooding are raised above the base flood elevation, and that those elements in the building that could float and cause damage are secured, thereby reducing the impact of potential flooding; and

WHEREAS, the applicant states that the proposed building is a necessary element of a waterfront plan that will service some of the project's signature destinations along the esplanade, and will provide an amenity for visitors in the form of bicycle storage and a convenience for visitors in the form of public restrooms, which will enhance the overall experience of the park; and

WHEREAS, the applicant further states that any unanticipated disadvantage posed by the waiver would be far outweighed by the importance of the services provided by the proposed development to the community; and

WHEREAS, the applicant represents that any alternate location would require the same variance as the proposed site because the entire tax lot is below the design flood elevation; and

WHEREAS, the applicant states that because the floor area of the proposed building is small in relation to the total area of the esplanade and streets around it, the impact of the variance on the comprehensive plan and flood plain management program for that area would be insignificant; and

WHEREAS, the applicant states that the safety of access to the property in times of flood for ordinary and emergency vehicles will not be compromised by the variance because direct access to the site from the adjacent South Street would be unchanged; and .

WHEREAS, the applicant states that wave action is not applicable to the subject site as the John Street Service Building is within a FEMA AE Zone – a flood hazard area not subject to high velocity wave action; and

WHEREAS, the applicant further states that analysis has not been performed regarding velocity, duration, rate of rise and debris and sediment transport of floodwaters because the consequences of all these factors on the subject site would be unaffected by the variance, as the amount of proposed floor area is small in relation to the total area of esplanade and surrounding streets; and

WHEREAS, the applicant states that the cost to provide governmental services during and after flood conditions will be essentially the same as without the variance, as the building electrical and mechanical systems will be designed to survive the flooding, and because underground public utilities will not be affected by the variance; and

WHEREAS, the Fire Department has reviewed the plans and associated documents and has no objections to the proposed project; and

WHEREAS, based on the above, the Board has determined that the evidence in the record supports the findings required to be made pursuant to Appendix G § BC G107 of the Building Code and Section 666(7) of the New York City Charter.

Therefore it is Resolved that the application of the

Commissioner of the NYC Economic Development Corporation to permit construction of a one-story pavilion building in a flood hazard area contrary to the floodproofing requirements of Appendix G, Section G304.1.2 of the Building Code is granted; *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, 2011" four (4) sheets; and *on further condition*:

THAT the design provides for entry and exit of flood waters and equalization of hydrostatic flood forces in accordance with Section 2.6.2 of "Flood Resistant Design and Construction, SEI/ASCE 24-05" (2006), published by the American Society of Civil Engineers ("SEI/ASCE 24-05");

THAT heating, ventilation, air conditioning, and plumbing equipment shall be installed above the base flood elevation;

THAT all materials and finishes shall comply with flood resistant standards set forth in Section 5 of SEI/ASCE 24-05;

THAT the foregoing conditions shall be subject to the review and approval of the Department of Small Business Services;

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

THAT the Department of Small Business Services must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 26, 2011.

176-10-A

APPLICANT – Sheldon Lobel, P.C., for LIV Realty LLC, owner.

SUBJECT – Application September 8, 2010 – Proposed construction of a residential building not fronting a mapped street, contrary to General City Law Section 36. R6 zoning District.

PREMISES AFFECTED – 62 Brighton 2nd Place, east side, Block 8662, Lot 155, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Richard Lobel.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to August 23, 2011, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, JULY 26, 2011
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

24-09-BZ

CEQR #09-BSA-071K

APPLICANT – Sheldon Lobel, PC, for Meadows Park Rehabilitation and Health Care Center, LLC, owners.

SUBJECT – Application February 12, 2009 – Variance to allow the enlargement of a community facility (*Meadow Park Rehabilitation and Health Care Center*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), height (§24-521) and rear yard (§24-382) regulations. R3-2 district.

PREMISES AFFECTED – 78-10 164th Street, Located on the western side of 164th Street between 78th Avenue and 78th Road, Block 6851, Lot 9, 11, 12, 23, 24, 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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated October 6, 2009, acting on Department of Buildings Application No. 410490724, reads in pertinent part:

1. Proposed floor area ratio for the adult care facility located in an R3-2 zoning district exceeds the limits set forth in ZR §...24-11.
2. Proposed front yard does not meet the requirements set forth in ZR § 24-34.
3. Proposed lot coverage exceeds the maximum set forth in ZR § 24-11.
4. Proposed wall height exceeded and sky exposure lane penetrated as set forth in ZR §24-521.
5. Proposed rear yard does not meet the minimum requirements set forth in ZR § 24-382; and

WHEREAS, this is an application under ZR § 72-21, to permit the horizontal enlargement of an existing four-story (including basement) nursing care facility (Use Group 3), which does not comply with the required floor area ratio ("FAR"), front yard depth, lot coverage, wall height and sky exposure plane, and rear yard, contrary to ZR §§ 24-11, 24-34, 24-521, and 24-382; and

WHEREAS, a public hearing was held on this application on July 13, 2010, after due notice by publication in the *City Record*, with continued hearings on September 21, 2010, November 16, 2010, March 15, 2011, and June 7, 2011, and then to decision on July 26, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, this application is brought on behalf of Meadow Park Rehabilitation and Health Care Center ("Meadow Park"); and

WHEREAS, Community Board 8, Queens, recommends approval of the proposed application, with the condition that an enclosed refrigerator type garbage compactor be installed; and

WHEREAS, Council Member James F. Gennaro recommends approval of this application; and

WHEREAS, certain members of the community provided testimony in opposition to this application, citing concerns with the impact of the proposed enlargement on the immediately adjacent homes and the surrounding neighborhood character; and

WHEREAS, the site is located on a corner through lot bounded by 78th Avenue to the north, 164th Street to the east, and 78th Road to the west, within an R3-2 zoning district; and

WHEREAS, the site consists of five tax lots (Lots 9, 11, 12, 23 and 24) with approximately 200 feet of frontage along 164th Street, a depth of 157 feet along 78th Avenue, a depth of 143 feet along 78th Road, and a total lot area of approximately 29,933 sq. ft.; and

WHEREAS, the applicant notes that the portion of the site within 100 feet of the corner formed by 164th Street, 78th Road and 78th Avenue is subject to corner lot regulations, while the remainder of the site is subject to through lot regulations; and

WHEREAS, the site is currently occupied by a pre-existing non-complying four-story (including basement) 31,580 sq. ft. nursing care facility with 143 beds on Lot 12, while Lots 11, 23 and 24 are occupied by two-and-one-half story, three-story, and one-story buildings, respectively, each of which is used by Meadow Park for storage and other related services, and Lot 9 is occupied by a two-and-one-half story residential building; and

WHEREAS, the applicant notes that Lot 12 has a lot area of 17,933 sq. ft., and that because the existing facility exists solely on Lot 12, its 31,580 sq. ft. of floor area equates to an FAR of 1.76; and

WHEREAS, the applicant further notes that the existing facility on Lot 12 has the following legal, pre-existing non-compliances: an FAR of 1.76, a front yard with a depth of 9'-7" along 164th Street and 5'-0" along 78th Avenue, and a wall height of 34'-8"; and

WHEREAS, the applicant proposes to demolish the buildings located on Lots 9, 11, 23 and 24 in order to accommodate the proposed enlargement of the nursing care facility; and

WHEREAS, the applicant proposes to construct a four-story (including basement) enlargement to the existing nursing

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care facility on Lot 12, which will result in the following non-complying parameters: a total floor area of 60,366 sq. ft. and an FAR of 2.02 (a total floor area of 14,966.5 sq. ft. and an FAR of 0.50 is the maximum permitted); the extension of the existing non-complying front yard of 9'-7" along 164th Street (a front yard with a minimum depth of 15'-0" is required); lot coverage of 73 percent for the corner lot portion of the site (a maximum lot coverage of 60 percent is permitted for corner lots); the extension of the existing non-complying wall height of 34'-8" (a maximum wall height of 25'-0" is permitted); intrusion into the sky exposure plane; and intrusion into the required rear yard equivalent for the through lot portion of the site; and

WHEREAS, the applicant notes that, pursuant to ZR § 22-42, any enlargement to a nursing home or health related facility in a residential district requires certification from the City Planning Commission in order to determine whether a special permit is required under ZR § 74-90 to allow the enlargement; and

WHEREAS, the applicant initially proposed to construct an enlargement with a total floor area of 61,981 sq. ft. (2.07 FAR), a wall height of 38'-4", a side yard with a width of 12'-2" along the 78th Road frontage, and a side yard with a width of 13'-5" along the 78th Avenue frontage; and

WHEREAS, in response to concerns raised by the Community Board and Queens Borough President, the applicant revised its plans to the current proposal with a floor area of 60,366 sq. ft. (2.02 FAR), a wall height of 34'-8", a side yard with a width of 18'-0" along the 78th Road frontage, and a side yard with a width of 18'-10" along the 78th Avenue frontage; and

WHEREAS, because relief from the bulk requirements of the R3-2 zoning district is necessary, the applicant requests the subject variance; and

WHEREAS, the applicant represents that the following are unique physical conditions inherent to the subject building and zoning lot, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: (1) the existing nursing care facility and adjacent buildings are obsolete and the existing non-complying facility is overbuilt; (2) the existing facility's inability to conform to contemporary New York State Department of Health ("DOH") standards for nursing care facilities or attract the appropriate patient mix to keep Meadow Park financially viable under the current conditions at the site; and (3) the need for environmental remediation; and

WHEREAS, as to the obsolescence of the building, the applicant states that the existing four-story (including basement) nursing care facility was constructed in 1956, and is a legal pre-existing building with non-compliances related to the underlying zoning regulations as well as current DOH regulations related to minimum standards of care at nursing care facilities; and

WHEREAS, the applicant states that the existing facility provides only 221 sq. ft. of space per bed, which is uniquely bed-dense as compared to other facilities in Queens, and renders the existing facility obsolete for modern nursing care

facilities; and

WHEREAS, specifically, the applicant submitted tables reflecting that of the 56 nursing care facilities in Queens, only two had fewer square feet per bed (211 sq. ft. and 214 sq. ft. per bed, respectively) than Meadow Park at 221 sq. ft. per bed, while the Queens average was 428 sq. ft. per bed, or an adjusted 367 sq. ft. per bed; and

WHEREAS, therefore, the existing facility is 40 percent below the county-wide mean square footage per bed, reflecting that from a privacy and crowding perspective, Meadow Park is among the least desirable nursing care facilities in Queens County; and

WHEREAS, the applicant notes that the proposed enlargement would not increase the number of beds at Meadow Park, which would remain at 143, but would merely increase the amount of space provided at the site per resident, from 221 sq. ft. per bed, to 422 sq. ft. per bed, in order to comply with current DOH regulations and remain competitive within the health care field; and

WHEREAS, the applicant represents that the proposed bed density of 422 sq. ft. per bed remains compact in light of DOH's desired baseline bed density of 625 sq. ft. per bed, and the proposed enlargement is as small as possible while still achieving the minimum compliance with DOH regulations; and

WHEREAS, the applicant states that, due to the lack of available space on the site, Meadow Park currently uses the buildings located on Lots 11, 23 and 24 for the storage of supplies and medical records, and as a bookkeeping office; and

WHEREAS, the applicant further states that Meadow Park utilizes a detached garage between Lots 23 and 24, as well as nine storage containers located behind the existing facility to store other necessary supplies and equipment for the nursing care facility; and

WHEREAS, the applicant represents that the bookkeeping office and the various storage spaces are intended to be located within the Meadow Park facility, but due to the obsolete nature of the existing building and the resulting space limitations, Meadow Park has been forced to use these peripheral spaces for various operational uses; and

WHEREAS, the applicant states that the existing facility, which occupies 31,580 sq. ft. of floor area (1.76 FAR) on a lot (Lot 12) with a total lot area of 17,933 sq. ft., is significantly overbuilt and that even with the addition of 12,000 sq. ft. of lot area from Lots 9, 11, 23 and 24, the existing facility would still have a non-complying FAR of 1.06 even if it was the only structure on the zoning lot; and

WHEREAS, therefore, the applicant states that even with the addition of 12,000 sq. ft. of lot area, Meadow Park is unable to construct any enlargement to the existing facility that would comply with the underlying zoning regulations; and

WHEREAS, the applicant notes that approximately 14,500 sq. ft. of floor area is proposed on Lots 9, 11, 23 and 24, which constitutes only 0.48 FAR with regard to the entire zoning lot, or 1.21 FAR with regard to the aggregated four small parcels with a lot area of 12,000 sq. ft.; and

WHEREAS, as to the existing facility's inability to comply with DOH regulations, the applicant notes that DOH regulates (1) the level of care provided by nursing homes, and

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(2) the proposed construction of a new facility, or enlargement or modification of an existing facility; and

WHEREAS, the applicant represents that the inability of the existing facility to comply with current DOH requirements and market conditions have rendered it obsolete; and

WHEREAS, specifically, the applicant submitted a table reflecting that the existing facility has the following deficiencies based on DOH regulations: (1) toilet rooms that are not ADA accessible; (2) there are no single rooms; (3) typical toilet rooms are shared between two rooms and a total of between two and six patients; (4) 81 percent of the rooms exceed the maximum room capacity of two people; (5) there is no staff lounge space, employee facilities, or bathrooms; (6) the facility only provides approximately 16 sq. ft. of resident dining space per resident, rather than the minimum required ratio of 28 sq. ft. per resident; (7) there is no separate room provided for residents' hair care and grooming needs; (8) the existing elevator is substandard and the facility lacks a required second elevator; (9) the corridors have a substandard width of six feet; and

WHEREAS, in addition to the aforementioned code violations, the applicant states that the following marketability deficiencies further limit the functionality of the existing facility: (1) overcrowded bedrooms and bathrooms; (2) no space for in-house laundry or linen storage, necessitating the outsourcing of laundry which is more time-consuming and expensive; (3) lack of common space, limiting the recreational programming provided by Meadow Park; (4) inadequate in-building storage space, resulting in the need to install nine inefficient storage bins behind the facility; (5) off-site bookkeeping; and (6) a substandard sized rehabilitation gymnasium; and

WHEREAS, the applicant notes that the proposed enlargement was approved by DOH as well as the State Hospital Review and Planning Council ("SHRPC"), which is empowered by the State's Public Health Law to make recommendations to the Commissioner of Health regarding major facility construction projects, such as the subject proposal by Meadow Park; and

WHEREAS, the applicant notes that, in issuing its approval of the proposed enlargement, the SHRPC stated that "the existing 4-level building is obsolete for current use as a residential health care facility as currently configured and in need of major renovations or replacement. The need for major renovation or replacement was validated by a field visit by Department of Health Staff;" and

WHEREAS, the applicant represents that Meadow Park's eligibility under the Medicaid and Medicare reimbursement system is another factor which makes the existing facility obsolete; and

WHEREAS, the applicant states that facilities like Meadow Park rely on more than 80 percent of their revenue from Medicaid and Medicare and, as such, eligibility for those funds comes with strict monitoring by the authorized governing body, which in New York State is DOH; and

WHEREAS, the applicant further states that every Medicaid dollar received by a participating facility is broken down into: (1) a nursing care, or direct, component; (2) a

maintenance, or indirect, component; (3) a non-comparable component (for unique services provided at a given facility); and (4) a capital component (for major repairs, enlargements, and debt service); and

WHEREAS, the applicant states that since proprietary nursing homes rely heavily on public funding sources, DOH imposes strict guidelines on the enlargement of existing non-compliant structures, and is guided by two principles: (1) an enlargement will not be permitted that creates two distinct levels of care within a facility; and (2) when making any major alteration to a facility, complete compliance with contemporary regulations is required; and

WHEREAS, the applicant represents that, since the capital component piece of the Medicaid dollar partly reimburses the operator for facility enlargement, modernization, and the financing thereof, the State will only authorize the use of capital component monies for facilities brought into compliance with contemporary regulations; and

WHEREAS, accordingly, the applicant states that the State will not authorize use of public funds to support the enlargement and upgrade of a facility unless it fully complies with current regulations, thereby making such facility compliance an all-or-nothing proposition from DOH's perspective; and

WHEREAS, the applicant states that if the present Meadow Park facility were forced to comply with current DOH requirements, the building would have to be completely reconfigured and the number of beds would have to be reduced from the current 143 to approximately 78, which would render the facility unsustainable; and

WHEREAS, the applicant states that the proposed enlargement is also necessary to ensure that the facility attracts patients with a higher acuity level (such as short term care and rehabilitation care), who are said to have a higher case mix index ("CMI"), and to attract an appropriate blend of Medicare and Medicaid patients, because both high CMI patients and Medicare patients come with a higher level of reimbursement; and

WHEREAS, the applicant represents that Medicare patients and high CMI patients increasingly seek modern facilities and private and semi-private rooms, and as a result Meadow Park has experienced a decline in income of approximately 40 percent between 2002 and 2009, due to its inability to retain Medicare patients and high CMI patients at the existing facility; and

WHEREAS, accordingly, the applicant represents that the proposed enlargement is necessary to prevent (1) a trending decline of higher CMI patients, and (2) an unfavorable Medicaid/Medicare blend; and

WHEREAS, therefore, the applicant represents that the requested waivers are necessary in order to allow Meadow Park to bring the existing facility into compliance with the applicable DOH regulations regarding nursing care facilities, improve Meadow Park's ability to compete in the health care service sector, and improve the level of care available to patients; and

WHEREAS, as to the environmental conditions on the site, the applicant states that a Phase II Site Investigation was

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conducted on the site which revealed the presence of certain metals and soil gases, as well as one definite and a second likely underground storage tank; and

WHEREAS, the applicant states that, as a result of these environmental issues, clean fill will need to be brought in and installed below the cellar slab, clean fill and top soil will be needed for all non-pervious and landscaped areas, and a vapor barrier will be required beneath the foundation or cellar floor slab, along with a vapor migration system; and

WHEREAS, the applicant represents that the construction related remediation and site preparation costs that result from these environmental issues present construction related remediation and site preparation costs of approximately \$580,000; and

WHEREAS, accordingly, based upon the above, the Board finds that the site's unique physical conditions and the limitations and inefficiencies of the existing building create unnecessary hardship and practical difficulty in the continued use of the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed the following scenarios: (1) an as-is scenario with the existing conditions at the building; (2) a renovated existing building scenario that complies with DOH regulations and results in a facility with 78 beds; (3) a lesser variance alternative that complies with DOH regulations and results in a facility with 107 beds; and (4) the proposed enlarged facility that complies with DOH regulations and maintains the current 143 bed count; and

WHEREAS, the study concluded that the existing scenario and lesser variance alternatives would not result in a reasonable return, but that the proposed enlargement would realize a reasonable return; and

WHEREAS, based upon the above, the Board determined that because of the subject site'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 variance, if granted, will not negatively impact the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant states that the subject building and use has existed on the site for more than 50 years; and

WHEREAS, the applicant further states that the proposed enlargement will merely extend the existing four-story (including basement) building along the 78th Avenue and 78th Road frontages, and the enlarged portions of the building are designed to replicate the massing, facades, building height, and yards of the existing building; and

WHEREAS, the applicant submitted a radius diagram which reflects that a seven-story, 114-unit co-op building, with professional offices and parking for approximately 50 vehicles is located across 78th Road from the site; and

WHEREAS, the applicant states that the co-op building is located on a similarly sized lot as the subject site but, with a floor area of approximately 98,000 sq. ft. (3.47 FAR), and is a significantly taller and larger building than the proposed facility; and

WHEREAS, the radius diagram submitted by the applicant also reflects that there is a warehouse building located one block from the site on 77th Road, which is an apparent two-story building with nearly 100 percent lot coverage; and

WHEREAS, the applicant notes that the proposed enlargement of the existing facility from 1.76 FAR on Lot 12 (17,933 sq. ft. of lot area), to 2.02 FAR across the larger site (29,932 sq. ft. of lot area) results in a significant decrease in the bed-density of the facility, since the bed count of 143 is proposed to remain the same; and

WHEREAS, the applicant further states that Lot 23 is currently occupied by a three-story residential building of approximately the same height as the existing nursing care facility; therefore, replacing this residential building for a segment of the proposed enlarged facility will not have a significant impact on the surrounding neighborhood; and

WHEREAS, the applicant states that the proposed side yards along 78th Avenue and 78th Road are each over 18 feet, which constitutes more than half of the 30-ft. width of the underlying existing tax lots on which they are located (Lots 9 and 24); and

WHEREAS, the applicant further states that Lots 9 and 24 are currently occupied by homes with side yards ranging from two feet to eight feet in width; therefore, under the proposed enlargement the distance between the adjacent homes and the proposed facility will be greater than it presently is between the adjacent homes and the Meadow Park owned houses currently located on Lots 9 and 24; and

WHEREAS, the applicant submitted a landscaping plan reflecting plantings and a residential-type fence buffering the side lot line along the 78th Road frontage, and a residential-type fence buffering the side lot line along the 78th Avenue frontage; and

WHEREAS, the applicant states that the proposed enlargement will provide 15 off-street parking spaces, which will improve the current traffic and parking conditions in the surrounding neighborhood, since the existing facility does not provide any parking spaces and the 15 proposed spaces will service a facility that maintains the existing 143 bed count; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant provided revised plans reflecting that a new trash compactor will be stored in a basement level enclosure area which is separated from the parking area by a retaining wall, has an opaque gate at the front, and is partially covered by the proposed enlargement; and

WHEREAS, the applicant states that garbage collection will take place approximately once every two weeks, at 7:30 a.m. or later; and

WHEREAS, accordingly, the Board finds that the variance, if granted, will not negatively impact the character of the neighborhood; 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 requested waivers are the minimum necessary to bring the existing facility into compliance with DOH regulations for the existing

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143 beds; and

WHEREAS, as noted above, the applicant initially proposed to construct an enlargement with a total floor area of 61,981 sq. ft. (2.07 FAR), a wall height of 38'-4", a side yard with a width of 12'-2" along the 78th Road frontage, and a side yard with a width of 13'-5" along the 78th Avenue frontage; and

WHEREAS, during the course of the hearing process, the applicant revised its plans to the current proposal with a floor area of 60,366 sq. ft. (2.02 FAR), a wall height of 34'-8", a side yard with a width of 18'-0" along the 78th Road frontage, and a side yard with a width of 18'-10" along the 78th Avenue frontage; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary; 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; 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. 09-BSA-071K dated January 7, 2009; 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 Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Analysis has reviewed the project for potential hazardous materials; and

WHEREAS, DEP accepts the September 2010 Remedial Action Plan and the Construction Health & Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; 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 the horizontal enlargement of an

existing four-story (including basement) nursing care facility (Use Group 3), which does not comply with the required FAR, front yard depth, lot coverage, wall height and sky exposure plane, and rear yard, contrary to ZR §§ 24-11, 24-34, 24-521, and 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 June 28, 2011" one – (1) sheet and "Received July 20, 2011" – fourteen (14) sheets; and *on further condition*;

THAT the following shall be the bulk parameters of the building: 60,366 sq. ft. of floor area (2.02 FAR); a front yard of 9'-7" along 164th Street; lot coverage of 73 percent for the corner lot portion of the site; a wall height of 34'-8"; intrusion into the sky exposure plane; and intrusion into the required rear yard equivalent for the through lot portion of the site, as indicated on the BSA-approved plans;

THAT prior to the issuance of any DOB permits, the applicant shall obtain a certification from the City Planning Commission pursuant to ZR § 22-42;

THAT prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain from DEP a Notice of Satisfaction;

THAT all garbage shall remain within the designated trash compactor area until pickup, which shall occur no earlier than 7:30 a.m.;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

THAT 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 26, 2011.

56-10-BZ

APPLICANT – T-Mobile Northeast LLC, for Luca & Maryann Guglielmo, owners.

SUBJECT – Application April 19, 2010 – Variance (§72-21) to construct a telecommunications facility on the rooftop of an existing building. The proposal is contrary to perimeter wall height (§33-431) sky exposure plane (§33-431) and front yard (§23-45). C1-2/R3-2 zoning district.

PREMISES AFFECTED – 3424 Quentin Road, Quentin Road and East 35th Street, Block 7717, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and

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Commissioner Montanez.....5
Negative:.....0
Adopted by the Board of Standards and Appeals, July
26, 2011.

95-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for
Raymond Kohanbash, owner.

SUBJECT – Application May 27, 2010 – Special Permit
(\$73-622) for the enlargement of an existing single family
home contrary to floor area, open space and lot coverage
(\$23-141); side yard (§23-461) and less than the required
rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 2216 Quentin Road, south side
of Quentin Road between East 22nd Street and East 23rd
Street, Block 6805, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Monta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough
Commissioner, dated April 27, 2010, acting on Department
of Buildings Application No. 320011492, reads in pertinent
part:

“ZR 23-141: Proposed FAR exceeds permitted 0.5
as per ZR.

ZR 23-461b: Proposed side yard is contrary to ZR
requirements.

ZR 23-47: Proposed rear yard is contrary to ZR
requirements.

ZR 23-141: Proposed plans are contrary to ZR in
that the proposed lot coverage exceeds the max.
permitted lot coverage. (max. 35%)

ZR 23-141: Proposed plans are contrary to ZR in
that the proposed open space is less than the min.
required open space;” 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 home, which does
not comply with the zoning requirements for floor area ratio
(“FAR”), open space, lot coverage, 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 September 14, 2010 after due notice by
publication in *The City Record*, with continued hearings on
November 23, 2010, January 11, 2011, April 5, 2011, May 10,
2011, June 7, 2011 and July 12, 2011, and then to decision on
July 26, 2011; and

WHEREAS, the premises and surrounding area had
site and neighborhood examinations by Chair Srinivasan,

Vice-Chair Collins, Commissioner Hinkson, Commissioner
Montanez, and Commissioner Ottley-Brown; and

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

WHEREAS, the subject site is located on the south
side of Quentin Road, between East 22nd Street and East 23rd
Street, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of
4,000 sq. ft., and is occupied by a single-family home with a
floor area of 2,346 sq. ft. (0.59 FAR); 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 2,346 sq. ft. (0.59 FAR) to 4,075 sq. ft. (1.0
FAR); the maximum permitted floor area is 2,000 sq. ft.
(0.50 FAR); and

WHEREAS, the applicant proposes to provide 2,157
sq. ft. of open space (2,600 sq. ft. is the minimum required);
and

WHEREAS, the applicant proposes to provide lot
coverage of 46 percent (35 percent is the maximum
permitted); and

WHEREAS, the applicant proposes to maintain the
existing side yard along the eastern lot line with a width of
3’-1” (a minimum width of 5’-0” is required for each side
yard) and to provide a side yard with a width of 8’-1” along
the western lot line; and

WHEREAS, the proposed enlargement will provide a
rear yard with a depth of 24’-0” (a minimum rear yard depth
of 30’-0” is required); and

WHEREAS, at hearing, the Board questioned which
portions of the original home were being retained; and

WHEREAS, in response, the applicant submitted revised
plans showing the portions of the existing home, including
floor joists and walls, that are being retained; and

WHEREAS, at hearing, the Board raised concerns about
whether the perimeter wall height and roof line fit within the
permitted building envelope; and

WHEREAS, in response, the applicant submitted revised
plans which reflect a perimeter wall height and roof line that
comply with all zoning requirements; and

WHEREAS, the applicant represents that the proposed
building will not alter the essential character of the
neighborhood, and will not impair the future use or
development of the surrounding area; and

WHEREAS, based upon its review of the record, 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

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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, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space, lot coverage, 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 June 27, 2011"-(7) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,075 sq. ft. (1.0 FAR); 2,157 sq. ft. of open space; a side yard with a minimum width of 3'-1" along the eastern lot line; a side yard with a minimum width of 8'-1" along the western lot line; and a rear yard with a minimum depth of 24'-0", 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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 26, 2011.

22-11-BZ

CEQR #11-BSA-065K

APPLICANT – Simons & Wright, LLC, for Agama LLC, owner; Vorea Holdings LLC, lessee.

SUBJECT – Application March 1, 2011 – Variance (§72-21) to permit the conversion of a vacant warehouse to a physical culture establishment. R6B zoning district.

PREMISES AFFECTED – 184 North 8th Street, between Driggs and Bedford Avenues, Block 2320, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #1BK

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 23, 2011, acting on Department of Buildings Application No. 320275377, reads in pertinent part:

"The proposed use of the building as a martial arts study (physical culture establishment) is not permitted as-of-right in a R6B zoning district and is contrary to Section 22-00 (use) 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 R6B zoning district, the conversion of a vacant warehouse to a physical culture establishment (PCE), contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on June 21, 2011, after due notice by publication in the *City Record*, and then to decision on July 26, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the south side of North 8th Street, between Bedford Avenue and Driggs Avenue, in an R6B zoning district; and

WHEREAS, the subject site has a total lot area of approximately 5,000 sq. ft.; and

WHEREAS, the site is currently improved upon with a vacant two-story warehouse building with 7,200 sq. ft. of floor area; and

WHEREAS, the applicant proposes to convert the existing warehouse building into a PCE; and

WHEREAS, because commercial uses are not permitted in the subject R6B zoning district, and because a special permit pursuant to ZR § 73-36 is not available in the underlying district, the applicant requests a use variance to permit the operation of the proposed PCE at the site; and

WHEREAS, the applicant states that the following is a unique physical condition which creates an unnecessary hardship in developing the site in compliance with applicable regulations: the existing building is obsolete; and

WHEREAS, the applicant states that the subject building was constructed approximately 100 years ago and has operated as a warehouse for approximately 50 years, until the use was discontinued in 2003; and

WHEREAS, the applicant states that the building has remained vacant since the discontinuance of the warehouse use, except for the use of a small portion of the building as storage by the owner; and

WHEREAS, the applicant states that the existing building is obsolete for a conforming residential or community

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facility use because there are no existing windows in the subject building that can be used to provide required light and air; and

WHEREAS, the applicant further states that even if rear windows were installed in the building it would not provide legal habitable windows, because the rear wall of the site is located less than five feet from the rear lot line; and

WHEREAS, the applicant states that in order to convert the building to a conforming use with legal habitable windows, it would require the demolition of the rear thirty feet of the building, the reconstruction of the rear wall, and the complete rebuilding of the front wall to provide windows; and

WHEREAS, the applicant represents that a conforming community facility use of the building would also require major structural alterations to provide necessary amenities because the interior floor plates are bare and do not provide any walls or partitions, the building lacks windows and yards, and the brick façade of the 100-year old building is dilapidated; and

WHEREAS, the applicant states that the existing building is also obsolete for its historical use as a warehouse, as there are no loading docks and the only entrance to the building is by a small front door; and

WHEREAS, the applicant represents that the owner has engaged in a number of unsuccessful marketing efforts to lease the space, and submitted a letter from a real estate broker stating that the property has been listed for the last two years without any interest, primarily due to the obsolescence of the building; and

WHEREAS, the applicant states that the existing building is also unable to support the addition of a third floor to provide additional floor area to accommodate a conforming residential use; and

WHEREAS, in support of this statement, the applicant submitted a report from a structural engineer which states that the existing building does not possess adequate structural capacity to accommodate the construction of a third floor, and it would be more feasible to demolish the existing building and construct a new three-story building; and

WHEREAS, accordingly, the Board finds that the aforementioned unique physical condition creates 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 condition, 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 the following scenarios: (1) the conversion of the existing building to an as-of-right two-story, four-unit residential building; and (2) the proposed conversion of the existing building to a PCE use; and

WHEREAS, the applicant concluded that only the proposed use would realize a reasonable return; and

WHEREAS, based upon its review of the feasibility study, the Board has determined that because of the subject building's unique physical condition, 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, the applicant states that the surrounding area is characterized by a mixture of residential, commercial, industrial, and community facility uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram which reflects that the midblock portion of North 8th Street between Bedford Avenue and Driggs Avenue is predominantly occupied by three- and four-story residential buildings, but that a significant number of commercial uses are located less than a block in either direction from the site, along both Bedford Avenue and Driggs Avenue; and

WHEREAS, the radius diagram submitted by the applicant further reflects that the adjacent property to the west of the site is occupied by the rear garage door for a warehouse that fronts North 7th Street, and that there are commercial uses spread throughout the surrounding blocks; and

WHEREAS, the applicant represents that the proposed PCE use, which will be operated as a martial arts studio, will be compatible with the neighborhood as it will provide residents with a useful amenity, eliminate a vacant building from the street, and the light foot traffic generated by the use will be spread out over the hours of the operation of the PCE; and

WHEREAS, the applicant notes that the subject site is within the Ombudsman Area of the Greenpoint-Williamsburg Industrial Business Zone ("IBZ"); and

WHEREAS, according to the Mayor's Office of Industrial and Manufacturing Businesses, Industrial Ombudsman Areas are areas located adjacent to IBZs but which reflect a greater mix of uses other than industrial; and

WHEREAS, accordingly, the applicant states that the proposed PCE use fits within the character of the Industrial Ombudsman Area of the Greenpoint-Williamsburg IBZ; and

WHEREAS, the applicant documented that the proposed PCE meets the requirements of the special permit available under ZR § 73-36 for locating PCEs in certain commercial and manufacturing zoning districts; and

WHEREAS, the applicant states that the proposed hours of operation of the PCE are 6:00 a.m. to 10:00 p.m., daily; and

WHEREAS, the applicant has agreed to install a full sprinkler system throughout the building, which will be connected to an approved fire alarm system with smoke detectors, pull stations, and audible and visual alarms connected to a Fire Department central station; and

WHEREAS, the applicant states that noise attenuation will be achieved through the existing building's solid brick construction, the installation of a three-inch sound attenuation blanket in the first and second floor ceilings, and the installation of double-glazed windows; 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

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report which the Board has determined to be satisfactory; 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 project is classified as an Unlisted action pursuant to Sections 617.2 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. 11BSA065K dated April 28, 2011; 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, in an R6B zoning district, the conversion of an existing warehouse to a PCE, 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 12, 2011"- (8) 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 July 26, 2021, subject to further

renewal;

THAT, the hours of operation for the physical culture establishment shall be limited to 6:00 a.m. until 10:00 p.m., daily;

THAT signage on the site shall comply with C1 district regulations;

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 full sprinklering, shall be installed in accordance with the BSA-approved plans;

THAT noise attenuation measures shall be provided in accordance with the BSA-approved plans;

THAT substantial construction shall be completed in accordance with ZR §72-23;

THAT 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 26, 2011.

24-11-BZ

APPLICANT – Jay A. Segal, Esq., Greenberg Traurig, LLP, for LaSalle New York City, Inc., owner; WCL Academy of New York LLC, lessee.

SUBJECT – Application March 8, 2011 – Variance (§72-21) to permit the construction of an elevator and vestibule in the courtyard of a school building (*WCL Academy*) contrary to floor area (§24-11), lot coverage (§24-11) and permitted obstruction requirements (§24-51). C6-2A/R8B zoning district.

PREMISES AFFECTED – 44-50 East 2nd Street, north side of East 2nd Street, between First and Second Avenues, Block 444, Lot 59, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Jay Segal.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated March 14, 2011, acting on Department of

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Buildings Application No. 120518797, reads, in pertinent part:

1. ZR 24-11. Lot coverage exceeds the 70% allowed.
2. ZR 24-51. Exposure of bulkheads exceeds allowable;" and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R8B zoning district and partially within a C6-2A zoning district, the enlargement of a five- and six-story (including basement) school building (Use Group 3), which is contrary to ZR §§ 24-11 and 24-51; and

WHEREAS, a public hearing was held on this application on June 7, 2011, after due notice by publication in the *City Record*, with a continued hearing on July 12, 2011, and then to July 26, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Manhattan, recommends approval of the application; and

WHEREAS, this application is brought on behalf of WCL Academy (the "School"); and

WHEREAS, the site is located on the northern side of East Second Street, between First Avenue and Second Avenue, partially within an R8B zoning district and partially within a C6-2A zoning district; and

WHEREAS, the site has 100 feet of frontage on East Second Street, a depth ranging from 86 feet to 110.4 feet, and a total lot area of 10,455 sq. ft.; and

WHEREAS, the subject site is currently occupied by a five- and six-story (including basement) school building which was constructed in 1936 (the "Building"), with a floor area of approximately 41,107 sq. ft. (3.93 FAR) and a pre-existing non-complying lot coverage of 82.9 percent; and

WHEREAS, the applicant notes that the Building has two wings: the west wing consists of the five-story portion of the Building located within the C6-2A zoning district, which encompasses the western 25 feet of the lot (the "West Wing"); and the east wing consists of the six-story (including basement) portion of the Building located within the R8B zoning district, which encompasses the eastern 75 feet of the lot (the "East Wing"); and

WHEREAS, the applicant states that the West Wing has a height of approximately 59'-4" with an existing elevator bulkhead that extends an additional 13'-0" to a height of approximately 72'-4", and the East Wing has a height of approximately 72'-6" with an existing stair bulkhead that extends an additional 8'-8" to a height of approximately 81'-2"; and

WHEREAS, the School proposes to construct the following: an elevator and vestibule in the courtyard of the R8B portion of the Building, a wheelchair lift to provide access to the cellar of the East Wing from the first floor, a wheelchair ramp to provide street level access to the East Wing, and a new stair bulkhead to provide a second means of egress for a proposed rooftop green space; and

WHEREAS, the applicant notes that the proposed enlargement will occur entirely within the R8B portion of the

zoning lot; and

WHEREAS, the applicant states that the proposed enlargement requires the construction of a new elevator bulkhead, which extends 25'-8" above the 72'-6" height of the East Wing (to a height of approximately 98'-2"), and a new stair bulkhead, which extends 9'-6" above the 72'-6" height of the East Wing (to a height of approximately 82'-0"); and

WHEREAS, the applicant further states that the construction of the new stair and elevator bulkheads on the roof of the Building, when considered in the aggregate with the existing stair bulkhead on the East Wing, would yield a total net surface area of approximately 369 sq. ft. above the maximum building height of 75 feet, which exceeds the 300 sq. ft. net surface area allowed under the permitted obstruction rules of ZR § 24-51; and

WHEREAS, the applicant states that the proposed construction will result in a floor area of 42,067 sq. ft. (4.02 FAR) (the maximum permitted floor area is 47,254 sq. ft. (4.52 FAR)), a lot coverage of 83.4 percent (the maximum permitted lot coverage is 70 percent), and bulkheads which do not comply with the permitted obstruction rules; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the School which necessitate the requested waivers: (1) that the School be ADA-accessible; and (2) that rooftop green space be provided for the students; and

WHEREAS, in order to meet its programmatic needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant represents that the lot coverage and permitted obstruction waivers are necessary to make the School ADA-accessible through the construction of an elevator providing access to every floor on both the East Wing and West Wing; and

WHEREAS, the applicant states that the School's program requires that the Building be ADA-accessible because accessibility is fundamental to the aims of the School, as it seeks to make its curriculum available to students with disabilities, to employ faculty and staff with disabilities, and to allow parents with disabilities to visit the School; and

WHEREAS, the applicant states that the proposed elevator would be located in the courtyard of the R8B portion of the Building, which would allow it to make a total of 13 stops on all floors of both wings of the Building, except for the basement of the East Wing and the rooftop green space; and

WHEREAS, the applicant represents that without the waivers, it would not be feasible to make the Building ADA-accessible; and

WHEREAS, the applicant states that the School also has a programmatic need to create a green space, including a discovery garden and play area, on the rooftop of the East Wing; and

WHEREAS, the applicant states that the rooftop green space will be incorporated into the School's curriculum; and

WHEREAS, the applicant represents that in order to make the rooftop green space accessible to students it must be located within the East Wing, and a new stair bulkhead must be constructed on the roof in order to provide a second means of egress; and

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WHEREAS, the Board acknowledges that the School, as an educational institution, is entitled to significant deference under the 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, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, however, the applicant represents that there are also unique physical conditions that result in practical difficulties or unnecessary hardship in allowing the School to satisfy its programmatic need while complying with the Zoning Resolution; and

WHEREAS, the applicant states that the options for making the Building handicapped accessible are limited because, among other things: (1) neither the East Wing nor West Wing can be accessed without the use of stairs because the ground floor level of both wings is above the curb level; (2) neither wing has an elevator that complies with applicable Building Code requirements; and (3) the two wings are at different levels, so movement between the wings requires the use of stairs; and

WHEREAS, specifically, the applicant states that, because the wings have different levels, the only way to pass from space used for school purposes in one wing of the Building to similar space in the other wing is through one of six doorways, located at different elevations, that connect the stairway of the East Wing to the adjacent stairway of the West Wing; and

WHEREAS, the applicant further states that it is only possible to pass through one of the doorways from one wing to the other without the use of stairs at the lowest shared elevation of both wings (i.e., the cellar of the West Wing and the basement and cellar of the East Wing); above the shared level such passage between the wings is only possible with the use of stairs; and

WHEREAS, the applicant submitted a letter from an elevator consultant stating that the existing elevator in the West Wing cannot be modified or upgraded to comply with the accessibility requirements of the Building Code; and

WHEREAS, the applicant represents that the proposed waivers are necessary because constructing a complying enlargement which would make the Building ADA-accessible would require the installation of two elevators (one to facilitate access between the cellar and fourth floor of the East Wing and one to facilitate access between the fourth floor and roof of the East Wing), a ramping system to provide access from each floor of the East Wing to each floor of the West Wing, a wheelchair lift to provide access to the cellar of the East Wing from street level, and a wheelchair ramp to provide street level access to the East Wing; and

WHEREAS, the applicant states that the complying elevators would also have to be constructed within the footprint of the East Wing portion of the Building because the elevators

could not be located within the courtyard, as it would exceed the maximum permitted lot coverage under ZR § 24-11; and

WHEREAS, the applicant represents that the need to construct the complying elevators within the footprint of the East Wing results in smaller classrooms at the fourth and fifth floors and a reduction in the amount of classroom space of approximately 1,419 sq. ft., which would equate to approximately 40 fewer students; and

WHEREAS, the Board notes that the School leases the Building; however, even if the School's lease expires, the requested variance would still be necessary for any subsequent educational institution that occupies the existing 1936 school building; and

WHEREAS, the Board further notes that the Building was constructed as a school in 1936 and has been occupied by a school use since that time; and

WHEREAS, the Board finds that the School's programmatic needs are legitimate, and agrees that the proposed enlargement is necessary to address its 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 School, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the School is a for-profit institution the finding set forth at ZR § 72-21(b) must be made in order to grant the variance requested in this application; and

WHEREAS, the applicant submitted a financial analysis which analyzed the following scenarios: (1) an as-of-right enlargement consisting of the construction of two elevators to provide ADA-accessibility; and (2) the proposed enlargement; and

WHEREAS, the financial analysis concluded that the as-of-right scenario would not realize a reasonable return, but that the proposed scenario would realize a reasonable return; and

WHEREAS, based upon the above, the Board has determined that there is no reasonable possibility that a development in strict conformance with zoning 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 noted above, the Building was constructed in 1936 and has been operating since that time as a school; and

WHEREAS, the applicant states that the proposed enlargement will be constructed within the courtyard of the Building and, except for a portion of the new elevator bulkhead, will not be visible from the street; and

WHEREAS, at hearing, the Board questioned whether the applicant could reduce the height of the proposed elevator bulkhead, and whether a hydraulic elevator could be installed rather than a traction elevator to reduce the

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height of the bulkhead; and

WHEREAS, in response, the applicant submitted a letter from an elevator consultant stating that the height of the proposed elevator bulkhead is dictated by the Building Code requirements related to traction elevators; and

WHEREAS, the letter from the elevator consultant further stated that the travel distance of 78'-8" makes the installation of a hydraulic elevator at the subject site impractical because hydraulic elevators are generally only efficient up to 60'-0" of travel and consume a significantly greater amount of electrical power; 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 School could occur 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 waivers are the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the School 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 Section 617.5 of 6 NYCRR; 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 R8B zoning district and partially within a C6-2A zoning district, the enlargement of a five- and six-story (including basement) school building (Use Group 3), which is contrary to ZR §§ 24-11 and 24-51; *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, 2011" – (10) sheets and "Received July 20, 2011" – (1) sheet and *on further condition*:

THAT the following shall be the bulk parameters for the building: a floor area of 42,067 sq. ft. (4.02 FAR), a lot coverage of 83.4 percent, and a net surface area of the portions of the bulkheads above 75 feet of approximately 369 sq. ft., 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);

THAT substantial construction shall be completed in accordance with ZR § 72-23;

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 26, 2011.

37-11-BZ

APPLICANT – Moshe M. Friedman, for Eli Bauer, owner.
SUBJECT – Application April 4, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area and open space (§23-141); side yards (§23-461) and (§23-48) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1337 East 26th Street, east side, 300' of Avenue M and East 26th Street, Block 7662, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Yosef Gottdiener.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 29, 2011, acting on Department of Buildings Application No. 320214193, reads in pertinent part:

“Proposed extension of an existing one family dwelling is contrary to:

ZR Sec 23-141 Floor Area Ratio

ZR Sec 23-141 Open Space Ratio

ZR Sec 23-47 Required Rear Yard

ZR Sec 23-46 & 23-48 Required Side Yard;” 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 home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-48 and 23-47; and

WHEREAS, a public hearing was held on this application on June 21, 2011 after due notice by publication in *The City Record*, and then to decision on July 26, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

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WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 26th Street, between Avenue M and Avenue N, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 3,000 sq. ft., and is occupied by a single-family home with a floor area of 2,111 sq. ft. (0.70 FAR); 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 2,111 sq. ft. (0.70 FAR) to 2,929 sq. ft. (0.98 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 64 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard along the southern lot line with a width of 3'-2¼" (a minimum width of 5'-0" is required for each side yard) and the existing side yard along the northern lot line with a width of 6'-11¾"; and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 23'-4¼" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, based upon its review of the record, 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, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space ratio, side yards, and rear yard, contrary to ZR §§ 23-141, 23-461, 23-48 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 May 26, 2011"-(11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 2,929 sq. ft. (0.98 FAR); an open space ratio of 64 percent; a side yard with a minimum width of 3'-2¼" along the southern lot line; a side yard with a minimum width of 6'-11¾" along the northern lot line; and a rear yard with a minimum depth of 23'-4¼", 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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 26, 2011.

59-11-BZ CEQR #11-BSA-092R

APPLICANT – The Law Office of Fredrick A. Becker, for 156 South Avenue Corporation, owner; Community Health Center, lessee.

SUBJECT – Application May 5, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory diagnostic facility building. C8-1 zoning district.

PREMISES AFFECTED – 439 Port Richmond Avenue, southwest corner of Port Richmond Avenue and Homestead Avenue, Block 1048, Lot 9, Borough of Staten Island.

COMMUNITY BOARD #ISI

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated May 4, 2011, acting on Department of Buildings Application No. 520062566, reads in pertinent part:

"Required accessory off street parking is not being provided for proposed change of use from use group 6 (store) and use group 16 (offices) to use group 4 (community facility) for existing building

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located in a C8-1 zoning district which was erected after 12/15/1961 contrary to section 36-21 of the New York City 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 Use Group 4 ambulatory diagnostic or treatment facility from 18 spaces to nine spaces, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on June 21, 2011, after due notice by publication in *The City Record*, with a continued hearing on July 19, 2011, and then closed and set for decision on July 19, 2011; and

WHEREAS, on July 19, 2011 the application was re-opened to accept additional submissions, and then to decision on July 26, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 1, Staten Island, recommends disapproval of this application, citing concerns that the proposed number of parking spaces is insufficient for the proposed use; and

WHEREAS, a member of the community provided testimony in opposition to this application; and

WHEREAS, this application is brought on behalf of the Community Health Center of Richmond (the “Health Center”), a non-profit entity; and

WHEREAS, the subject site is located on the southwest corner of Port Richmond Avenue and Homestead Avenue, and has a lot area of 4,995 sq. ft.; and

WHEREAS, the site is currently occupied by a vacant two-story commercial building with a floor area of 5,230 (1.05 FAR); and

WHEREAS, the applicant proposes to convert the entire building to a Use Group 4 ambulatory diagnostic or treatment facility and to add a 375 sq. ft. enlargement at the second floor, for a total floor area of 5,605 sq. ft. (1.14 FAR); and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject C8-1 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 4 ambulatory diagnostic or treatment facility uses; in the subject zoning district, 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, pursuant to ZR § 36-21 the total number of required parking spaces for the existing and proposed office use at the site is 18; and

WHEREAS, the applicant represents that the proposed use of the site does not require 18 accessory parking spaces; and

WHEREAS, the applicant states that the staff at the proposed facility will primarily use public transportation; and

WHEREAS, the applicant represents that the majority of the patients for the proposed ambulatory diagnostic or treatment facility are from the Port Richmond area and therefore will either walk or take public transportation to the site, thereby lessening the demand for on-site parking; and

WHEREAS, pursuant to the special permit authorized by ZR § 73-44 the number of parking spaces for the subject 5,605 sq. ft. building could be reduced to nine for the proposed use; and

WHEREAS, the applicant proposes to provide a total of nine parking spaces; and

WHEREAS, the applicant states that any Certificate of Occupancy for the building will state that no subsequent Certificate of Occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius; and

WHEREAS, the Board finds that the applicant has submitted sufficient evidence that the Use Group 4 ambulatory diagnostic or treatment facility use is contemplated in good faith, in accordance with ZR § 73-44; and

WHEREAS, the applicant submitted a survey of available street parking within an approximate three block radius of the site, which reflects that there are between 52 and 65 available on-street parking spaces throughout the day; and

WHEREAS, based on the survey, the applicant represents that there will be sufficient available on-street parking in the surrounding area to compensate for the requested reduction of nine parking spaces at the subject site; and

WHEREAS, the applicant initially sought to provide the nine proposed parking spaces on-site, by means of an attended parking lot located on Homestead Avenue; and

WHEREAS, however, ZR § 36-521 prohibits the use of an attendant for required parking spaces, and instead there must be individual access to each vehicle and an aisle width of 22 feet; and

WHEREAS, the applicant states that, in order to comply with ZR § 36-521, only five unattended parking spaces can be accommodated on the on-site parking lot; and

WHEREAS, the applicant now proposes to provide the remaining four required parking spaces off-site; and

WHEREAS, accordingly, the applicant submitted a signed lease with the property owner for property located at 357 Port Richmond Avenue for four off-site parking spaces; and

WHEREAS, the applicant notes that 357 Port Richmond Avenue is located at the corner of Port Richmond Avenue and Hatfield Place, and is within the 600-ft. permitted distance from the subject site; and

WHEREAS, the applicant states that, upon approval of the subject application, the property owners will enter into a Restrictive Declaration for the off-site parking spaces as required by the Department of Buildings (“DOB”); and

WHEREAS, the Board agrees that the accessory

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parking space needs can be accommodated even with the parking reduction; 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.11BSA092R, dated May 5, 2011; 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 a C8-1 zoning district, a reduction in the required number of accessory parking spaces for a Use Group 4 ambulatory diagnostic or treatment facility from 18 spaces to nine spaces, contrary to ZR § 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 July 20, 2011"- one (1) sheet and "Received June 9, 2011" – seven (7) sheets, and *on further condition*:

THAT there shall be no change in the operator of the site without prior review and approval by the Board;

THAT a minimum of nine parking spaces shall be provided as follows: five unattended parking spaces shall be located in the accessory parking lot for the proposed use, and four off-site parking spaces shall be located at 357 Port Richmond Avenue;

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

THAT prior to the issuance of any DOB permits, a Restrictive Declaration for the four off-site parking spaces

shall be entered into between the Health Center and the property owner of 357 Port Richmond Avenue, and submitted to DOB;

THAT no certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius;

THAT any building enlargement shall be as approved by DOB and must comply with all relevant zoning district regulations;

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 substantial construction shall be completed in accordance with ZR §73-70;

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 26, 2011.

221-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Chris Xu, owner.
SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the development of a transient hotel, contrary to district use regulations. M2-1 zoning district.

PREMISES AFFECTED – 34-08 Collins Place, north side of Collins Place, 34th Avenue, College Point Boulevard and 35th Avenue, Block 4945, Lot 34, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Richard Lobel and Barbara Cohen.

For Opposition: Ken Telly, Kevin McDermott, Beverly McDermott and Salvatore Cantatore.

ACTION OF THE BOARD – Laid over to September 27, 2011, at 1:30 P.M., for continued hearing.

236-09-BZ

APPLICANT – Marvin Mitzner, Esq, for Crosstown West 28 LLC, owner.

SUBJECT – Application July 31, 2009 – Variance (§72-21) to allow for a 29 story mixed use commercial and residential building contrary to use regulations (§42-00), floor area (§43-12), rear yard equivalent (§43-28), height (§43-43), tower regulations (§43-45) and parking (§13-10). M1-6 zoning district.

PREMISES AFFECTED – 140-148 West 28th Street, south

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side of West 28th Street, between 6th Avenue and 7th Avenue, block 803, Lots 62 and 65, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Marvin Mitzner.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to September 27, 2011, at 1:30 P.M., for decision, hearing closed.

119-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Samson and Rivka Molinsky, owners.

SUBJECT – Application June 28, 2010 – Variance (§72-21) to allow legalization of an enlargement of a residential building, contrary to front yard (§23-45) and height (§23-631) regulations. R2X zoning district.

PREMISES AFFECTED – 787 Cornaga Avenue, southwest corner of Cornaga Avenue and Mador Court, Block 15571, Lot 133, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to August 23, 2011, at 1:30 P.M., for adjourned hearing.

128-10-BZ

APPLICANT – Eric Palatnik, P.C., for Merhay Yagaduyev, owner; Jewish Center of Kew Gardens Hill Inc., lessee.

SUBJECT – Application July 13, 2010 – Variance (§72-21) to permit proposed synagogue, religious school and Rabbi's residence (*Jewish Center of Kew Gardens*) contrary to floor area and lot coverage (§24-11), height, setback and sky exposure plane (§24-521), front yard (§24-34), side yards (§24-35), side setback (§24-551), and minimum distance between windows (§24-672 and §23-863). R4 zoning district.

PREMISES AFFECTED – 147-58 77th Road, 150th Street and 77th Road, Block 6688, Lot 31, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik and Sandy Anagnostov.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to August 23, at 1:30 P.M., for decision, hearing closed.

194-10-BZ

APPLICANT – Eric Palatnik, P.C., for Revekka Kreposterman, owner.

SUBJECT – Application October 26, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 175 Exeter Street, north of Oriental Avenue, Block 8737, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik and Sandy Anagnostou.

For Opposition: Judith Baron.

ACTION OF THE BOARD – Laid over to August 16, 2011, at 1:30 P.M., for continued hearing.

196-10-BZ

APPLICANT – James Chin & Associates, LLC, for Turtle Bay Inn, LLC., owner.

SUBJECT – Application October 25, 2010 – Variance (§72-21) to allow ground floor commercial use in an existing residential building, contrary to use regulations (§22-00). R8B zoning district.

PREMISES AFFECTED – 234 East 53rd Street, mid-block parcel located on the south side of 53rd Street, between 2nd and 3rd Avenue, Block 1326, Lot 34, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Chris Wright and Robert Pauls.

ACTION OF THE BOARD – Laid over to August 23, 2011, at 1:30 P.M., for continued hearing.

3-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Schron and Eli Shron, owners.

SUBJECT – Application January 10, 2011 – Special Permit (§73-622) for the enlargement of a single family home, contrary to floor area and open space (§23-141) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1221 East 22nd Street, between Avenue K and Avenue L, Block 7622, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to October 18, 2011, at 1:30 P.M., for adjourned hearing.

6-11-BZ

APPLICANT – Paul Bonfilio, for Denis Forde, Rockchapel Reality, LLC, owner.

SUBJECT – Application January 19, 2011 – Variance (§72-21) to permit the construction of a one family detached residence on a vacant corner tax lot contrary to ZR §23-711 for minimum distance between buildings on the same zoning lot; ZR §23-461 for less than the required width of a

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side yard on a corner lot and ZR §23-89(b) less than the required open area between two buildings. R2A zoning district.

PREMISES AFFECTED – 50-20 216th Street, corner of 51st Avenue, Block 7395, Lot 13, 16, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for adjourned hearing.

21-11-BZ

APPLICANT – Eric Palatnik, P.C., for 1810-12 Voorhies Avenue, LLC, owner.

SUBJECT – Application February 28, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory or diagnostic treatment facility. C1-2/R4 zoning district.

PREMISES AFFECTED – 1810 Voorhies Avenue, south side of Voorhies Avenue, between East 19th Street and Sheepshead Bay Road, Block 8772, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 23, 2011, at 1:30 P.M., for adjourned hearing.

27-11-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 88 Franklin Street Group LLC, owner; Acqua Ancien Bath New York, LLC, lessee.

SUBJECT – Application March 22, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Acqua Ancien Bath*). C6-2A zoning district.

PREMISES AFFECTED – 86-88 Franklin Street, east of intersection of Church Street and Franklin Street, Block 175, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to August 23, at 1:30 P.M., for decision, hearing closed.

60-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Zvi Turk and Miriam Turk, owners.

SUBJECT – Application May 5, 2011 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1214 East 29th Street, west side of East 29th Street and Avenue L, Block 7646, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to August 23, 2011, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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August 24, 2011

DIRECTORY

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DOCKET

New Case Filed Up to August 16, 2011

106-11-BZ

27-28 Thomson Avenue, triangular zoning lot with frontages on Thomson Street and Court Square, adjacent to Sunnyside Yards., Block 82, Lot(s) 7501(1001), Borough of **Queens, Community Board: 02**. Special Permit (§73-36) to permit the operation of a physical culture establishment (Planet Fitness). M1-5/R7-3 (Special Long Island City Mixed Use District) zoning district. M1-5/R7-3 district.

107-11-BZ

1643 East 21st Street, Located on the east side of 21st Street between avenue O and Avenue P, Block 6768, Lot(s) 84, Borough of **Brooklyn, Community Board: 14**. Variance (§72-21) to permit the enlargement of a synagogue (Congregation Yeshiva Bais Yitzchok) contrary to the bulk requirements for community facility buildings. R4-1 district. R4-1 district.

108-11-BZ

10 Hett Avenue, East side of Hett Avenue, 99.52 feet south of the intersection of Hett Avenue and New Dorp Lane., Block 4065, Lot(s) 27, Borough of **Staten Island, Community Board: 02**. Variance (§72-21) to permit the construction of four semi-detached one-family dwellings that do not provide ground floor commercial use as required in Staten Island. C1-1/R3-1 zoning district C1-1/R3-1 district.

109-11-BZ

12 Hett Avenue, East side of Hett Avenue, 99.52 feet south of the intersection of Hett Avenue and New Dorp Lane., Block 4065, Lot(s) 25, Borough of **Staten Island, Community Board: 02**. Variance (§72-21) to permit the construction of four semi-detached one-family dwellings that do not provide ground floor commercial use as required in Staten Island. C1-1/R3-1 zoning district C1-1/R3-1 district.

110-11-BZ

14 Hett Avenue, East side of Hett Avenue, 99.52 feet south of the intersection of Hett Avenue and New Dorp Lane., Block 4065, Lot(s) 24, Borough of **Staten Island, Community Board: 02**. Variance (§72-21) to permit the construction of four semi-detached one-family dwellings that do not provide ground floor commercial use as required in Staten Island. C1-1/R3-1 zoning district C1-1/R3-1 district.

111-11-BZ

16 Hett Avenue, East side of Hett Avenue, 99.52 feet south of the intersection of Hett Avenue and New Dorp Lane., Block 4065, Lot(s) 21, Borough of **Staten Island, Community Board: 02**. Variance (§72-21) to permit the construction of four semi-detached one-family dwellings that do not provide ground floor commercial use as required in Staten Island. C1-1/R3-1 zoning district C1-1/R3-1 district.

112-11-BZ

2994/3018 Cropsey Avenue, southwest corner of Bay 54th Street, Block 6947, Lot(s) 260, Borough of **Brooklyn, Community Board: 13**. Variance (§72-21) to legalize the enlargement of the zoning lot of a previously approved use group 18 scrap metal yard which is contrary to ZR Section 32-10. C8-1 district. C8-1 district.

113-11-BZ

66 Van Cortlandt Park South, corner lot, south of Van Cortlandt Park S, east of Saxon Avenue, west of Dickinson Avenue, Block 3252, Lot(s) 76, Borough of **Bronx, Community Board: 08**. Variance (§72-21) to permit the proposed enlargement to an existing Use Group 3 nursing home which does not comply with the rear yard equivalent requirements of ZR 24-382. R7-1 zoning district. R7-1 district.

114-11-A

655 West 254th Street, north side of West 254th Street, between Palisade and Independence Avenues, Block 5947, Lot(s) 1, Borough of **Bronx, Community Board: 08**. Proposed construction of a stone wall, pier, curbs and related footings for an accessory parking area to SAR Academy to be located within the bed of the mapped street (West 245 th) contrary to General City Law Section 35 . R1-1 Riverdale SNAD Zoning District . R1-1 district.

115-11-BZ

1110 East 22nd Street, west side of East 22nd Street between Avenue J and Avenue K., Block 7603, Lot(s) 62, 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. R2 district.

DOCKET

116-11-A

835 Liberty Lane, west side of Liberty Lane, 139' north of Marshall Avenue, Block 16350, Lot 300, Borough of **Queens, Community Board:14**. Proposed reconstruction and enlargement of an existing single family home street not fronting a legally mapped street contrary to General City Law Sections 36 . R4 Zoning District.

117-11-BZ

86-50 Edgerton Boulevard, corner through lot bounded by Dalny Road, Wexford Terrace, and Edgerton Boulevard, Block 9885, Lot(s) 8, Borough of **Queens, Community Board: 08**. Variance (ZR 72-21) to permit the development of a new athletic center building accessory to an existing Use Group 3 school. R1-2 & R5 zoning districts. R1-2 & R5 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

SEPTEMBER 13, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 13, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

329-59-BZ

APPLICANT – Mango & Iacoviello, LLP, for Coliseum Tenants Corporation c/o Punia & Marx, Incorporate, owner; Central Parking Systems of New York, Incorporated, lessee. SUBJECT – Application June 1, 2011 – Extension of Term for the continued operation of transient parking in a multiple dwelling which expired on November 4, 2008; an Extension of Time to obtain a Certificate of Occupancy which expired on January 15, 2003 and waiver of rules. R8/C6-6(MID) zoning district.

PREMISES AFFECTED – 910-924 Ninth Avenue aka 22-44 West 60th Street, Block 1049, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

624-68-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for MMT Realty Associates LLC, owner.

SUBJECT – Application June 7, 2011 – Extension of Term of a previously granted Variance (§72-21) to permit building occupancy as a wholesale plumbing supply house (UG16), stores and office (UG6) which expired on January 13, 2011; Extension of Time to obtain a Certificate of Occupancy and waiver of the rules. R3-2 zoning district.

PREMISES AFFECTED – 188-07 Northern Boulevard, north side of Northern Boulevard between Utopia Parkway and 189th Street, Block 5364, Lots 1, 5, 7, Borough of Queens.

COMMUNITY BOARD #11Q

351-05-BZ

APPLICANT – Simons & Wright LLC, for Atlas Packaging Solutions Holding Co., Inc., owner.

SUBJECT – Application August 11, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of six-unit, four story residential building which expired on August 22, 2010; Waiver of Rules of Practice and Procedures. M2-1 zoning district.

PREMISES AFFECTED – 146 Conover Street, northeast side of Conover Street, between Sullivan and King Streets, Block 554, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #6BK

265-08-BZ

APPLICANT – Richard Bass/Herrick, Feinstein, LLP for 70 Wyckoff, LLC, owner.

SUBJECT – Application August 11, 2011 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (§72-21) for the legalization of residential units in a manufacturing building which expired on August 9, 2011. M1-1 zoning district.

PREMISES AFFECTED – 70 Wyckoff Avenue, south east corner of Wyckoff Avenue and Suydam Street. Block 3221, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #4BK

13-09-BZ

APPLICANT – Moshe M. Friedman, P.E. for Congregations Tehilos Yotzchok, owner.

SUBJECT – Application May 27, 2011 – Amendment to a previously approved application to allow a synagogue contrary to ZR §24-11 Floor & Lot Coverage, ZR §24-34 Front Yard and ZR §24-35 Side Yard. R5 zoning district. PREMISES AFFECTED – 5611 21st Street, East side 95'-8" North of intersection of 21st Avenue and 57th Street. Block 5495, Lot 430, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEALS CALENDAR

219-10-A

APPLICANT – Sheldon Lobel, P.C., for 74-76 Adelphi Realty LLC, owner.

SUBJECT – Application November 24, 2010 – An Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R6 zoning district. R5B Zoning district.

PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, between Park and Myrtle Avenues, Block 2044, Lots 52, 53, Borough of Brooklyn.

COMMUNITY BOARD #2BK

69-11-A & 70-11-A

APPLICANT – Sheldon Lobel, P.C., for Fiesta Latina Sports Bar Corporation, owner.

SUBJECT – Application May 23, 2011 – An appeal seeking a determination that the owner of said premise has acquired a common law vested right to continue development of prior R4-1 zoning district.

PREMISES AFFECTED – 88-11 & 88-13 173rd Street, East side of 173rd Street between 89th Avenue and Warwick Circle. Block 9830, Lot 22, 23 (tentative), Borough of Queens.

COMMUNITY BOARD #12Q

CALENDAR

SEPTEMBER 13, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 13, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

43-11-BZ

APPLICANT – Harold Weinberg, for David Waknin, owner.

SUBJECT – Application April 12, 2011– Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a single family home contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1296 East 21st Street, west side 220' south of Avenue R, between Avenues R and S, Block 6826, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #15BK

58-11-BZ

APPLICANT – Friedman & Gotbaum, LLP, for The Trustees of The Spence School, Incorporated, owner.

SUBJECT – Application May 4, 2011 – Variance (§72-21) to permit the expansion of a (UG 3) community facility (The Spence School) contrary to lot coverage (§24-11) and rear yard equivalent (§24-382). R8B zoning district.

PREMISES AFFECTED – 20-22 East 91st Street, South side of East 91st Street, 62.17 ft. westerly from the corner formed by the intersection of the southerly side of 91st. Street & the westerly side of Madison Avenue. Block 1502, Lot 59 & 12, Borough of Manhattan.

COMMUNITY BOARD #8M

82-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Livaho Choueka, owner.

SUBJECT – Application June 8, 2011 – Special Permit (73-622) for the enlargement of an existing single family home, contrary to floor area (23-141); side yard (23-461); rear yard (23-47) regulations. R5 zoning district.

PREMISES AFFECTED – 2020 Homecrest Avenue, west side of Homecrest Avenue, 165' south of Avenue T, Block 7316, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, AUGUST 16, 2011 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

1045-67-BZ

APPLICANT – Michael A. Cosentino, for Thomas Abruzzi,
owner.

SUBJECT – Application June 14, 2011 – Extension of Time
to obtain a Certificate of Occupancy for a previously
approved Variance (§72-01 & §72-22) for an accessory
parking lot to be used for adjoining commercial uses which
expired on May 18, 2011. C2-2/R-2 zoning district.

PREMISES AFFECTED – 160-10 Cross Bay Boulevard,
between 160th and 161st Avenue, Block 14030, Lots 6 & 20,
Borough of Queens.

COMMUNITY BOARD #10Q

APPEARANCES –

For Applicant: Michael A. Cosentino.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and
an extension of time to obtain a certificate of occupancy,
which expired on May 18, 2011; and

WHEREAS, a public hearing was held on this
application on July 19, 2011 after due notice by publication
in *The City Record*, and then to decision on August 16, 2011;
and

WHEREAS, the premises and surrounding area had site
and neighborhood examinations by Chair Srinivasan and
Commissioner Montanez; and

WHEREAS, the subject site consists of two zoning lots
(Lots 6 and 20), which occupy an entire city block, bounded by
92nd Street to the west, 160th Avenue to the north, Cross Bay
Boulevard to the east, and 161st Avenue to the south, partially
within an R2 zoning district and partially within a C2-2 zoning
district; and

WHEREAS, the site is occupied by a post office, retail
stores (Use Group 6), and an open parking lot; and

WHEREAS, the Board has exercised jurisdiction over
the site since June 12, 1973 when, under the subject calendar
number, the Board granted a variance to permit, in an R2
zoning district, the construction and maintenance of an
accessory parking lot for the adjoining commercial
establishment, for a term of five years; and

WHEREAS, subsequently, the grant has been amended
and the term extended at various times; and

WHEREAS, most recently, on May 18, 2010, the
Board eliminated the term of the grant and removed the
specified condition related to the permitted hours of
operation of the parking lot from prior approvals; and

WHEREAS, the applicant now requests an extension of
time to obtain a new certificate of occupancy; and

WHEREAS, the applicant states that an additional two
years is required to obtain a certificate of occupancy due to the
time required to repair certain site conditions and resolve the
associated violations; and

WHEREAS, based upon the above, the Board finds
that the requested extension of time 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, dated June 12,
1973, so that as amended this portion of the resolution shall
read: “to permit an extension of time to obtain a certificate of
occupancy, to expire on August 16, 2013; *on condition* that the
use and operation of the site shall substantially conform to the
previously approved plans; and *on further condition*:

THAT a new certificate of occupancy shall be obtained
by August 16, 2013;

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. 410227712, 410227721 and
410227730)

Adopted by the Board of Standards and Appeals, August
16, 2011.

703-80-BZ

APPLICANT – Joseph P. Morsellino, for Louis N.
Petrosino, owner.

SUBJECT – Application July 1, 2010 – Extension of Term
of a previously granted Variance (§72-21) for the continued
operation of an existing scrap metal storage establishment
which expires on December 2, 2010; Amendment to legalize
the enclosure of an open storage area. C8-1 zoning district.
PREMISES AFFECTED – 2994/3018 Cropsey Avenue,
southwest corner of Bay 54th Street, Block 6947, Lot 260,
Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collin,
Commissioner Ottley-Brown, Commissioner Hinkson and

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Commissioner Montanez.....5
Negative:.....0
Adopted by the Board of Standards and Appeals,
August 16, 2011.

677-53-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for James Marchetti, owner.

SUBJECT – Application April 22, 2010 – Extension of Term (§11-411) of a Variance for the operation of a UG16 Auto Body Repair Shop (*Carriage House*) with incidental painting and spraying which expired on March 24, 2007; Extension of Time to Obtain a Certificate of Occupancy which expired on January 13, 1999; Amendment (§11-412) to enlarge the building; Waiver of the Rules. R4/C2-2 zoning district.

PREMISES AFFECTED – 61-26/30 Fresh Meadow Lane, west side of Fresh Meadow Lane, 289’ northerly of the intersection with 65th Avenue, Block 6901, Lot 48, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for adjourned hearing.

662-56-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Flatbush Holdings LLC, owner.

SUBJECT – Application April 6, 2011 – Extension of Term (§11-411) of a previously approved variance which permitted a public parking lot (UG 8), which expired on January 23, 2011; Waiver of the Rules. C1-2/R5 zoning district.

PREMISES AFFECTED – 3875 Flatbush Avenue, Northerly side of Flatbush Avenue, 100’ east of the intersection of Flatlands Avenue. Block 7821, Lots 21, 23. Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for decision, hearing closed.

593-69-BZ

APPLICANT – Eric Palatnik, P.C., for Metro New York Dealer Stations, LLC, owner.

SUBJECT – Application May 27, 2011 – Amendment pursuant to §11-413 to convert the automotive repair bays to an accessory convenience store at an existing gasoline service station (Shell). C2-2/R5 zoning district.

PREMISES AFFECTED – 108-01 Atlantic Avenue, Between 108th and 109th Street. Block 9315, Lot 23, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to September 20, 2011, at 10 A.M., for postponed hearing.

586-87-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Frasca Real Estate Incorporated, owner; 65th Street Auto Service Center, Incorporated, lessee.

SUBJECT – Application April 5, 2011 – Extension of Term (§11-411) for the continued operation of an existing gasoline service station (*Emporium*) with lubritorium, auto repairs and the sale of new/used cars which expired on July 12, 2008; waiver of the rules. R5B/C2-3 zoning district.

PREMISES AFFECTED – 1302/12 65th Street, southeast corner of intersection of 65th Street and 13th Avenue, Block 5754, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for decision, hearing closed.

172-96-BZ

APPLICANT – Law Office of Mitchell Ross, for Don Mitchell, owner; D/B/A Mitchell Iron Works, lessee.

SUBJECT – Application June 29, 2011 – Extension of Time to obtain a Certificate of Occupancy for an existing (UG 16) welding shop which expired on May 17, 2010; Waiver of the Rules. C1-3/R6 zoning district.

PREMISES AFFECTED – 597/599 Marcy Avenue, southeast corner of March and Vernon Avenue, Block 1759, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 27, 2011, at 10 A.M., for postponed h hearing.

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58-99-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owner.

SUBJECT – Application May 19, 2011 – Extension of Term (§11-411) for the continued operation of a gasoline service station (Gulf) which expired on October 26, 2009; an Amendment to the previously approved plans to remove the canopy and Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 18-10 Utopia Parkway, Entire block is bounded by utopia Parkway, 18th Avenue, 169th Street and 19th Avenue. Block 5743, Lot 75. Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to September 20, 2011, at 10 A.M., for decision, hearing closed.

185-05-BZ

APPLICANT – John C. Chen for 62-02 Roosevelt Avenue Corporation, owner; Lapchi, Incorporated, lessee.

SUBJECT – Application April 20, 2011 – Extension of Term to a previously granted Variance (§72-21) for the continued operation of an eating and drinking establishment with dancing (UG12A) which expired on January 10, 2008; Amendment to permit the enlargement of the dance floor and kitchen; Extension of Time to complete construction which expired on January 10, 2009 and waiver of the rules. C1-2/R6 zoning district.

PREMISES AFFECTED – 62-02 Roosevelt Avenue, south side of Roosevelt Avenue 192.59' west side of intersection of 63rd Street/Roosevelt Avenue. Block 1294, Lot 58. Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: John C. Chen and Dilli R. Bhetta.

For Opposition: Patrick A. O'Brien, Community Board 2, Queens.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to November 15, 2011, at 10 A.M., for continued hearing.

259-06-BZ

APPLICANT – Fredrick A. Becker, for Ahi Ezer Congregation, owner.

SUBJECT – Application July 11, 2011 – Extension of Time to Complete Construction of a previously granted Variance (72-21) for the enlargement of an existing one and two-story synagogue which expired on June 12, 2011. R-5 (OP) zoning district.

PREMISES AFFECTED – 1885-1891 Ocean Parkway, northeast corner of Ocean Parkway and Avenue S, Block 682, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for decision, hearing closed.

302-06-BZ

APPLICANT – Harold Weinberg, for Mirrer Yeshiva, owner.

SUBJECT – Application July 8, 2011 – Extension of Time to Complete Construction of a previously granted Variance (72-21) for the construction of a mezzanine and a two-story enlargement over the existing two-story community facility building which expired on June 12, 2011. R6A in OP zoning district.

PREMISES AFFECTED – 1791 Ocean Parkway, between Ocean Parkway, Avenue R and East 7th Street, Block 6663, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg, P.E and Frank Sellitto, R.A.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

17-05-A

APPLICANT – Sheldon Lobel, P.C., for GRA V LLC, owner.

SUBJECT – Application February 15, 2011 – Application to reopen pursuant to a court remand for a determination of whether the property owner has established a common law vested right to continue construction under the prior R6 zoning district. R4A zoning district.

PREMISES AFFECTED – 3329 Giles Place, west side of Giles Place between Canon Place and Fort Independence Street, Block 3258, Lots 5 & 7, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

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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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

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 six-story (including basement) residential building under the common law doctrine of vested rights, which was previously before the Board; and

WHEREAS, the Court of Appeals has remitted the subject case to the Board for review of the common law vesting findings; and

WHEREAS, a public hearing was held on this application on March 15, 2011, after due notice by publication in *The City Record*, with a continued hearings on June 14, 2011, and then to decision on August 16, 2011; and

WHEREAS, the site was inspected by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board, 8, Bronx, recommends disapproval of this application; and

WHEREAS, New York City Council Member G. Oliver Koppel recommends disapproval of this application; and

WHEREAS, New York State Senator Gustavo Rivera and New York State Assembly Member Jeff Dinowitz provided testimony in opposition to this application; and

WHEREAS, representatives of the Fort Independence Park Neighborhood Association provided oral and written testimony in opposition to this application; and

WHEREAS, collectively, the parties who provided testimony in opposition to the proposal are the “Opposition;” and

WHEREAS, specifically, the Opposition raised the following primary concerns: (1) the construction was not performed pursuant to a valid permit; (2) the foundation encroaches on City property; (3) a building that complies with R6 zoning cannot be constructed above the existing foundation; (4) substantial construction has not been performed; (5) expenditures are not adequately documented and are not substantial; and (6) the owner has not acted in good faith; and

WHEREAS, the subject site is located on the west side of Giles Place, between Heath Avenue and Canon Place, within an R4A zoning district; and

WHEREAS, the site has 125 feet of frontage along Giles Place and a lot area of 19,418 sq. ft.; and

WHEREAS, the applicant proposes to construct a six-story (including basement) residential building with a total floor area of 42,239 sq. ft. (2.18 FAR), a total height of 55’-0”, and with 63 dwelling units (hereinafter, the “Building”); and

WHEREAS, the site was formerly located within an R6 zoning district; and

WHEREAS, however, on September 28, 2004 (hereinafter, the “Rezoning Date”), the area in which the site is located was rezoned from R6 to R4A by the City (CPC Res. C040516 ZMX adopted by the City Planning Commission on September 8, 2004) and approved by the City Council on the Rezoning Date; and

WHEREAS, the applicant represents that the Building complies with the former R6 zoning district parameters; and

WHEREAS, because the Building is not in compliance with the provisions of the R4A zoning district and work on the foundation was not completed as of the Rezoning Date, 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 development; and

WHEREAS, on August 8, 2005, pursuant to the subject calendar number, the Board denied statutory and common law vested rights applications for the subject site based on the Department of Building’s (“DOB”) determination that the underlying foundation permit (permit No. 200869024-01-FO (the “Permit”)), issued on September 7, 2004, was invalid; the Board did not evaluate the other aspects of the common law vested rights findings; and

WHEREAS, DOB’s determination that the Permit was invalid was based on the fact that the plans approved prior to the R4A rezoning did not comply with the R6 zoning in effect at the time of the issuance of the Permit; and

WHEREAS, at the Court of Appeals, in consultation with DOB, the Board requested that the case be remanded for further consideration of the vesting application, in light of DOB’s position that plans can be amended to correct zoning defects after zoning changes, thereby enabling applicants to pursue vested rights claims; and

WHEREAS, subsequently, on June 4, 2009, the Court of Appeals remitted the case to the Board to review “all other material aspects” of the application; and

WHEREAS, following the remand, the Board directed the applicant to resolve all non-compliances related to Job No. 200869024 with DOB; and

WHEREAS, the Board is in receipt of DOB’s February 24, 2011 determination that all non-compliances related to Job No. 200869024 have been cured and the Permit is deemed valid; and

WHEREAS, however, on May 17, 2011 DOB issued a Stop Work Order for the site based on the intrusion of the foundation walls over the 1.9-ft. setback from the lot line; and

WHEREAS, on July 11, 2011, DOB issued a “Revocation of Permit(s)” letter due to building elements encroaching onto Giles Place, a public way; and

WHEREAS, the Opposition contends that this is evidence that DOB has not approved the foundation work that has been completed on the site; and

WHEREAS, however, on August 4, 2011, DOB issued a letter rescinding the July 11, 2011 revocation of the permit, and stating that the applicant sufficiently demonstrated that the encroachment of the foundation into the street as well as the concrete above the natural grade of the front yard will be

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rectified once the permits are reinstated, and that the Department's February 24, 2011 determination that the Permit is validly issued stands; and

WHEREAS, accordingly, the validity of the Permit has been established and the Board's scope of review on remand is limited to the other material aspects of the common law vested rights findings; and

WHEREAS, the Opposition argues that a building that complies with the prior R6 zoning district regulations cannot be constructed on the existing foundation because portions of the foundation are located beyond the 1.9-ft. setback area and encroach onto City property, and moving the front wall back will create non-compliances with other portions of the Building; and

WHEREAS, in response, the applicant states that the encroachment represents a very small area in relation to the overall structure, and the condition was corrected with minor front wall changes that have been reviewed and approved by DOB; and

WHEREAS, the Board notes that DOB has reviewed the plans and determined that they reflect a zoning compliant building, that the applicant is required to build according to the approved plans, and that any non-compliances are subject to enforcement by DOB; and

WHEREAS, 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

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 before the Rezoning Date, the owner completed: (1) site preparation; (2) the grading of portions of the site; (3) excavation of a portion of the site; and (4) the pouring of 530 cubic yards (566 linear feet) of concrete for the retaining walls, footings, and foundation walls, or approximately 74 percent of the total concrete required for all foundation work (68 percent of the linear feet of the foundation); and

WHEREAS, in support of this assertion, the applicant

submitted the following evidence: photographs of the site as of the Rezoning Date; affidavits from the general contractor and foundation contractor attesting to the amount of work completed; a construction table; copies of concrete pour tickets; and invoices; and

WHEREAS, the applicant initially stated that 603 cubic yards (621 linear feet) of concrete had been poured, amounting to approximately 85 percent of the total concrete required for the foundation work (74 percent of the linear feet of the foundation); and

WHEREAS, during the course of the hearings, the Opposition argued that portions of the front wall of the foundation are located beyond the 1.9-ft. setback and encroach onto City property (Giles Place); and

WHEREAS, the Board directed the applicant to provide a survey reflecting the precise location of the foundation elements on the site; and

WHEREAS, in response, the applicant submitted a survey which reflects that certain portions of the front wall of the foundation are located beyond the setback area and encroach onto City property; and

WHEREAS, subsequently, the Board directed the applicant to provide a revised foundation plan which excludes any concrete poured in the initial 1.9-ft. setback distance and any concrete that may have been poured beyond the front property line; and

WHEREAS, in response, the applicant provided a revised foundation plan which discounted the concrete poured in the initial setback area and beyond the property line; and

WHEREAS, the applicant states that the disallowance of this concrete does not effect the design of the Building from a zoning perspective, and does not significantly effect the amount of work completed at the site as of the Rezoning Date, which was reduced from 603 cubic yards (621 linear feet) of concrete to 530 cubic yards (566 linear feet) of concrete as a result; and

WHEREAS, the applicant further states that the foundation work completed at the site is significantly more complex than the work remaining, which includes only minor clearing, completion of remaining forms, installation of remaining rebar and final concrete pours along the rear perimeter of the site, which is estimated to take approximately five additional days to complete; and

WHEREAS, the Board concludes that given the size of the site, and 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, a significant amount of work was performed at the site prior to the rezoning; and

WHEREAS, accordingly, as to the amount of work performed, the Board finds that it was substantial enough to meet the guideposts established by case law; 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

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WHEREAS, the applicant states that prior to the Rezoning Date, the owner expended \$475,000, including hard and soft costs and irrevocable commitments, out of \$8,660,850 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted affidavits from the general contractor and foundation contractor, accounting tables, invoices, and concrete pour tickets; and

WHEREAS, the Opposition argues that the expenditures for the project were not adequately documented because the applicant did not provide copies of checks as evidence of the payments made; and

WHEREAS, the applicant states that it is unable to secure checks because the general contractor who controls the account is no longer involved in the project and is not readily available; and

WHEREAS, the Board finds that the affidavits from the general contractor and foundation contractor, which specifically speak to the total costs of and payments made toward foundation work on the site, in conjunction with concrete pour tickets and the invoices from the foundation contractor for work performed at the site, are sufficient in lieu of providing copies of checks as evidence to establish the expenditures made for the project; and

WHEREAS, the Board considers the amount of expenditures significant, both in and of itself for a project of this size, and when compared against the total 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 serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that the R4A zoning permits only detached housing and would effectively require the subdivision of the site into four separate development parcels, each of which would have separate buildings and separate foundations; and

WHEREAS, the applicant states that the maximum permitted residential FAR for the project would decrease from 2.2 FAR to 0.75 FAR if the applicant is required to comply with R4A zoning requirements, and this 66 percent decrease in FAR would result in a loss of 28,156 sq. ft. of buildable floor area for the site; and

WHEREAS, the applicant states that under the new zoning, the site could provide only eight dwelling units in four detached two-family homes, as opposed to the 63 dwelling units permitted under R6 zoning; and

WHEREAS, the applicant further states that the foundations at the site have been poured for the R6 compliant building and they have no reasonable re-use under the R4A zoning development scenario, which would

effectively require four separate foundations; and

WHEREAS, the applicant represents that compliance with the R4A district parameters would also result in a loss of potential monthly rental income of approximately \$49,400 and a loss of potential annual rental income of approximately \$592,800 as compared to the prior R6 zoning; and

WHEREAS, the Board agrees that the serious reduction in FAR, the loss of 55 dwelling units, the reduction in rental income, and the need to redesign would result in a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, the Opposition contends that proposed project will have an adverse impact on the public health, safety and welfare, and cites to Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15 (2d Dept. 1976) for the proposition that the application should be denied on those grounds alone; and

WHEREAS, in response, the applicant states that the facts in Putnam are distinguishable from the case at hand, and argues that the proposed project will not adversely impact the public health, safety and welfare of the surrounding area; and

WHEREAS, the Board agrees with the applicant that the facts in Putnam are distinguishable from the subject case, and notes that the question before the court in Putnam was whether the property owner had been divested of its right to construct a development pursuant to the prior zoning based on events that occurred in the 15 years subsequent to the initial determination made, under separate litigation, that the property owner had a vested right to construct under the prior zoning; and

WHEREAS, in the context of divestment, the court in Putnam stated that there are three factors relevant to whether divestment has occurred: (1) abandonment, (2) recoupment, and (3) considerations of public safety, health and welfare; and

WHEREAS, the Board notes that, unlike Putnam, the subject case concerns an initial vesting determination, and therefore the criteria set forth in Putnam for determining whether divestment has occurred is not relevant to the instant application; and

WHEREAS, the Opposition argues that this application should be denied because the developer acted in bad faith in that it had knowledge of the impending zoning change and was trying to "beat the clock," and because the applicant did not timely respond to the Board's notice of comments upon remand of the case; and

WHEREAS, in response, the applicant states that the developer was not attempting to "beat the clock," and submitted an affidavit from the general contractor stating that he had no knowledge of City Planning or the Community Board's intention to rezone the area where the site is located when the permits for the retaining wall were obtained on May 24, 2004, and that he did not become aware of the pending zoning change until the third week of July, 2004, after full building plans had been pre-filed at DOB; and

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WHEREAS, as to the timeliness of its response to the Board's notice of comments, the applicant notes that one of the Board's comments was to resolve any outstanding zoning issues associated with the proposed plans with DOB, and that the delay in responding to the notice of comments was primarily due to the long review process at DOB; 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 Rezoning Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 200869024-01-FO, 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 16, 2011.

94-10-A

APPLICANT – Borah, Goldstein, Altschuler, Nahins & Goidel, P.C., for Twenty-Seven-Twenty Four Realty Corporation, owner.

SUBJECT – Application May 26, 2010 – Appeal challenging the Department of Buildings' determination that signs located on the north and south walls of the subject building are not a continuous legal nonconforming use. C2-2 Zoning district.

PREMISES AFFECTED – 27-24 21st Street, west side of 21st Street south of Astoria Boulevard, Block 539, Lot 35, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

THE RESOLUTION –

WHEREAS, this is an appeal of a final determination, issued by the Queens Borough Commissioner of the Department of Buildings (“DOB”) on February 14, 2011 (the “Final Determination”), brought by the property owner (the “Appellant”); and

WHEREAS, the Final Determination states, in pertinent part:

“Advertising sign, for which present application is filed for, is not permitted under the Zoning Resolution Section ZR 32-68;” and

WHEREAS, a public hearing was held on this appeal on May 17, 2011 after due notice by publication in *The City Record*, with a continued hearing on July 12, 2011, and then to decision on August 16, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the west side of 21st Street south of Astoria Boulevard within a C2-2 (R7X) zoning district; and

WHEREAS, the site is occupied by a five-story mixed-use commercial/residential building with four illuminated signs – two on its north wall and two on its south wall; and

WHEREAS, as of December 15, 1961, advertising signs were not permitted as of right within the subject zoning district; and

PROCEDURAL HISTORY

WHEREAS, the Appellant sought to replace an existing sign and to establish the legal status of the sign, so on May 21, 2009, the Appellant sought a reconsideration from DOB that the four signs be accepted as grandfathered signs per ZR § 52-83 (*Regulations Applying to Non-Conforming Signs, Non-Conforming Advertising Signs*); and

WHEREAS, at DOB's request, on October 7, 2009, the Appellant re-submitted the request on a Zoning Resolution Determination form (ZRD1), with additional supporting documents; and

WHEREAS, the Appellant's evidence included the following: (1) Department of Taxation photographs and block and lot photographs; (2) photographs from sometime between 1970 and 1990 of signs at the site; (3) leases from the 1970s with sign companies; (4) affidavits, which assert that the signs have existed for more than 60 years; and (5) correspondence, receipts, and other documents to support the assertion that the signs have been at the site since 1950; and

WHEREAS, on April 26, 2010, DOB issued a determination, which states, in pertinent part:

(1) Existing non-conforming advertising sign on the south wall existed prior to 12/15/1961 as shown on a tax photograph of a “Trommer's Beer” sign, dated 1939-1940; however, submitted evidence indicates time gaps from 1940 onward which demonstrate discontinuance of the use for a period of two years; therefore it cannot be restored to previous non-conforming use as per ZR 52-61.

(2) No evidence of legal use of advertising sign prior to 1961 was submitted for the north wall; and

WHEREAS, the Appellant subsequently filed an appeal of the Borough Commissioner's determination at the Board; and

WHEREAS, by letter dated August 19, 2010, DOB informed the Appellant that the April 26, 2010 reconsideration could not be appealed to the Board and that the Appellant must file an application with plans of the proposed work in order to obtain a Final Determination appealable to the Board; and

WHEREAS, accordingly, the Appellant filed application numbers 420322289, 420322298, 420322270, and 420322234 to legalize the four signs; and

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WHEREAS, DOB subsequently issued the Final Determination; and

RELEVANT ZONING RESOLUTION PROVISIONS

ZR § 12-10 (*Definitions*)

Non-conforming, or non-conformity

A "non-conforming" #use# is any lawful #use#, whether of a #building or other structure# or of a #zoning lot#, which does not conform to any one or more of the applicable #use# regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto. . . ; and

* * *

ZR § 32-68 (*Sign Regulations*)

Permitted Signs on Residential or Mixed Buildings
C1 C2 C3 C4 C5 C6

In the districts indicated, any #use# listed in Use Group 1 or 2 shall conform to the #sign# regulations for #Residence Districts# or #mixed buildings#, #residential sign# regulations shall apply to the #residential# portion.

Where non-#residential uses# are permitted to occupy two floors of the #building#, all #signs accessory# to non-#residential uses# located on the second floor shall be non-#illuminated signs#, and shall be located below the level of the finished floor of the third #story#; and

* * *

ZR § 52-11 (*Continuation of Non-Conforming Uses*)

General Provisions

A #non-conforming use# may be continued, except as otherwise provided in this Chapter; and

* * *

ZR § 52-61 (*Discontinuance*)

General Provisions

If, for a continuous period of two years, either the #nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing . . . ; and

THE APPLICABLE STANDARD FOR NON-CONFORMING USES

WHEREAS, DOB and the Appellant agree that the site is currently within a C2-2 (R7X) zoning district and that the existing advertising signs are not permitted as-of-right within the zoning district; and

WHEREAS, accordingly, in order to establish the affirmative defense that the non-conforming signs are permitted to remain, DOB asserts that the Appellant must meet the ZR criteria for a "non-conforming use" as defined at ZR § 12-10; and

WHEREAS, ZR § 12-10 defines "non-conforming" use as "any lawful use, whether of a building or other structure or of a tract of land, which does not conform to any one or more

of the applicable use regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto"; and

WHEREAS, additionally, DOB asserts that the Appellant must comply with ZR § 52-61 (*Discontinuance, General Provisions*) which states that: "[i]f, for a continuous period of two years, either the non-conforming use of land with minor improvements is discontinued, or the active operation of substantially all the non-conforming uses in any building or other structure is discontinued, such land . . . shall thereafter be used only for a conforming use"; and

WHEREAS, accordingly, DOB asserts that as per the ZR, the Appellant must establish that the use was established before it became unlawful, by zoning, on December 15, 1961 and it must have continued without any two-year period of discontinuance since then; and

WHEREAS, the Appellant asserts that because the signs existed prior to 1961, the continuity standard set forth at ZR § 52-61, which was enacted on December 15, 1961, is not applicable and that (1) a statute is to be applied prospectively, not retroactively and (2) a requirement to apply the continuity requirement at ZR § 52-61 is inconsistent with DOB's and the court's position in Yung Brothers v. LiMandri, 26 Misc.3d 1203(A) (Sup. N.Y. 2009); and

WHEREAS, in the alternate, as discussed below, the Appellant asserts that it meets the continuity requirement; and

WHEREAS, the Appellant states that ZR §§ 12-10 and 52-11 protect the continued use of the signs as "[i]t is the law of this State that nonconforming uses or structures, in existence when a zoning ordinance is enacted, are, as a general rule, constitutionally protected and will be permitted to continue, notwithstanding the contrary provisions of the [zoning] ordinance." Costa v. Callahan, 41 A.D.3d 1111, 1113, (3rd Dept 2007), citing Matter of Rudolf Steiner Fellowship v. De Luccia, 90 N.Y.2d 453, 463 (1997); and

WHEREAS, the Appellant asserts that a statute is to be applied prospectively and not retrospectively unless provided for otherwise, citing to Town of Islip v. Caviglia, 73 N.Y.2d 544 (1989) and thus the continuity requirement set forth at ZR § 52-61 is not applicable to a use established prior to the December 15, 1961 adoption of the ZR; and

WHEREAS, the Board does not find the cited principle in Costa to be at odds with ZR § 52-11 which states that a non-conforming use may be continued *except as otherwise provided* in Article V, Chapter 2 of the ZR because the ZR is clear that non-conforming uses may continue notwithstanding contrary zoning provisions with the condition that they are not discontinued for periods of two years or longer; and

WHEREAS, the Board notes that the ZR § 12-10 definition of non-conforming use and ZR § 52-61 contemplate prospective enforcement in that uses that were rendered non-conforming on December 15, 1961 (like the subject signs) have been able to remain so long as they were (1) lawful on December 15, 1961 (ZR § 12-10) and (2) have remained in continuous use (ZR § 52-61); and

WHEREAS, the Board notes that the adoption of the 1961 ZR did not prohibit the continuance of non-conforming uses, but rather newly non-conforming uses may exist in

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derogation of the ZR, but only if the continuance requirement is satisfied; and

WHEREAS, the Appellant asserts that DOB has been inconsistent with its own position and the court's in Yung Brothers, which states that "the pre-existing use within the context of zoning is to be evaluated solely on whether the use offends the regulations which were in effect at the time of the use"; and

WHEREAS, the Board finds that the Appellant's reliance on the decision in Yung Brothers is misplaced as the court did not make an ultimate finding on the matter or the relevant law; rather, as the court was faced with a motion for a Preliminary Injunction, it merely considered whether the Appellant's arguments had a likelihood of success on the merits; the court ordered the Appellant to effectuate a transfer of the matter to the Appellate Division for a review of the merits of the case, which has not yet been effectuated and thus, there has been no resolution of the matter; and

WHEREAS, the Board has reviewed the submissions in Yung Brothers and has found that DOB maintains its position that a non-conforming use can be lost if it discontinues and that the burden is on the party claiming non-conforming use status to establish such; and

WHEREAS, as to the applicability of statutes adopted after a use has been established, the Board states that per the Court of Appeals, municipalities may adopt laws regarding previously existing non-conforming uses. 550 Halstead Corp. v. Zoning Bd. of Appeals, 1 N.Y.3d 561, 562 (2003); Matter of Toys "R" Us v Silva, 89 N.Y.2d 411, 417, (1996); and

WHEREAS, specifically, the Board notes that the Court of Appeals has held that, "[b]ecause nonconforming uses are viewed as detrimental to zoning schemes, public policy favors their reasonable restriction and eventual elimination[.]" and "municipalities may adopt measures regulating nonconforming uses and may, in a reasonable fashion, eliminate them." 550 Halstead Corp., 1 N.Y.3d at 562; and

WHEREAS, moreover, the Board notes that numerous New York State courts, including the Court of Appeals, have found that a defense of prior non-conforming use is an affirmative one that the property owner bears the burden of proving. See Town of Ithaca v. Hull, 174 A.D.2d 911 (3d Dep't 1991); Syracuse Aggregate Corp. v. Weise, 51 N.Y.2d 278, 284-5 (1980) citing 8A Eugene McQuillin, Municipal Corporations § 25.180 (3d ed. 1994); Quade v. Zoning Bd. of Appeals, 248 A.D.2d 386 (2d Dep't 1998); Mohan v. Zoning Bd. of Appeals, 1 A.D.3d 364 (2d Dep't 2003); and

WHEREAS, further, the Board notes that in Off Shore Restaurant Corp. v. Linden (30 N.Y.2d 160, 331 N.Y.S.2d 397 (1972)), the Court stated, "the courts do not hesitate to give effect to restrictions on non-conforming uses . . . It is because these restrictions flow from a strong policy favoring the eventual elimination of nonconforming uses" 30 N.Y.2d at 164; and

WHEREAS, the Board agrees with the Appellant that the ZR expressly permits the continuation of non-conforming uses

under certain conditions and does not find that the requirement to establish the commencement of the use prior to the adoption of the 1961 ZR or the continuation of the use from 1961 to the present to be in conflict with the property owner's rights or the intent of the ZR or relevant case law; and

WHEREAS, lastly, the Board notes that ZR § 52-61 is not contrary to ZR §52-11, which states that "a nonconforming use may be continued, except as otherwise provided in [Chapter 2]" because the Board notes that nonconforming uses are protected by ZR Article V, but, as anticipated at ZR § 52-11, there are limiting conditions; and

WHEREAS, as to the appropriate standard, the Board concludes that DOB is correct in applying ZR § 52-61's continuity requirement to the subject signs; and

WHEREAS, thus, the Board notes that the standard to apply to the subject signs is (1) the signs existed lawfully as of December 15, 1961, and (2) that the use did not change or cease for a two-year period since then. See ZR §§ 12-10, 52-61. See also Toys "R" Us, 89 N.Y.2d 411; and THE APPELLANT'S EVIDENCE OF CONTINUOUS USE

WHEREAS, since the Board has determined that the continuity requirement of ZR § 52-61 does apply, the Appellant asserts, in the alternate, that DOB erred in denying its request to recognize the signs as legal non-conforming signs because all four signs have been (1) lawfully established and (2) continuously in existence since at least 1939; and

WHEREAS, in support of its assertion that the signs were lawfully established prior to December 15, 1961 and have been in continuous use to the present, the Appellant has submitted the following evidence and analysis; and

- South Wall

WHEREAS, the Appellant submitted the following evidence to establish a non-conforming use prior to December 15, 1961: a photograph of a Trommer's Beer sign it estimates to be dated from between 1939 and 1940, which DOB acknowledges as being from that period; and

WHEREAS, the Appellant submitted photographs and leases as primary evidence to establish continuity of use since December 15, 1961; and

WHEREAS, for the south wall, the Appellant submitted the following three photographs: (1) a 2006 photograph of a faded Midas Muffler sign, which the Appellant estimates was installed and existed sometime between the 1960s and 1970s; (2) a photograph of a Marlboro Lights sign, which the Appellant estimates to be dated sometime between 1985 and 1998; and (3) a photograph of National Bible and Unlimit'D signs, which the Appellant represents is dated 2009; and

WHEREAS, the Appellant asserts that a small corner of a sign above the faded Midas Muffler sign in the 2006 photograph depicts a sign that is different than the Marlboro Lights sign, but it is indecipherable; and

WHEREAS, the Appellant also submitted copies of leases from 1971, 1978, 1990, 1994, and 1999 for the south wall; and

- North Wall

WHEREAS, the Appellant submitted the following evidence to establish a non-conforming use prior to December 15, 1961: a photograph of a Chas H. Fletcher Castoria sign,

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which the Queens Historical Society has certified dates from prior to 1938; and

WHEREAS, DOB initially determined that there was not evidence to establish the lawfulness or establishment of the north wall sign, but during the hearing process, the Appellant discovered the Fletcher photograph and DOB now accepts the signs on the north and south walls as being lawfully established prior to December 15, 1961; and

WHEREAS, for the north wall, the Appellant submitted the following four photographs: (1) a photograph of Newport Cigarettes and Miller Time signs, which the Appellant estimates dates from sometime between 1972 and the 1980s; (2) a photograph of two indecipherable signs, which was taken by the New York City Department of Taxation in 1984, which the Appellant asserts look different than the Newport and Miller Time signs; (3) a Marlboro sign, which the Appellant estimates dates from sometime between 1985 and 1998; and (4) a photograph of Bank of America and ESPN signs, which the Appellant represents is dated 2009; and

WHEREAS, the Appellant submitted copies of companion leases to the south wall signs' leases; and

WHEREAS, to fill in gaps from 1942 to the present for both walls, the Appellant submitted affidavits and testimony from several people familiar with the site; the affidavits are from (1) a resident of the building which states that she has resided at the site since her birth in 1942 and she has seen signs at the site from 1950 to the present; (2) the owners of Fender Menders, an auto body repair shop at 27-16 21st Street adjacent to the north wall and involved with the repair business since 1951 and also owners of 27-28 21st Street, adjacent to the south wall who attest that there were billboards on both walls from 1951 through the present, and state that they have received compensation for allowing billboard companies access to the roof of his business to perform maintenance and/or repairs to the billboards; and (3) the current owner of the subject building who purchased it in 1993 and states that the billboards date back to at least 1960 since he saw leases demonstrating such in the office of the current lessee, but is unable to obtain those prior leases and/or photographs; and

DOB'S ARGUMENTS

- The ZR requires lawful establishment and existence prior to the 1961 zoning change and continuity

WHEREAS, DOB follows the definition of non-conforming to include the requirement that the use was lawful at its commencement and that uses which were not established lawfully are not *non-conforming* uses per the ZR; and

WHEREAS, as noted, DOB has accepted that the north and south wall signs appear to have been installed lawfully sometime prior to 1940, but there was insufficient proof that the signs were entitled to protection as non-conforming uses because continuous use had not been established; and

WHEREAS, DOB notes that it generally requires evidence that the sign was lawfully established and in existence on December 15, 1961, rather than 20 years before, in order to be established as non-conforming but since the Borough Commissioner accepted the Trommer's Beer photograph to the Appellant's benefit as lawful establishment and lawful

existence on December 15, 1961, DOB made the same determination for the Chas H. Fletcher Castoria sign on the north wall; and

WHEREAS, DOB accepts that the signs were lawful when established because they were established pursuant to the 1938 Building Code, which did not require permits for the signs reflected in the photographs; and

WHEREAS, DOB cites to ZR § 52-61 for the requirement that "[i]f for a continuous period of two years . . . the active operation of substantially all the non-conforming uses in any building or other structure is discontinued such land or building or other structure shall thereafter be used only for a conforming use" and to ZR § 52-81, which provides "[a] non-conforming sign shall be subject to all the provisions of [Article V] relating to non-conforming uses . . ."; and

WHEREAS, DOB cites to ZR § 51-00 (*Statement of Legislative Intent, Purpose of Regulations Governing Non-Conforming Uses and Non-Complying Buildings*) for the principle that non-conforming uses are disfavored under the ZR and public policy demands strict control and the ultimate elimination of such uses; and

WHEREAS, in furtherance of this principle, DOB requires that a party seeking non-conforming use protection (1) prove that a use was lawfully established and (2) provide sufficient evidence to support that such use was not discontinued for two or more years since becoming non-conforming; and

WHEREAS, DOB asserts that the Appellant is incorrect in statements about whether the text of ZR § 52-61, which sets forth the continuous use standard, may appropriately be applied to a use that was established prior to 1961; and

WHEREAS, specifically, DOB states that the prohibition on a two-year discontinuance is applicable since the signs became non-conforming on December 15, 1961; and

- The evidence of continuity fails to satisfy the standard set forth at DOB Technical Policy and Procedure Notice 14/1988

WHEREAS, DOB asserts that the signs became non-conforming on December 15, 1961 and thus have been subject to the continuity requirement established by ZR Article V since that date; and

WHEREAS, DOB issued TPPN 14/1988 to establish guidelines for DOB's review of whether a non-conforming use has been continuous; the TPPN includes the following types of evidence, which have been accepted by the Borough Commissioner: (1) Item (a): City agency records; (2) Item (b): records, bills, documentation from public utilities; (3) Item (c): other documentation of occupancy including ads and invoices; and (4) Item (d): affidavits; and

WHEREAS, DOB notes that the Appellant has not provided any relevant records from any city agency (Item (a) evidence), including permits from DOB; DOB notes that the only DOB record was evidence that sign applications were filed and disapproved in 1996 to "install wall sign"; DOB questions whether the noted permit application and denial in fact suggest that a new sign was to be installed since changing copy may not have required a permit and the applications were not filed to legalize existing signs; and

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WHEREAS, DOB notes that no public utility bills or records (Item (b) evidence) were submitted even though the signs are illuminated and would have had associated electric bills; and

WHEREAS, as to the photographs, DOB accepts the following from the following dates: (south wall) (1) 1930s (Trommer's Beer and Chas. H. Fletcher), (2) the late 1980s or early 1990s (red and yellow Marlboro Lights and Fender Menders), and (3) 2009 (National Bible and Unlimit'D Boost Mobile); and

WHEREAS, DOB notes that there are no photos from the 1940s, 1950s, 1960s or 1970s, and only four photographs total from the 1980s, 1990s, and 2000s; and

WHEREAS, DOB notes that the absence of photographs is not covered by the other Item (c) evidence which includes leases covering 1971-1977 and 1990-2015, which creates an inference that the signs were discontinued sometime after 1940, not resumed until 1971, and possibly abandoned for more than two years from the 1970s to the present; and

WHEREAS, as to the north wall, DOB states that there is no evidence that the sign existed between 1961 and 1971 as there are not any photographs, utility bills or city records of any kind from that time period; and

WHEREAS, DOB notes that the Miller Time, Newport, and Fender Menders photographs demonstrate that, at most, there were signs on the north wall for an indeterminate period of time in the 1970s and 1980s; the only photograph from the 1990s (or possibly 1980s, according to the Appellant) is the one depicting a Marlboro sign and no photographs are submitted for any years thereafter until the 2009 ESPN and Bank of America signs; and

WHEREAS, DOB notes that there are no utility bills or city records of any kind for the 1980s, 1990s, and 2000s other than a disapproved DOB sign permit application; and

WHEREAS, as to leases, DOB states that they are given limited weight since they may at most reflect a right to occupy a space, but do not reflect actual occupancy; and

WHEREAS, DOB has determined that there are significant gaps in the evidence for the north wall, particularly from 1961 to 1971 and, thus, DOB's position is that the north wall signs were discontinued and cannot be resumed; similarly, the lack of evidence for the period of 1961 to 1971 for the south wall prohibits a finding of continuous use there; and

WHEREAS, as to affidavits (Item (d) evidence), DOB notes that (1) one is from an owner who purchased the building in 1993 and is of limited evidentiary value because it is self-serving and does not address in any reliable way the issue of continuity prior to 1993, (2) one is from a woman who claims to have resided at the site since 1942 and does not provide details and which may be biased given a potential disincentive to provide information that would harm the building's owner, and (3) two affidavits from principals in Fender Menders, an auto body shop adjacent to the site, which DOB finds may be biased given that they have been compensated for allowing billboard companies access to their roof; and

WHEREAS, DOB states that it does not rely on potentially biased sworn statements in lieu of objectively verifiable evidence in instances where there is not sufficient

evidence or a satisfactory explanation of the lack of evidence as required by the TPPN; and

WHEREAS, DOB states that the prior building owners were charged with the knowledge of ZR § 52-61 and the current owner should have performed due diligence to determine whether sufficient evidence existed to demonstrate that the signs were compliant with ZR § 52-61; and

WHEREAS, DOB also cites to the Board's decision in a non-conforming use case at BSA Cal. No. 1-10-A (527 East 86th Street, Brooklyn) in which the Board affirmed DOB's decision that the property owner failed to submit "substantial evidence" of the use and considered (1) the quality and quantity of the evidence, (2) the specificity of the testimony, and (3) whether there was any evidence to support the testimony; and

WHEREAS, DOB has determined that the evidence is insufficient as it is lacking in quantity and quality and fails to provide specificity regarding a continuous timeline and notes that, in sum, the Appellant provides three or four photographs and several lease agreements to prove more than 50 years of continuous use; and

WHEREAS, DOB states that it examines evidence submitted to prove the existence and continuity of non-conforming signs in accordance with the TPPN, which provides a list of the kinds of proof that are commonly submitted and that forms of evidence not described in the TPPN are accepted and are given due consideration and weight depending on the nature of the evidence; and

WHEREAS, for example, DOB states that a sign permit is given substantial weight and where no permit exists, the burden lies with the owner to provide evidence that demonstrates (1) lawful establishment, (2) lawfulness when the ZR made the use non-conforming, and (3) no discontinuance for a period of two or more years; and

WHEREAS, as to the weight of evidence, DOB states that it considers government records, recorded documents, utility bills, and photographs as high-value evidence and if, for example, two photographs taken more than two years apart reflected the same sign, DOB would conclude that the sign existed for the entire period; and

WHEREAS, DOB considers uncorroborated testimonial evidence that a sign existed as insufficient since testimony may be tainted by memory lapses, bias, and misperception; similarly, leases and other contracts that are not corroborated by independently verifiable evidence may not be sufficient because they may not be reliable and they do not demonstrate the actual existence of a sign; and

WHEREAS, DOB states that items of evidence are examined for their individual and collective probative value; and

APPELLANT'S RESPONSE TO THE TPPN CRITERIA

WHEREAS, the Appellant asserts that the TPPN is not an applicable guideline for advertising signs; and

WHEREAS, specifically, the Appellant asserts that Items (a), (b), and (c) do not describe evidence that is relevant to signs; and

WHEREAS, however, the Appellant asserts that if the Board finds that the TPPN is applicable to the signs, it should

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find that the Appellant has satisfied the burden; and

WHEREAS, specifically, the Appellant asserts that there are not any City records except evidence that the tenant-affiant has lived in the building since 1942 and the records showing ownership of the adjacent properties for Item (a); and

WHEREAS, as to Item (b), the Appellant asserts that there are not any utility bills since ConEd does not maintain records prior to 2005; the Appellant asserts that ConEd's confirmation that records are not kept for longer than six years explains the inability to provide information that is required to allow for the introduction of affidavits under Item (d); and

WHEREAS, as to Item (c), the Appellant asserts that it has provided leases, proof of payment, and photographs to establish continuous use; and

WHEREAS, as to Item (d), the Appellant asserts that DOB must accept affidavits since it has an explanation for not having evidence in the other categories; and

CONCLUSION

WHEREAS, the Board supports DOB's determination that the Appellant has not met the burden of establishing that the signs have been in continuous use, without any two-year interruption since 1961; and

WHEREAS, the Board finds the Appellant's evidence to be insufficient primarily because (1) the ranges of dates of photographs proffered through outside information, do not establish an actual date and no gap can be covered by the same sign as in DOB's example of two photographs of the same sign over a span of time, which can lead to the conclusion that the sign existed during that span; (2) the leases do not establish the actual use of the sign; (3) the affidavits do not provide substantial enough detail to be relied upon; and (4) DOB appropriately applies the TPPN in the absence of a guideline designed specifically for signs; and

WHEREAS, as to the gaps in time, the Board states that it cannot ignore the gaps of time not covered by evidence, including 1961 to 1971 and the 1980s; and

WHEREAS, the Board notes that the Appellant provided a total of three decipherable photographs for each wall, which span the 50-year period of 1961 to the present; that is less than one photograph per decade; and

WHEREAS, the Board agrees with DOB that there are significant gaps in the evidence and cannot accept a single photograph with a range of dates amounting to ten years or more as establishing that the use has been continuous for that period; and

WHEREAS, the Board cannot accept the owner's statements that he has seen additional evidence of the signs' history, which he is unable to provide into the record; and

WHEREAS, in the absence of any other records issued by independent sources such as the City or utility companies that establish actual use, the Board is not persuaded by the Appellant's arguments to give significant weight to the leases; the Board notes that currently there are not any signs on the walls, but there are leases for the period of 2009 to 2015 in effect; this supports the assertion that there is a distinction between someone having the right to occupy the space with the sign, but not exercising the right, which may have been even more likely during periods when the sign rental was only \$125

per year and the loss to owner or lessee would not have been significant if a sign were not installed; and

WHEREAS, however, even if the Board were to accept the leases, it notes that there is neither a lease nor a dated photograph for either wall in the period of 1961 to 1971 and 1982 to 1990; and

WHEREAS, as to the affidavits, although the Board did not find any reason to discredit the testimony, the Board notes that the testimony failed to establish a timeline of continuous use from prior to December 15, 1961 and lacked specificity; and

WHEREAS, as to the TPPN, the Board agrees that it is a reasonable exercise of DOB's authority to establish guidelines and that DOB it is appropriate for DOB to refer to those guidelines in a sign case; and

WHEREAS, the Board has considered the criteria for establishing substantial evidence including (1) the quality and quantity of the evidence, (2) the specificity of the testimony, and (3) whether there is any evidence to support the testimony; and

WHEREAS, the Board finds that the quality of the evidence is insufficient to establish the required criteria because it lacks critical specificity regarding a continuous timeline; and

WHEREAS, as to the lawful establishment, the Board finds that the standard is even stricter than what is set forth at DOB's reconsideration and that the Appellant should have not only established that the signs were lawful prior to 1961, but that the use existed lawfully on December 15, 1961, which the Appellant has not done; and

WHEREAS, the Board finds that DOB's acceptance of the 1930s evidence for all signs as acceptance of a lawful use on December 15, 1961 works in the Appellant's favor as it is more permissive than the requirement described at ZR § 12-10; and

WHEREAS, the Appellant makes supplemental arguments that DOB has not been responsive to its and the Board's requests and therefore concedes to certain points not rebutted and that the Appellant has been prejudiced by the submission schedule; and

WHEREAS, the Board does not agree that DOB concedes to any points that it does not rebut and notes that the Board closes the hearing when it is satisfied that all necessary information has been introduced into the record; and

WHEREAS, the Board notes that it sets the schedule for submissions and allowed the Appellant the final submission, so the Appellant has not been prejudiced by a change in the submission schedule prior to the final hearing; and

WHEREAS, in sum, the Board concludes as follows: the Appellant has not established that the signs have been in continuous use since December 15, 1961 thus, the signs do not meet the criteria required for continuing such use within the subject zoning district and must cease; and

Therefore it is Resolved that this appeal, which challenges a Final Determination issued on February 14, 2011 is denied.

Adopted by the Board of Standards and Appeals, August 16, 2011.

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137-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Richard & Jane O'Brien, lessees.

SUBJECT – Application August 3, 2010 – Reconstruction and enlargement of an existing single-family home not fronting on a mapped street, contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 103 Beach 217th Street, 40' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated July 27, 2010, acting on Department of Buildings Application No. 420140519, 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 Art. 3, Sect. 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 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; and

WHEREAS, this is an application to permit the proposed construction of a detached single-family home not fronting on a legally mapped street, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a companion application appealing the Fire Department’s denial of a variance and requesting a waiver of the sprinkler requirement of Fire Code (“FC”) § 503.8.2, filed under BSA Cal. No. 62-11-A (the “Companion Appeal”), was heard concurrently and decided on the same date; and

WHEREAS, a separate application to permit the construction of a proposed home at 115 Beach 216th Street not fronting on a legally mapped street pursuant to GCL § 36, filed under BSA Cal. No. 185-10-A (and with a companion application appealing the Fire Department’s denial of an identical variance requesting a waiver of the sprinkler requirement of FC § 503.8.2, filed under BSA Cal. No. 63-11-A), was also heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on March 29, 2011, after due notice by publication in the *City Record*, with a continued hearing June 21, 2011, and

then to decision on August 16, 2011; and

WHEREAS, as discussed in the Companion Appeal, the Fire Department, by letters dated December 20, 2010 and April 18, 2011, has determined that the subject street does not provide the minimum width of 38’-0” as set forth in FC § 503.8.2, and therefore a sprinkler system is required to be installed throughout the proposed home; and

WHEREAS, as further discussed in the Board’s decision denying the Companion Appeal, the Board agrees with the Fire Department that the applicant did not provide compelling evidence in support of a waiver of FC § 503.8.2, and therefore a sprinkler system must be installed in the proposed home; and

WHEREAS, however, the Board finds that the subject application pursuant to GCL § 36 is merited, provided that a sprinkler system is provided throughout the subject home in accordance with the Companion Appeal; and

WHEREAS, accordingly, the Board has determined 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 July 27, 2010, acting on Department of Buildings Application No. 420140519 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 5, 2010 – 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 the entire building shall be fully sprinklered in conformance with the sprinkler provisions of Local Law 10 of 1999 and Reference Standard 17-2B of the Building Code;

THAT no building permits shall be issued for plans that do not reflect the sprinklering of the entire building;

THAT no certificate of occupancy shall be issued until the entire building is fully sprinklered;

THAT 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 review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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 16, 2011.

185-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Incorporated, owner; Raymond & Regina Walsh, lessees.

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SUBJECT – Application September 24, 2010 – Reconstruction and enlargement of an existing single-family home not fronting on a mapped street, contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 115 Beach 216th Street, east side Beach 216th south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated September 13, 2010, acting on Department of Buildings Application No. 420192375, 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 Art. 3, Sect. 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 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; and

WHEREAS, this is an application to permit the proposed construction of a detached single-family home not fronting on a legally mapped street, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a companion application appealing the Fire Department’s denial of a variance and requesting a waiver of the sprinkler requirement of Fire Code (“FC”) § 503.8.2, filed under BSA Cal. No. 63-11-A (the “Companion Appeal”), was heard concurrently and decided on the same date; and

WHEREAS, a separate application to permit the construction of a proposed home at 103 Beach 217th Street not fronting on a legally mapped street pursuant to GCL § 36, filed under BSA Cal. No. 137-10-A (and with a companion application appealing the Fire Department’s denial of an identical variance requesting a waiver of the sprinkler requirement of FC § 503.8.2, filed under BSA Cal. No. 62-11-A), was also heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on March 29, 2011, after due notice by publication in the *City Record*, with continued a hearing on June 21, 2011, and then to decision on August 16, 2011; and

WHEREAS, as discussed in the Companion Appeal, the Fire Department, by letters dated December 20, 2010 and April 18, 2011, has determined that the subject street does not provide the minimum width of 38’-0” as set forth in FC §

503.8.2, and therefore a sprinkler system is required to be installed throughout the proposed home; and

WHEREAS, as further discussed in the Board’s decision denying the Companion Appeal, the Board agrees with the Fire Department that the applicant did not provide compelling evidence in support of a waiver of FC § 503.8.2, and therefore a sprinkler system must be installed in the proposed home; and

WHEREAS, however, the Board finds that the subject application pursuant to GCL § 36 is merited, provided that a sprinkler system is provided throughout the subject home in accordance with the Companion Appeal; and

WHEREAS, accordingly, the Board has determined 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 13, 2010, acting on Department of Buildings Application No. 420192375 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 24, 2010 – 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 the entire building shall be fully sprinklered in conformance with the sprinkler provisions of Local Law 10 of 1999 and Reference Standard 17-2B of the Building Code;

THAT no building permits shall be issued for plans that do not reflect the sprinklering of the entire building;

THAT no certificate of occupancy shall be issued until the entire building is fully sprinklered;

THAT 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 review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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 16, 2011.

229-10-BZY

APPLICANT – Akerman Senterfitt, for 163 Orchard Street, LLC, owner.

SUBJECT – Application December 17, 2010 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior C6-1 zoning district. C4-4A zoning district.

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PREMISES AFFECTED – 163 Orchard Street, Orchard and Houston Streets, between Sytanton and Rivington Street, Block 416, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

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 minor development currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on April 12, 2011, after due notice by publication in *The City Record*, with continued hearings on June 21, 2011 and July 19, 2011, and then to decision on August 16, 2011; and

WHEREAS, the site was inspected by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, a representative of the East Village Community Coalition provided oral and written testimony in opposition to this application (the “Opposition”), citing concerns that the foundation was not completed as of the date the subject site was rezoned; and

WHEREAS, the subject site is a through-block site with frontages on Orchard Street and Allen Street, between Stanton Street and Rivington Street; and

WHEREAS, the site has a width of 26’-6” and a depth of 87’-6”, and a total lot area of approximately 2,319 sq. ft.; and

WHEREAS, the site is proposed to be developed with an 11-story transient hotel (Use Group 5) building (the “Building”); and

WHEREAS, the Building is proposed to have a total floor area of approximately 13,911 sq. ft. (5.99 FAR), a street wall height of 22’-0”, and a building height of 132’-0”; and

WHEREAS, the site was formerly located within a C6-1 zoning district; and

WHEREAS, on July 8, 2008, New Building Permit No. 104762570-01-NB (the “Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the Building, and work commenced on July 28, 2008; and

WHEREAS, on November 19, 2008 (hereinafter, the “Enactment Date”), the City Council voted to enact the East Village/Lower East Side Rezoning, which changed the zoning district to C4-4A; and

WHEREAS, the applicant represents that the Building complies with the former C6-1 zoning district parameters; specifically, the proposed 5.99 FAR, street wall height of 22’-0” and building height of 132’-0” were permitted; and

WHEREAS, however, because the site is now within a C4-4A zoning district, the Building would not comply with the

maximum FAR of 4.0, the minimum street wall height of 40’-0”, or the maximum total building height of 80’-0”; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the development, completed excavation of the property but had not completed the foundations for the property;

WHEREAS, on April 21, 2009 the Board granted a renewal of all permits necessary to complete construction under BSA Cal. No. 307-08-BZY, pursuant to ZR § 11-331, and

WHEREAS, as to the Opposition’s concerns that the foundation for the Building was not completed as of the Enactment Date, the Board notes that its grant pursuant to ZR § 11-331 gave the applicant a six-month extension of time to complete construction of the foundation; and

WHEREAS, the foundation was completed within six months and construction has continued since; and

WHEREAS, pursuant to ZR § 11-331, however, subsequent to the rezoning of a property, only two years are allowed for completion of construction and to obtain a certificate 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 a single building which is non-complying under an amendment to the ZR, 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, 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

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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.";

WHEREAS, the Board finds that, as discussed in the initial vesting determination under BSA Cal. No. 307-08-BZY, the Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date and were timely renewed until the expiration of the original two-year term for construction; 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, the Board further notes that any work performed after the two-year time limit to complete construction and obtain a certificate of occupancy cannot be considered for vesting purposes; accordingly, only the work performed as of November 19, 2010 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the permits, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes 100 percent of the foundation; and

WHEREAS, in support of this statement, the applicant has submitted the following: construction contracts, invoices, copies of cancelled checks, and construction tables; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the applicant represents that the total expenditure paid for the development is \$816,000; and

WHEREAS, as noted above, the applicant has submitted construction contracts, invoices and copies of cancelled checks evidencing payments made by the applicant; 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 initial 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 two-year extension of time to complete construction, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew New Building Permit No. 104762570-01-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 development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on August 16, 2013.

Adopted by the Board of Standards and Appeals, August 16, 2011.

62-11-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Richard & Jane O’Brien, lessees.
SUBJECT – Application May 10, 2011 – Appeal challenging the Fire Department’s determination that a sprinkler system be provided, per Fire Code section 503.8.2.

R4 zoning district.
PREMISES AFFECTED – 103 Beach 217th Street, east side of Beach 217th Street, 40’ south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.
For Opposition: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

THE RESOLUTION –

WHEREAS, this appeal arises in response to a final determination from the Chief of Operations, dated December 20, 2010 (and re-affirmed by letter dated April 18, 2011) (the “Final Determination”), issued in response to a variance application before the Fire Department, seeking to modify the sprinkler requirement of Fire Code (FC) § 503.8.2; and

WHEREAS, the Final Determination reads in pertinent part:

FC 503.8.2 requires that buildings on a public street with an unobstructed width of [less than] 38 feet be protected throughout by a sprinkler system...

In the absence of any showing of impracticability, and given that the public streets serving the

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proposed development are far narrower than the 38' required by the Fire Code, the Fire Department has determined that there is no grounds for granting a modification (variance) of the sprinklering requirement of FC 503.8.2, and has denied an application for a modification; and

WHEREAS, this appeal seeks to reverse a Fire Department determination denying a request for a variance of the sprinkler requirement of FC § 503.8.2 for the construction of a single-family home on a street with a width of less than 38'-0"; and

WHEREAS, a companion application to permit the construction of the proposed home not fronting on a legally mapped street pursuant to General City Law ("GCL") § 36, filed under BSA Cal. No. 137-10-A, was heard concurrently and decided on the same date; and

WHEREAS, a separate appeal challenging the Fire Department's denial of an identical variance at 115 Beach 216th Street, filed under BSA Cal. No. 63-11-A (and with a companion application for a waiver of GCL § 36, filed under BSA Cal. No. 185-10-A), was also heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this appeal on June 21, 2011, after due notice by publication in *The City Record*, and then to decision on August 16, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, the Fire Department provided testimony in opposition to the application; and

WHEREAS, the subject site is located on the east side of Beach 217th Street, 40 feet south of Breezy Point Boulevard, within an R4 zoning district; and

WHEREAS, the appellant proposes to construct a non-sprinklered two-story single-family home on the site; and

WHEREAS, Beach 217th Street has an asphalt roadbed with sand areas that border each side of the asphalt portion of the street and sidewalks that border the sand areas; and

WHEREAS, the appellant submitted a survey reflecting that the asphalt portion of Beach 217th Street has a width of approximately 31'-2" ¹, and the curb-to-curb width of the street is approximately 37'-11" (inclusive of the sand areas which have an approximate width of 2'-9" along the west side and 4'-0" along the east side); and

WHEREAS, prior to filing the subject appeal, the appellant submitted a variance application to the Fire Department requesting a waiver of FC § 503.8.2, which requires that "[e]xcept as otherwise approved, buildings on public streets that have an unobstructed width of less than 38 feet (11 582 mm) shall be protected throughout by a sprinkler system;" and

WHEREAS, subsequently, the Fire Department issued the Final Determination denying the appellant's variance application; and

WHEREAS, the appellant requests that the Board grant the subject appeal and waive the sprinkler requirement of FC § 503.8.2 based on the following: (1) the difference between the width of the subject street and the minimum width required under FC § 503.8.2 is de minimis; (2) the expense associated with installing a sprinkler system in the proposed home is a financial hardship which constitutes a practical difficulty in complying with FC § 503.8.2; (3) the Fire Department has granted similar variances in the past; (4) there are alternative fire safety measures in place at the site which render strict compliance with FC § 503.8.2 unnecessary; and (5) FC § 503.2.1.2 permits fire apparatus access roads with a minimum width of only 30'-0"; and

WHEREAS, the Fire Department has the following primary arguments in response: (1) the subject street has an unobstructed width of only 30'-0"; (2) the unpaved sand areas on either side of the street cannot be utilized for fire apparatus access because they are not an approved surface; (3) even if the unpaved sand areas could be utilized for fire apparatus access, the width of the subject street would still be substandard at approximately 37'-11", rather than the minimum required width of 38'-0" pursuant to FC § 503.8.2; and (4) the installation of sprinklers is not an unduly burdensome expenditure; and

WHEREAS, as to the width of the street, the appellant argues that the sand areas that run along both sides of the 31'-2" wide asphalt roadway are capable of withstanding the load imposed by the Fire Department fire apparatus and therefore should be included in measuring the width of the subject street; and

WHEREAS, accordingly, the appellant contends that the width of the subject street should be considered approximately 37'-11" rather than 31'-2" because of the additional 6'-9" of width provided by the sand areas; and

WHEREAS, the appellant further contends that, including the sand areas, the difference between the width of the subject street of 37'-11" and the minimum required width of 38'-0" is de minimis, and therefore a waiver of FC § 503.8.2 is justified; and

WHEREAS, the Fire Department argues that the sand areas cannot be included in calculating the width of the subject street because they are not capable of supporting the weight of fire apparatus and they are not an approved driving surface under FC § 503.1.1; and

WHEREAS, at hearing, the Board requested that the appellant provide a report from an engineer in support of its claims regarding the ability of the sand areas to support the fire apparatus; and

WHEREAS, in response, the appellant submitted a letter from an engineer stating that, based on a visual inspection, the soil located within the sand area is dense sand having a load capacity of six tons, and therefore is capable of withstanding the load imposed by the Fire Department fire apparatus; and

WHEREAS, the Fire Department states that the evidence submitted by the appellant applies to soils related to foundation

¹ The survey submitted by the appellant indicates that the asphalt portion of the street has a width of 31'-2", while the Fire Department states that it measured the width of the asphalt portion of the street at 30'-0". The Board notes that this discrepancy has no effect on the outcome of the subject appeal.

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systems and is not relevant to road surface materials exposed to the elements and the mechanical effects of vehicles and equipment; therefore the engineer's letter is not sufficient to establish that the sand areas are capable of supporting the weight of its fire apparatus; and

WHEREAS, the Fire Department further states that, pursuant to FC § 503.1.1 the subject street must have a surface composed of asphalt, concrete or other approved driving surface installed in accordance with the standards of the New York City Department of Transportation ("DOT"); and

WHEREAS, the Fire Department submitted DOT's 2009 Street Design Manual as evidence that the subject sand areas are not an approved driving surface; and

WHEREAS, accordingly, the Fire Department states that the sand areas cannot be included in measuring the unobstructed width of the street; therefore, the subject street has an approximate width of only 30'-0", which is far narrower than the minimum required width of 38'-0"; and

WHEREAS, as to the expense associated with the installation of sprinklers, the appellant represents that the cost to sprinkler the proposed home would be approximately \$20,000; and

WHEREAS, the appellant states that the expense of installing sprinklers at the site is the result of several factors, specifically, that there are no eight-inch city water mains in front of the site and the average private water lines are between two inches and four inches, and therefore the installation of a sprinkler system will require specially designed plans, a special construction engineer for design and inspection, and a new tap into the private water line in front of the site; and

WHEREAS, in response, the Fire Department argues that sprinklering a newly-constructed single-family home is an investment in fire safety, not an unnecessary or unduly burdensome expenditure; and

WHEREAS, the Fire Department further states that the Building Code provides simplified design standards for sprinkler systems in such occupancies, and the design standards only mandate water flow from a limited number of sprinkler heads over a brief amount of time and allow for use of the domestic water supply; and

WHEREAS, the appellant argues that the Fire Department recently granted a variance application for a property located at 109 Beach 217th Street, which had the same street conditions as the subject site; and

WHEREAS, in response, the Fire Department concedes that a similar variance application was granted for 109 Beach 217th Street, but states that the application was granted in error and that other similar applications have since been required to provide a sprinkler system in compliance with FC § 503.8.2; and

WHEREAS, as to the alternative methods of fire prevention, the appellant states that (1) the Breezy Point community has a private fire department which has four-wheel drive vehicles capable of accessing the site, (2) there is a 15'-0" wide sand fire lane located along the rear of the site to provide an alternate means of access, and (3) the proposed home will provide interconnected smoke alarms and will be constructed of one-hour fire-rated material; and

WHEREAS, in support of these alternative fire safety measures, the appellant submitted a letter from the Point Breeze Fire Department stating that it is a private fire house serving the community of Breezy Point and describing its two four-wheel drive fire vehicles; and

WHEREAS, the appellant also submitted photographs of the four-wheel drive fire vehicles as well as the 15'-0" wide sand fire lane located along the rear of the site; and

WHEREAS, in response, the Fire Department states that the alternative fire prevention measures cited by the appellant do not alleviate the site's non-compliance with FC § 503.8.2; and

WHEREAS, the appellant contends that the subject street width should be considered acceptable because a minimum width of 30'-0" is permitted under FC § 503.2.1.2; and

WHEREAS, the Board notes that FC § 503.2.1.2 permits a fire apparatus access road with a minimum width of 30'-0" as an exception to the general requirement that such roads have a minimum width of 38'-0" only upon the satisfaction of the requirements of ZR § 119-214; and

WHEREAS, the Board further notes that ZR § 119-214 only applies to sites within the Special Hillside Preservation District, which does not include the subject site; therefore, the subject site does not qualify for the exception provided in FC § 503.2.1.2; and

WHEREAS, based upon the above, the Board agrees with the Fire Department that the sand areas should not be included in measuring the width of the subject street, and therefore the unobstructed width of the street is no more than 31'-2", which is significantly narrower than the minimum required width of 38'-0" pursuant to FC § 503.8.2; and

WHEREAS, specifically, the Board agrees with the Fire Department that the sand areas are not approved driving surfaces under FC § 503.1.1, and the engineer's letter submitted by the appellant, which consists of an informal visual analysis of the soil located in the sand areas, is not sufficient to establish that the soil at this location is capable of withstanding the load of the fire apparatus; and

WHEREAS, further, the Board notes that even if it accepted the width of the subject street as 37'-11", the width would still not comply with FC § 503.8.2, and the fact that the non-compliance would be minor in nature does not, in and of itself, justify a waiver of the Fire Code; and

WHEREAS, the Board also agrees with the Fire Department that neither the expense associated with the installation of a sprinkler system nor the alternative methods of fire prevention at the site justify the requested waiver of the sprinkler requirement of FC § 503.8.2; and

WHEREAS, accordingly, based on the evidence in the record, the Board concurs with the Fire Department that the subject street does not provide a minimum width of 38'-0", as set forth in FC § 503.8.2, and the appellant has failed to provide any compelling argument or evidence as a basis for waiving the Fire Code.

Therefore it is Resolved that the instant appeal, seeking a reversal of the Fire Department decision dated December 20, 2010, is hereby denied.

Adopted by the Board of Standards and Appeals,

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August 16, 2011.

63-11-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Raymond & Raymond Walsh, lessees.

SUBJECT – Application May 10, 2011 – Appeal challenging the Fire Department’s determination that a sprinkler system be provided, per Fire Code section 503.8.2. R4 zoning district.

PREMISES AFFECTED – 115 Beach 216th Street, east side of Beach 216th Street, 280’ south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

For Opposition: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

THE RESOLUTION –

WHEREAS, this appeal arises in response to a final determination from the Chief of Operations, dated December 20, 2010 (and re-affirmed by letter dated April 18, 2011) (the “Final Determination”), issued in response to a variance application before the Fire Department, seeking to modify the sprinkler requirement of Fire Code (FC) § 503.8.2; and

WHEREAS, the Final Determination reads in pertinent part:

FC 503.8.2 requires that buildings on a public street with an unobstructed width of [less than] 38 feet be protected throughout by a sprinkler system...

In the absence of any showing of impracticability, and given that the public streets serving the proposed development are far narrower than the 38’ required by the Fire Code, the Fire Department has determined that there is no grounds for granting a modification (variance) of the sprinklering requirement of FC 503.8.2, and has denied an application for a modification; and

WHEREAS, this appeal seeks to reverse a Fire Department determination denying a request for a variance of the sprinkler requirement of FC § 503.8.2 for the construction of a single-family home on a street with a width of less than 38’-0”;

and
WHEREAS, a companion application to permit the construction of the proposed home not fronting on a legally mapped street pursuant to General City Law (“GCL”) § 36, filed under BSA Cal. No. 185-10-A, was heard concurrently and decided on the same date; and

WHEREAS, a separate appeal challenging the Fire Department’s denial of an identical variance at 103 Beach 217th Street, filed under BSA Cal. No. 62-11-A (and with a

companion application for a waiver of GCL § 36, filed under BSA Cal. No. 137-10-A), was also heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this appeal on June 21, 2011, after due notice by publication in *The City Record*, and then to decision on August 16, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, the Fire Department provided testimony in opposition to the application; and

WHEREAS, the subject site is located on the east side of Beach 216th Street, approximately 280 feet south of Breezy Point Boulevard, within an R4 zoning district; and

WHEREAS, the appellant proposes to construct a non-sprinklered two-story single-family home on the site; and

WHEREAS, Beach 216th Street has an asphalt roadbed with sand areas that border each side of the asphalt portion of the street and sidewalks that border the sand areas; and

WHEREAS, the appellant submitted a survey reflecting that the asphalt portion of Beach 216th Street has a width of approximately 31’-2” 1, and the curb-to-curb width of the street is approximately 37’-11” (inclusive of the sand areas which have an approximate width of 2’-9” along the west side and 4’-0” along the east side); and

WHEREAS, prior to filing the subject appeal, the appellant submitted a variance application to the Fire Department requesting a waiver of FC § 503.8.2, which requires that “[e]xcept as otherwise approved, buildings on public streets that have an unobstructed width of less than 38 feet (11 582 mm) shall be protected throughout by a sprinkler system;” and

WHEREAS, subsequently, the Fire Department issued the Final Determination denying the appellant’s variance application; and

WHEREAS, the appellant requests that the Board grant the subject appeal and waive the sprinkler requirement of FC § 503.8.2 based on the following: (1) the difference between the width of the subject street and the minimum width required under FC § 503.8.2 is de minimis; (2) the expense associated with installing a sprinkler system in the proposed home is a financial hardship which constitutes a practical difficulty in complying with FC § 503.8.2; (3) the Fire Department has granted similar variances in the past; (4) there are alternative fire safety measures in place at the site which render strict compliance with FC § 503.8.2 unnecessary; and (5) FC § 503.2.1.2 permits fire apparatus access roads with a minimum width of only 30’-0”;

and
WHEREAS, the Fire Department has the following primary arguments in response: (1) the subject street has an unobstructed width of only 30’-0”;

1 The survey submitted by the appellant indicates that the asphalt portion of the street has a width of 31’-2”, while the Fire Department states that it measured the width of the asphalt portion of the street at 30’-0”. The Board notes that this discrepancy has no effect on the outcome of the subject appeal.

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on either side of the street cannot be utilized for fire apparatus access because they are not an approved surface; (3) even if the unpaved sand areas could be utilized for fire apparatus access, the width of the subject street would still be substandard at approximately 37'-11", rather than the minimum required width of 38'-0" pursuant to FC § 503.8.2; and (4) the installation of sprinklers is not an unduly burdensome expenditure; and

WHEREAS, as to the width of the street, the appellant argues that the sand areas that run along both sides of the 31'-2" wide asphalt roadway are capable of withstanding the load imposed by the Fire Department fire apparatus and therefore should be included in measuring the width of the subject street; and

WHEREAS, accordingly, the appellant contends that the width of the subject street should be considered approximately 37'-11" rather than 31'-2" because of the additional 6'-9" of width provided by the sand areas; and

WHEREAS, the appellant further contends that, including the sand areas, the difference between the width of the subject street of 37'-11" and the minimum required width of 38'-0" is de minimis, and therefore a waiver of FC § 503.8.2 is justified; and

WHEREAS, the Fire Department argues that the sand areas cannot be included in calculating the width of the subject street because they are not capable of supporting the weight of fire apparatus and they are not an approved driving surface under FC § 503.1.1; and

WHEREAS, at hearing, the Board requested that the appellant provide a report from an engineer in support of its claims regarding the ability of the sand areas to support the fire apparatus; and

WHEREAS, in response, the appellant submitted a letter from an engineer stating that, based on a visual inspection, the soil located within the sand area is dense sand having a load capacity of six tons, and therefore is capable of withstanding the load imposed by the Fire Department fire apparatus; and

WHEREAS, the Fire Department states that the evidence submitted by the appellant applies to soils related to foundation systems and is not relevant to road surface materials exposed to the elements and the mechanical effects of vehicles and equipment; therefore the engineer's letter is not sufficient to establish that the sand areas are capable of supporting the weight of its fire apparatus; and

WHEREAS, the Fire Department further states that, pursuant to FC § 503.1.1 the subject street must have a surface composed of asphalt, concrete or other approved driving surface installed in accordance with the standards of the New York City Department of Transportation ("DOT"); and

WHEREAS, the Fire Department submitted DOT's 2009 Street Design Manual as evidence that the subject sand areas are not an approved driving surface; and

WHEREAS, accordingly, the Fire Department states that the sand areas cannot be included in measuring the unobstructed width of the street; therefore, the subject street has an approximate width of only 30'-0", which is far narrower than the minimum required width of 38'-0"; and

WHEREAS, as to the expense associated with the

installation of sprinklers, the appellant represents that the cost to sprinkler the proposed home would be approximately \$20,000; and

WHEREAS, the appellant states that the expense of installing sprinklers at the site is the result of several factors, specifically, that there are no eight-inch city water mains in front of the site and the average private water lines are between two inches and four inches, and therefore the installation of a sprinkler system will require specially designed plans, a special construction engineer for design and inspection, and a new tap into the private water line in front of the site; and

WHEREAS, in response, the Fire Department argues that sprinklering a newly-constructed single-family home is an investment in fire safety, not an unnecessary or unduly burdensome expenditure; and

WHEREAS, the Fire Department further states that the Building Code provides simplified design standards for sprinkler systems in such occupancies, and the design standards only mandate water flow from a limited number of sprinkler heads over a brief amount of time and allow for use of the domestic water supply; and

WHEREAS, the appellant argues that the Fire Department recently granted a variance application for a property located at 109 Beach 217th Street, which had the same street conditions as the subject site; and

WHEREAS, in response, the Fire Department concedes that a similar variance application was granted for 109 Beach 217th Street, but states that the application was granted in error and that other similar applications have since been required to provide a sprinkler system in compliance with FC § 503.8.2; and

WHEREAS, as to the alternative methods of fire prevention, the appellant states that (1) the Breezy Point community has a private fire department which has four-wheel drive vehicles capable of accessing the site, (2) there is a 15'-0" wide sand fire lane located along the rear of the site to provide an alternate means of access, and (3) the proposed home will provide interconnected smoke alarms and will be constructed of one-hour fire-rated material; and

WHEREAS, in support of these alternative fire safety measures, the appellant submitted a letter from the Point Breeze Fire Department stating that it is a private fire house serving the community of Breezy Point and describing its two four-wheel drive fire vehicles; and

WHEREAS, the appellant also submitted photographs of the four-wheel drive fire vehicles as well as the 15'-0" wide sand fire lane located along the rear of the site; and

WHEREAS, in response, the Fire Department states that the alternative fire prevention measures cited by the appellant do not alleviate the site's non-compliance with FC § 503.8.2; and

WHEREAS, the appellant contends that the subject street width should be considered acceptable because a minimum width of 30'-0" is permitted under FC § 503.2.1.2; and

WHEREAS, the Board notes that FC § 503.2.1.2 permits a fire apparatus access road with a minimum width of 30'-0" as an exception to the general requirement that such roads have a minimum width of 38'-0" only upon the satisfaction of the

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requirements of ZR § 119-214; and

WHEREAS, the Board further notes that ZR § 119-214 only applies to sites within the Special Hillside Preservation District, which does not include the subject site; therefore, the subject site does not qualify for the exception provided in FC § 503.2.1.2; and

WHEREAS, based upon the above, the Board agrees with the Fire Department that the sand areas should not be included in measuring the width of the subject street, and therefore the unobstructed width of the street is no more than 31'-2", which is significantly narrower than the minimum required width of 38'-0" pursuant to FC § 503.8.2; and

WHEREAS, specifically, the Board agrees with the Fire Department that the sand areas are not approved driving surfaces under FC § 503.1.1, and the engineer's letter submitted by the appellant, which consists of an informal visual analysis of the soil located in the sand areas, is not sufficient to establish that the soil at this location is capable of withstanding the load of the fire apparatus; and

WHEREAS, further, the Board notes that even if it accepted the width of the subject street as 37'-11", the width would still not comply with FC § 503.8.2, and the fact that the non-compliance would be minor in nature does not, in and of itself, justify a waiver of the Fire Code; and

WHEREAS, the Board also agrees with the Fire Department that neither the expense associated with the installation of a sprinkler system nor the alternative methods of fire prevention at the site justify the requested waiver of the sprinkler requirement of FC § 503.8.2; and

WHEREAS, accordingly, based on the evidence in the record, the Board concurs with the Fire Department that the subject street does not provide a minimum width of 38'-0", as set forth in FC § 503.8.2, and the appellant has failed to provide any compelling argument or evidence as a basis for waiving the Fire Code.

Therefore it is Resolved that the instant appeal, seeking a reversal of the Fire Department decision dated December 20, 2010, is hereby denied.

Adopted by the Board of Standards and Appeals, August 16, 2011.

182-06-A thru 211-06-A

APPLICANT – Akerman Senterfitt, LLP, for Boymelgreen Beachfront Community, LLC, owners.

SUBJECT – Application April 18, 2011 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously-granted Common Law Vesting which expired March 19, 2011. R4A zoning district.

PREMISES AFFECTED – 126, 128, 130, 134, 136, 140, 146, 148, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 161, and 163 Beach 5th Street. 150, 152, 154, 156, 158, 160, and 162 Beach 6th Street and 511 SeaGirt Avenue Block 15609, Lots 1, 3, 6, 8, 10, 12, 14, 16, 18, 58, 63, 64, 65, 66, 67, and 68 and Block 15608, Lots 1, 40, 42, 45, 51, 52, 53, 57, 58, 61, 63, 65, 67, and 69. Borough the Queens

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for an adjourned hearing.

224-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative, Incorporated, owners, John & Daniel Lynch, lessee.

SUBJECT – Application December 7, 2010 – Proposed reconstruction and enlargement not fronting on a legally mapped street contrary to General City Law Section 36 and the building and private disposal system is located within the bed of a mapped street contrary to General City Law Section 35 and Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 173 Reid Avenue, east side of Reid Avenue 245.0 north of Breezy Point Boulevard. Block 16359, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for continued hearing.

232-10-A

APPLICANT – OTR Media Group, Incorporated, for 4th Avenue Loft Corporation, owner;

SUBJECT – Application December 23, 2010 – An appeal challenging Department of Buildings determination to deny the issuance of a sign permit on the basis that a lawful advertising sign has not been established and not discontinued as per ZR Section 52-83. C1-6 Zoning District.

PREMISES AFFECTED – 59 Fourth Avenue, 9th Street & Fourth Avenue. Block 555, Lot 11. Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Caroline Harris.

For Opposition: John Egnatos Beene.

ACTION OF THE BOARD – Laid over to October 18, 2011, at 10 A.M., for continued hearing.

14-11-A

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Schron and Eli Shron, owners.

SUBJECT – Application February 2, 2011 – Appeal challenging a determination by the Department of Buildings that a proposed cellar to a single family home is contrary to accessory use as defined in §12-10 in the zoning resolution. R2 zoning district.

PREMISES AFFECTED – 1221 East 22th Street, between Avenues K and L, Block 7622, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

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For Opposition: John Egnatos Beene.
THE VOTE TO CLOSE HEARING –
Affirmative: Chair Srinivasan, Vice Chair Collin,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to October
18, 2011, at 10 A.M., for decision, hearing closed.

29-11-A & 30-11-A

APPLICANT – Randy M. Mastro-Gibson, Dunn & Crutcher
LLP, for Win Restaurant Equipment & Supply Corporation,
owner; Fuel Outdoor, lessee.

SUBJECT – Application March 24, 2011 – An appeal
challenging the Department of Building's revocation of sign
permits. M1-5B Zoning District.

PREMISES AFFECTED – 318 Lafayette Street, Northwest
corner of Houston and Lafayette Streets. Block 522, Lot 24,
Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Randy Mastro.

For Opposition: John Egnatos Beene.

ACTION OF THE BOARD – Laid over to October
18, 2011, at 10 A.M., for continued hearing.

77-11-A

APPLICANT – Akerman Senterfitt LLP, for 3516
Development LLC, owner.

SUBJECT – Application May 27, 2011 – Appeal seeking a
determination that the property owner has acquired a
common law vested right to continue development under the
prior R6 zoning regulations. R6B zoning district.

PREMISES AFFECTED – 35-16 Astoria Boulevard, South
side of Astoria Boulevard between 35th and 36th Streets.
Block 633, Lots 39 & 140, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Calvin Wong.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to
September 13, 2011, at 10 A.M., for decision, hearing
closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING TUESDAY AFTERNOON, AUGUST 16, 2011 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

ZONING CALENDAR

227-09-BZ

APPLICANT – Gerald J. Caliendo, R.A., for David
Rosero/Chris Realty Holding Corporation, lessee.

SUBJECT – Application July 10, 2009 – Variance (§72-21)
to allow a two-story commercial building, contrary to use
regulations (§22-10). R6B zoning district.

PREMISES AFFECTED – 100-14 Roosevelt Avenue, south
side of Roosevelt Avenue, 109.75' west of the corner of
102nd Street and Roosevelt Avenue, Block 1609, Lot 8,
Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Sandy Anagnostov.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough
Commissioner, dated March 12, 2009, acting on Department of
Buildings Application No. 410064219, reads in pertinent part:
“Proposed 2 sty commercial use is not permitted as-
of-right in an R6B zoning district. This is contrary to
Section 22-10 ZR;” and

WHEREAS, this is an application under ZR § 72-21, to
permit, in an R6B zoning district, the construction of a two-
story commercial building (Use Group 6) which does not
conform to district use regulations, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this
application on April 5, 2011 after due notice by publication in
The City Record, with a continued hearing on July 12, 2011,
and then to decision on August 16, 2011; and

WHEREAS, the site and surrounding area had site and
neighborhood examinations by Chair Srinivasan and
Commissioner Montanez; and

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

WHEREAS, the subject site is located on a triangular-
shaped lot bounded by Roosevelt Avenue to the north and
Spruce Avenue to the south, within an R6B zoning district; and

WHEREAS, the site has approximately 86 feet of
frontage on Roosevelt Avenue and 83 feet of frontage on

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Spruce Street, with a total lot area of 836 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story and cellar commercial building with retail use on the ground floor and office use on the second floor, and with a total floor area of 1,510 sq. ft. (1.80 FAR), and no parking; and

WHEREAS, commercial use is not permitted in the subject R6B zoning district, thus the applicant seeks a use variance to permit the proposed Use Group 6 uses; 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 complying development: the site is an irregularly shaped, undersized, vacant corner lot; and

WHEREAS, as to the site's irregular shape, the applicant states that the site is triangularly shaped and that the depth of the site tapers from a maximum depth of approximately 20 feet along the western lot line to zero feet along the eastern lot line; and

WHEREAS, the applicant represents that the shallow, tapering depth renders the eastern portion of the site unbuildable; and

WHEREAS, the applicant further represents that the irregular shape of the site results in small floor plates with an inefficient layout and configuration which makes as-of-right residential or community facility development infeasible; and

WHEREAS, as to the site's uniqueness, the applicant submitted a study of the lots within a 400-ft. radius of the site, which reflects that there are only six other vacant lots in the study area and all of those lots are larger and more regularly shaped than the subject site; and

WHEREAS, the applicant submitted a letter from a real estate brokerage firm stating that it made multiple attempts to rent out the subject site for community facility use but was unable to find a suitable candidate due to the space constraints imposed by the subject lot; and

WHEREAS, the applicant also submitted a letter from a prospective community facility tenant stating that it reviewed the subject site and determined that the layout of the site did not provide sufficient square footage to accommodate the needs of the community facility; and

WHEREAS, based upon the above, the Board finds that the irregular shape of the site creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) a conforming three-story mixed-use building with community facility use on the first floor and a duplex apartment on the second and third floors; (2) a conforming three-story community facility building; and (3) the proposed two-story commercial building with retail space on the first floor and commercial office space on the second floor; and

WHEREAS, the study concluded that the conforming scenarios would not result in a reasonable return, but that the proposed building would realize 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 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 represents that the surrounding area is occupied by a mix of residential, commercial, and community facility uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that there are multiple commercial uses located in the surrounding area, including commercial uses on the three lots immediately adjacent to the west of the site; and

WHEREAS, the radius diagram submitted by the applicant also reflects that the block located across Roosevelt Avenue from the site has a C1-4 commercial overlay along Roosevelt Avenue, and the majority of Block 1974, located one block east of the site, is zoned with a C2-2 overlay; and

WHEREAS, the applicant states that the site is also located adjacent to the elevated train on Roosevelt Avenue and has frontage on both Roosevelt Avenue and Spruce Avenue, with commercial and mixed uses surrounding the site; and

WHEREAS, the applicant further states that the site's proximity to the elevated train on Roosevelt Avenue, in conjunction with its small, irregular shape and frontage on two streets makes the site unsuitable for residential use; and

WHEREAS, at hearing, the Board directed the applicant to (1) provide street trees along Roosevelt Avenue and Spruce Street, (2) extend the existing sidewalk and construct a new sidewalk in front of the site along Spruce Street, (3) confirm that signage on the site complies with C1 district regulations; and (4) provide a survey to show the location of manholes on the site; and

WHEREAS, in response, the applicant submitted revised plans reflecting that street trees will be planted along Roosevelt Avenue and Spruce Street, a sidewalk will be provided in front of the site along Spruce Street, and the signage complies with C1 district regulations; and

WHEREAS, the applicant also submitted a survey and photograph reflecting that the existing manhole is located outside of the subject lot; 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 site's unique physical conditions; and

WHEREAS, 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.

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part

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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 R6B zoning district, the construction of a two-story commercial building (Use Group 6) which does not conform to district use regulations, contrary to ZR § 22-10; *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 5, 2011" – seven (7) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 1,510 sq. ft. (1.80 FAR), as indicated on the BSA-approved plans;

THAT signage on the site shall comply with C1 district regulations;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT 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 16, 2011.

28-11-BZ

CEQR #11-BSA-071M

APPLICANT – The Law Office of Fredrick A. Becker, for 291 Broadway Realty Associates LLC, owner; Garuda Thai Inc. dba The Wat, lessee.

SUBJECT – Application March 24, 2011 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*The Wat*). C6-4 zoning district.

PREMISES AFFECTED – 291 Broadway, northwest corner of Broadway and Reade Street, Block 150, Lot 38, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated August 11, 2011, acting on Department of Buildings Application No. 120296125, reads in pertinent part:

"Legalization of the subject Physical Culture Establishment/boxing gym is contrary to ZR 32-10 and is not permitted as-of-right in a C6-4A zoning district and requires a special permit from the Board of Standards and Appeals under ZR 73-36;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C6-4A zoning district, the legalization of a physical culture establishment (PCE) at the cellar of a 19-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 12, 2011, after due notice by publication in *The City Record*, and then to decision on August 16, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of Broadway and Reade Street, within a C6-4A zoning district; and

WHEREAS, the site is occupied by a 19-story commercial building; and

WHEREAS, the PCE will occupy 5,015 sq. ft. of floor space in a portion of the cellar level; and

WHEREAS, the PCE will be operated as The Wat; and

WHEREAS, the proposed hours of operation are Monday through Friday, from 7:00 a.m. to 10:00 p.m.; Saturday, from 8:00 a.m. to 4:00 p.m.; and Sunday, from 10:00 a.m. to 3:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement; 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 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 Board notes that the PCE has been in operation since January 1, 2011, without a special permit; and

MINUTES

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between January 1, 2011 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; 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. 11BSA071M, dated March 24, 2011; and

WHEREAS, the EAS documents 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, 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 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, on a site within a C6-4A zoning district, the operation of a physical culture establishment at a portion of the cellar level of a 19-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 1, 2011" – (4) sheets and *on further condition*:

THAT the term of this grant shall expire on January 1, 2021;

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 above conditions shall appear on the Certificate of Occupancy;

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);

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 16, 2011.

55-11-BZ

CEQR #11-BSA-088X

APPLICANT – Sheldon Lobel, P.C., for Acadia 2914 Third Avenue LLC, owner; Third Avenue Bronx Fitness Group, LLC, lessee.

SUBJECT – Application April 25, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C4-4 zoning district.

PREMISES AFFECTED – 2914 Third Avenue, south of East 152nd Street, Third Avenue and Bergen Avenue, Block 2362, Lot 13, Borough of Bronx.

COMMUNITY BOARD #1BX

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, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Superintendent, dated March 25, 2011, acting on Department of Buildings Application No. 220104875, reads in pertinent part:

“ZR-73-36. BSA approval required for proposed physical culture establishment in a C4-4 zoning district as per stated zoning section;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C4-4 zoning district, the operation of a physical culture establishment (PCE) at a portion of the first floor and the entire second and third floors of a three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 19, 2011, after due notice by publication in *The City Record*, and then to decision on August 16, 2011; and

WHEREAS, Community Board 1, Bronx, recommends approval of this application; and

WHEREAS, the subject site is a through lot with frontages on Third Avenue and Bergen Avenue, between East 152nd Street and Westchester Avenue, within a C4-4 zoning district; and

WHEREAS, the site is occupied by a three-story commercial building; and

WHEREAS, the PCE will occupy 23,522 sq. ft. of floor area on a portion of the first floor and the entire second and third floors; and

WHEREAS, the PCE will be operated as Planet Fitness; and

MINUTES

WHEREAS, the proposed hours of operation are 24 hours per day, seven days a week; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; 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 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 617.2; 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.11BSA088X, dated July 5, 2011; and

WHEREAS, the EAS documents 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, 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 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, on a site within a C4-4 zoning district, the operation of a physical culture establishment at a portion of the first floor and the entire second and third floors of a

three-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 20, 2011" – (6) sheets and *on further condition*:

THAT the term of this grant shall expire on August 16, 2021;

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 above conditions shall appear on the Certificate of Occupancy;

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);

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 16, 2011.

31-10-BZ

APPLICANT – Eric Palatnik, P.C., for 85-15 Queens Realty, LLC, owner.

SUBJECT – Application March 16, 2010 – Variance (§72-21) to allow for a commercial building, contrary to use (§22-00), lot coverage (§23-141), front yard (§23-45), side yard (§23-464), rear yard (§33-283), height (§23-631) and location of uses within a building (§32-431) regulations. C1-2/R6, C2-3/R6, C1-2/R7A, R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard aka 51-35 Reeder Street, north side of Queens Boulevard, between Broadway and Reeder Street, Block 1549, Lot 28, 41, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik and Barbara Cohen.

ACTION OF THE BOARD – Laid over to September 27, 2011, at 1:30 P.M., for continued hearing.

46-10-BZ

APPLICANT – Eric Palatnik, P.C., for 1401 Bay LLC, owner.

SUBJECT – Application April 8, 2010 – Special Permit (§73-44) to permit a reduction in required parking for ambulatory and diagnostic treatment center. C4-2 zoning district.

PREMISES AFFECTED – 1401 Sheepshead Bay Road, Avenue Z and Sheepshead Bay Road, Block 7459, Lot 1, Borough of Brooklyn.

MINUTES

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Jerome Fox.

ACTION OF THE BOARD – Laid over to October 18, 2011, at 1:30 P.M., for an adjourned hearing.

54-10-BZ

APPLICANT – Eric Palatnik, P.C., for Richard Valenti as Trustee, owner; Babis Krasanakis, lessee.

SUBJECT – Application April 19, 2010 – Special Permit (§73-44) to permit reduction in required parking for an ambulatory diagnostic or treatment center. C4-2 zoning district.

PREMISES AFFECTED – 150(c) Sheepshead Bay Road, aka 1508 Avenue Z, south side of Avenue Z, between East 15th and East 16th Street, Block 7460, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to October 18, 2011, at 1:30 P.M., for decision, hearing closed.

177-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLC, for Cee Jay Real Estate Development, owner.

SUBJECT – Application September 9, 2010 – Variance (§72-21) for the construction of a detached three-story single family home, contrary to open space (§23-141); front yard (§23-45) and side yard (§23-461). R3A zoning district.

PREMISES AFFECTED – 8 Orange Avenue, south west corner of Decker Avenue and Orange Avenue, Block 1061, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Jeannie Borkowski, Joanne Donnaruma, John Donnaruma and Eileen Martin.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for decision, hearing closed.

194-10-BZ

APPLICANT – Eric Palatnik, P.C., for Revekka Kreposterman, owner.

SUBJECT – Application October 26, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 175 Exeter Street, north of Oriental Avenue, Block 8737, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for an adjourned hearing.

230-10-BZ

APPLICANT – Eric Palatnik, P.C., for Leonid Fishman, owner.

SUBJECT – Application December 17, 2010 – Special Permit (§73-622) for the enlargement of a single family home, contrary to open space, lot coverage and floor area (§23-141(b)) and perimeter wall height (§23-631(b)). R3-1 zoning district.

PREMISES AFFECTED – 177 Kensington Street, Oriental Boulevard and Kensington Street, Block 8754, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik and Ian Rasmussen.

For Opposition: Janna Kolfman, Laura Krasner, Arielle Fox and Jerome Fox.

ACTION OF THE BOARD – Laid over to September 27, 2011, at 1:30 P.M., for continued hearing.

4-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 1747 East 2nd Street, LLC, owner.

SUBJECT – Application January 10, 2011 – Variance (§72-21) to allow a three-story synagogue, contrary to lot coverage (§24-11), floor area (§113-51), wall height and total height (§113-55), front yard (§113-542), side yards (§113-543), encroachment into required setback and sky exposure plane (§113-55), and parking (§25-18, §25-31, and §113-561). R5 zoning district.

PREMISES AFFECTED – 1747-1751 East 2nd Street, aka 389 Quentin Road, northeast corner of East 2nd Street and Quentin Road, Block 6634, Lot 49, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for decision, hearing

MINUTES

closed.

38-11-BZ

APPLICANT – Eric Palatnik, P.C., for Arveh Schimmer, owner.

SUBJECT – Application April 5, 2011 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted into a single family home, contrary to floor area and open space (§23-141(a)); side yard (§23-461(a)) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1368 East 27th Street, between Avenue M and N, Block 7662, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for decision, hearing closed.

48-11-BZ

APPLICANT – Richard C. Bonsignore, for Joseph Moinian, owner; Mendez Boxing New York, lessee.

SUBJECT – Application April 13, 2011– Special Permit (§73-36) to allow the operation of a physical culture establishment (Mendez Boxing). C5-2 zoning district.

PREMISES AFFECTED – 60 Madison Avenue, aka 54-60 Madison Avenue, aka 23-25 East 26th Street, aka 18-20 East 27th Street, North side of Madison Avenue at East 26th Street and the north east corner to East 27th Street. Block 856, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Richard C. Bonsignore.

ACTION OF THE BOARD – Laid over to September 20, 2011, at 1:30 P.M., for continued hearing.

51-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Susan Sherer and Shimishon Sherer, owners.

SUBJECT – Application April 18, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence, contrary to floor area and open space (§23-141); and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1226 East 26th Street, west side of 26th Street, between Avenue L and Avenue M, Block 7643, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra A. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for decision, hearing closed.

54-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Bay Parkway Group LLC, owner.

SUBJECT – Application April 21, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory diagnostic or treatment facility building. R6/C1-3 zoning district.

PREMISES AFFECTED – 6010 Bay Parkway, west side of Bay Parkway between 60th Street and 61st Street, Block 5522, Lot 36 & 32, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Lyra J. Altman and Jim Heineman.

For Opposition: Stefanie Fedak, Anna Cali, Stephanie Wong, Natalie DeRicola, Msg. Dan Cassato, Rebeca Gray, Virginia Bivona, Sal Cali, Lorraine Cardozo, Joseph Oliva and Vito Marinelli, and others.

ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for continued hearing.

65-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Vornado Gun Hill Road LLC, for Gun Hill Road Fitness Group, lessee.

SUBJECT – Application May 12, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) in portion of an existing one-story building. The premises is located in a C2-1/R3-2 zoning district. The proposal is contrary to Section 32-31.

PREMISES AFFECTED – 1750 East Gun Hill Road, frontage on East Gun Hill Road, Gunther Avenue, and Bergen Avenue, Block 4494, Lot 1, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for decision, hearing closed.

MINUTES

68-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Rivkie Weingarten and Nachum Weingarten, owners.

SUBJECT – Application April 16, 2011 – Special Permit (§73-622) for enlargement of existing single family home, contrary to floor area, lot coverage and open space (§23-141); rear yard (§23-47) and side yard (§23-461). R3-2 zoning district.

PREMISES AFFECTED – 1636 East 23rd Street, between Avenue P and Quentin Road, Block 6785, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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August 31, 2011

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72-11-BZ	101-06 Astoria Boulevard, Queens

DOCKET

New Case Filed Up to August 23, 2011

118-11-A

811 Liberty Lane, Block 16350, Lot(s) 300, Borough of **Queens, Community Board: 14.** site and building not fronting a mapped street contrary to Art. 3 Sect. 36 GCL and Sect. 27-291 Admin. Code of the City of New York. The Building is in the bed of a mapped street contrary to Art 3 Sect 35 of the General City Law, private disposal in the bed of a mapped street contrary to Department of Buildings policy. R4 district.

119-11-A

2230-2234 Kimball Street, Kimball Street between Avenue U and Avenue V., Block 8556, Lot(s) 55, Borough of **Brooklyn, Community Board: 18.** Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under prior zoning (24-33& 25-31) . R4 zoning district . R4 district.

120-11-BZ

52-11 29th Street, corner of 29th Street and Review Avenue, Block 295, Lot(s) 1, Borough of **Queens, Community Board: 02.** Special Permit (ZR 73-44) to reduce the parking requirement for office use and catering use (parking requirement category B1). M1-3 zoning district. M103 district.

121-11-BZ

351 Convent Avenue, southeast corner of Convent Avenue and West 145th Street., Block 2050, Lot(s) 42,47, Borough of **Manhattan, Community Board: 09.** Variance application to legalize a two story and basement rear yard enlargement in an existing church (Convent Avenue Baptist Church) that exceeds the permitted height and contains two stories contrary to the permitted one story and that violates a rear yard requirements and exceeds the permitted lot coverage. R7-2 zoning district. R7-2 district.

122-11-A

5 Bement Avenue, southeast corner of the intersection of Bement Avenue and Richmond Terrace, Block 150, Lot(s) 4, Borough of **Staten Island, Community Board: 01.** Proposed construction of a one family dwelling located partially within the bed of a mapped street contrary to General City Law Section 35 and waiver of the required front yard under 72-01-(g) . R3-1 Zoning District . R3-1 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

SEPTEMBER 20, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 20, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

742-59-BZ

APPLICANT – Harold L. Robertson, for David B. Levy/136 E. 55th Street, Inc.

SUBJECT – Application July 14, 2011– Extension of Term for the continued operation to permit the use of no more than 50 unused and surplus tenant parking spaces within an accessory garage in a multiple dwelling building which expired on June 13, 2011. C6-6 zoning district.

PREMISES AFFECTED – 136 East 55th Street, Lexington Avenue and East 55th Street, Block 1309, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #6M

92-99-BZ, 94-99-BZ, 96-99-BZ, 98-99-BZ, 100-99-BZ, 102-99-BZ

APPLICANT – Sheldon Lobel, P.C., for Walden Terrace Inc., owner.

SUBJECT – Application June 24, 2011 – Extension of Term for the Variance filed pursuant to ZR§60 (3) of the Multiple Dwelling Law for the continued use of transient parking in multi-unit residential building which expired on May 30, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on May 30, 2001 and Waiver of the Rules. R7-1 zoning district.

PREMISES AFFECTED – 98-09, 98-25, 98-41, 98-51, 98-33, 98-19, 64th Avenue, western portion of the block bounded by the 64th Avenue to the north, 64th Road to the south, 98th Street to the west and 99th Street to the east, Block 2101 & 2100, Lot 1, 16, 24, 29, 21,15, Borough of Queens.

COMMUNITY BOARD #6Q

200-00-BZ

APPLICANT – Eric Palatnik, P.C., for Blans Development Corporation, owners.

SUBJECT – Application August 25, 2011 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (§72-21) to operate a Physical Culture Establishment (Squash Fitness Center) which expired on June 8, 2011; Waiver of the Rules. C1-4(R6B) zoning district.

PREMISES AFFECTED – 107-24 37th Avenue, southwest corner of 37th Avenue and 108th Street, aka 37-16 108th Street, Block 1773, Lot 10, Borough of Queens.

COMMUNITY BOARD #3Q

75-06-BZ

APPLICANT – Eric Palatnik, P.C., for Cord Meyer Development Company, owner.

SUBJECT – Application April 27, 2011 – Extension of Time to complete construction of a previous approved variance (§72-21) and to amend the previous approval by increasing open space, eliminating a sub-cellar, and complying with new building code requirements. C1-2/R7-1 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

APPEALS CALENDAR

95-11-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner.

SUBJECT – Application June 30, 2011 – Reconstruction and enlargement of a single family dwelling located within a bed of a mapped street contrary to General City Law Section 35 in an R4 district.

PREMISES AFFECTED – 385 Bayside Drive, 30' east of mapped Beach 182nd Street, Block 16340, Lot p/o 50, Borough of Queens.

COMMUNITY BOARD #14Q

100-11-A

APPLICANT – Deidre Duffy, for Breezy Point Cooperative, Incorporated, owner; John and Roseann Kennedy, lessees.

SUBJECT – Application July 7, 2011 – Proposed reconstruction of a single family home located within the bed of a mapped street contrary to General City Law Section 35. R4 Zoning District.

PREMISES AFFECTED – 157 Ocean Avenue, east side of Ocean Avenue, 74' south of Oceanside Avenue, Block 16530, Lot 400, Borough of Brooklyn.

COMMUNITY BOARD #14BK

CALENDAR

SEPTEMBER 20, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 20, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

231-10-BZ

APPLICANT – Eric Palatnik, PC, for WIEDC (Williamsburg Infant & Early Childhood Development Center), owners.

SUBJECT – Application December 17, 2010 – Variance (§72-21) to permit the development of a six-story school contrary to use regulations (§42-11) and bulk regulations; FAR (§43-122), rear yard (§43-26), wall height, total height, number of stories, setback, and sky exposure plane (§43-43). M1-1 zoning district.

PREMISES AFFECTED – 430-440 Park Avenue, Between Kent Avenue and Franklin Avenue. Block 1898, Tent. Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #3BK

47-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for USA Outreach Corp., by Shaya Cohen, owner.

SUBJECT – Application April 13, 2011– Variance (§72-21) to allow a three-story yeshiva with dormitories, contrary to bulk regulations.

PREMISES AFFECTED – 1213 Bay 25th Street, west side of Bay 25th Street, between Bayswater Avenue and Healy Avenue, Block 15720, Lot 67, Borough of Queens.

COMMUNITY BOARD #14Q

94-11-BZ

APPLICANT – Victor K. Han, RA, AIA, for 149 Northern Plaza, LLC & Seungho Kim, owners. New York Spa & Sauna Corp., lessee.

SUBJECT – Application June 27, 2011– Special Permit (§73-36) to facilitate the use of a portion of a new building as a physical culture establishment (New York Spa & Sauna) in a C2-2/R6A&R5 Zoning District.

PREMISES AFFECTED – 149-06 Northern Boulevard, Southeast of Northern Boulevard, 0' Southeast of 149th, Block 5017, Lot 11, Borough of Queens.

COMMUNITY BOARD #7Q

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, AUGUST 23, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.
Absent: Commissioner Montanez.

SPECIAL ORDER CALENDAR

887-54-BZ

APPLICANT – Eric Palatnik, P.C., for Napa Realty Corporation, owner.

SUBJECT – Application July 5, 2011 – Extension of Time to obtain a Certificate of Occupancy for an existing gasoline service station (*British Petroleum*) with accessory convenience store (*7-Eleven*) which expired on June 15, 2011. C2-2/R6B zoning district.

PREMISES AFFECTED – 218-01 Northern Boulevard, between 218th and 219th Streets, Block 6321, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Trevis Savage.

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

Absent: Commissioner Montanez.....1

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for an automobile service station, which expired on June 15, 2011; and

WHEREAS, a public hearing was held on this application on July 26, 2011 after due notice by publication in *The City Record*, and then to decision on August 23, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the north side of Northern Boulevard between 218th Street and 219th Street, within a C2-2 (R6B) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 3, 1955 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by an automobile showroom with supplementary servicing, including gasoline dispensing service, for a term of 15 years; and

WHEREAS, on March 18, 1958, the Board granted an amendment to permit the construction of a gasoline service

station, lubricatorium, minor auto repairs, car washing, office, sales, and storage and parking of motor vehicles; and

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

WHEREAS, most recently, on June 15, 2010, the Board extended the term of the grant for an additional ten years, and legalized certain modifications to the previously approved plans; a condition of the grant was that a new certificate of occupancy be obtained by June 15, 2011; and

WHEREAS, the applicant now requests a further extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that it has not obtained a new certificate of occupancy due to unexpected delays in the filing and approval process at the Department of Buildings (“DOB”) as the result of two open applications which were filed at DOB by the tenant of the site; and

WHEREAS, the applicant represents that it will take approximately two years to secure the necessary sign-offs and obtain a new certificate of occupancy for the site; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and amendment 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 May 3, 1955, so that as amended this portion of the resolution shall read: “to extend the time to obtain a certificate of occupancy for two years from the date of this grant, to expire on August 23, 2013; *on condition* that all use and operations shall substantially comply with the BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a new certificate of occupancy shall be obtained by August 23, 2013;

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

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 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. 420126679)

Adopted by the Board of Standards and Appeals August 23, 2011.

281-39-BZ

APPLICANT – Eric Palatnik, P.C., for 1599 Lexington Avenue Corporation, owner.

SUBJECT – Application May 3, 2011 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) with accessory uses which expired on May 18, 2009; Waiver of the Rules. C1/R7-2 zoning district.

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PREMISES AFFECTED – 1605 Lexington Avenue, southeast corner of 102nd Street, Block 1629, Lot 150, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Laid over to September 27, 2011, at 10 A.M., for continued hearing.

713-55-BZ

APPLICANT – Walter T. Gorman, P.E., for East River Petroleum Realty LLC, owner; Brendan Utopia Mobil, lessee.

SUBJECT – Application May 3, 2011 – Extension of Term (§11-411) of a variance for the continued operation of a gasoline service station (*Mobil*) which expired on December 11, 2011. C2-2/R3-1 zoning district.

PREMISES AFFECTED – 181-05 Horace Harding Expressway, north side block front between Utopia and 182nd Street, Block 7065, Lot 8, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: John Ronan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to September 27, 2011, at 10 A.M., for decision, hearing closed.

827-55-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products, Incorporated, owner.

SUBJECT – Application October 5, 2010 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*British Petroleum*) which expires on January 31, 2011. R3-2 zoning district.

PREMISES AFFECTED – 245-20 139th Avenue, southwest corner of Conduit Avenue, Block 13614, Lot 23, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to September 20, 2011, at 10 A.M., for decision, hearing closed.

1045-64-BZ

APPLICANT – Hal Dorfman, R.A., for Kips Bay Tower Associates, owner.

SUBJECT – Application June 10, 2011 – Extension of Term permitting 120 tenant parking spaces, within an accessory garage, for transient parking, pursuant to §60(1)(b) of the Multiple Dwelling Law (MDL), which expired on June 21, 2011. R8 zoning district.

PREMISES AFFECTED – 300-330 East 33rd Street, Northwest corner of East 33rd Street and First Avenue. Block 936, Lot 7501. Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 13, 2011, at 10 A.M., for postponed hearing.

926-86-BZ

APPLICANT – Sheldon Lobel, P.C., for Manes Bayside Realty LLC, owner.

SUBJECT – Application November 1, 2010 – Extension of Term of a variance for the operation of an automotive dealership with accessory repairs (UG 16B) which expired on November 4, 2010; Extension of time to obtain a Certificate of Occupancy which expired on January 6, 2006; Waiver of the Rules. C2-2/R6-B/R3X zoning district.

PREMISES AFFECTED – 217-07 Northern Boulevard, block front on the northerly side of Northern Boulevard between 217th Street and 218th Street, Block 6320, Lot 18, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Carly Bradley.

ACTION OF THE BOARD – Laid over to September 27, 2011, at 10 A.M., for continued hearing.

93-95-BZ

APPLICANT – Akerman Senterfeit, for 149-58 Realty Company, owner.

SUBJECT – Application April 18, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of a (UG 6a) eating and drinking establishment and (UG 9) catering establishment which expired on June 10, 2007 and waiver of the rules. R3A zoning district.

PREMISES AFFECTED – 149-56/58 Cross Island Parkway, between 149th and 150th Streets, Block 4662, Lot 36 & 38, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Jessica Loeser.

For Opposition: Steven Gjorgjoski.

ACTION OF THE BOARD – Laid over to September 20, 2011, at 10 A.M., for continued hearing.

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188-96-BZ

APPLICANT – Mitchell S. Ross, Esq., for 444 Soundview Services Stations, Incorporated c/o William McCombs, owner; Scott Greco, lessee.

SUBJECT – Application June 22, 2010 – Extension of Term (§11-411) of a variance for the continued operation of a Gasoline Service Station (*Gulf*) with accessory convenience store which expired January 6, 2008; Waiver of the rules. R5 zoning district.

PREMISES AFFECTED – 444 Soundview Avenue, north side of Soundview Avenue and west of Underhill Avenue, Block 3498, Lot 51, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 27, 2011, at 10 A.M., for adjourned hearing.

86-92-BZ

APPLICANT – Randy M. Gulkis, DDS, owner.

SUBJECT – Application April 29, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of a UG6B dental office which expired on June 11, 2011. R3X zoning district.

PREMISES AFFECTED – 15 First Street, a triangle formed by First Street to the east, Richmond to west and Rose Street to the south, Block 4190, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Randy M. Gulkis and A. Zimbler.

ACTION OF THE BOARD – Laid over to September 20, 2011, at 10 A.M., for continued hearing.

201-02-BZ

APPLICANT – Eric Palatnik, P.C., for Papa Page, LLC, owner.

SUBJECT – Application July 20, 2011 – Extension of Time to Complete Construction of a Variance (§72-21) for the construction of a new automotive service station with accessory convenience store which expired on May 22, 2011 and a waiver of the rules. C1-1/R3X (SRD) zoning district. PREMISES AFFECTED – 6778 Hylan Boulevard, between Page Avenue and Culotta. Block 7734, Lot 13 & 20, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Hinkson...4
Negative:.....0
Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to September 20, 2011, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

176-10-A

APPLICANT – Sheldon Lobel, P.C., for LIV Realty LLC, owner.

SUBJECT – Application September 8, 2010 – Proposed construction of a residential building not fronting a mapped street, contrary to General City Law Section 36. R6 zoning District.

PREMISES AFFECTED – 62 Brighton 2nd Place, east side, Block 8662, Lot 155, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Carly Bradley.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to September 27, 2011, at 10 A.M., for continued hearing.

15-11-A

APPLICANT – Slater & Beckerman, LLP., for 1239 Operating Corporation, owner.

SUBJECT – Application February 10, 2011 – Appeal challenging the Department of Building's determination that a non-illuminated advertising sign and structure is not a legal non-conforming advertising sign pursuant to ZR §52-00. C6 zoning district.

PREMISES AFFECTED – 860 Sixth Avenue, through lot on the north side of West 30th Street, between Broadway and Avenue of the Americas, Block 832, Lot 1. Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Stuart Beckerman.

For Opposition: Amanda Derr, Buildings Department.

ACTION OF THE BOARD – Laid over to October 18, 2011, at 10 A.M., for continued hearing.

40-11-A

APPLICANT – Bryan Cave LLP, Margery Perlmutter, Esq., for CPW Retail, LLC c/o American Continental Properties, LLC, owner.

SUBJECT – Application April 8, 2011 – Appeal challenging the Department of Building's determination that non-conforming commercial use was discontinued pursuant to ZR §52-61. R10A & C4-7 LSD Zoning district.

PREMISES AFFECTED – 25 Central Park West, West 62nd and West 63rd Streets, Block 1115, Lot 7501(2) Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Margery Perlmutter.

For Opposition: Lisa M. Orrantia, Buildings Department and Paul Selver.

ACTION OF THE BOARD – Laid over to September 27, 2011, at 10 A.M., for continued hearing.

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Jeff Mulligan, Executive Director

Adjourned: P.M.

**REGULAR MEETING
TUESDAY AFTERNOON, AUGUST 23, 2011
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown and Commissioner Hinkson.
Absent: Commissioner Montanez.

ZONING CALENDAR

201-08-BZ

CEQR #09-BSA-014Q

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for
For Our Children, Inc., owner.

SUBJECT – Application August 1, 2008 – Variance (§72-
21) to allow a one story commercial building (UG 6);
contrary to use regulations (§22-00). R3X zoning district.

REMISES AFFECTED – 40-38 216th Street, between 215th
Place and 216th Street, 200’ south of 40th Avenue, Block
6290, Lot 70, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Trevis Savage.

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

Absent: Commissioner Montanez.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough
Commissioner, dated July 22, 2009, acting on Department of
Buildings Application No. 410019812, reads in pertinent part:

- “1. The proposed use of Offices (Use Group #6) in
an R3X District is contrary to Section 22-00 of
the Zoning Resolution.
2. There are no bulk or parking regulations for
commercial uses in an R3X District;” and

WHEREAS, this is an application under ZR § 72-21, to
permit, in an R3X zoning district, the construction of a one-
story commercial office building (Use Group 6) which does not
conform to district use regulations, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this
application on December 19, 2008 after due notice by
publication in *The City Record*, with continued hearings on
March 17, 2009, April 21, 2009, June 9, 2009, March 8, 2011,
and June 7, 2011, and then to decision on August 23, 2011; and

WHEREAS, the site and surrounding area had site and
neighborhood examinations by Chair Srinivasan, Vice-Chair

Collins, Commissioner Hinkson, Commissioner Montanez,
and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Queens,
recommends disapproval of this application; and

WHEREAS, New York City Council Member Daniel J.
Halloran and Queens Borough President Helen Marshall
recommend disapproval of this application; and

WHEREAS, New York State Senator Tony Avella
provided oral and written testimony in opposition to this
application; and

WHEREAS, certain members of the community
provided testimony in opposition to this application; and

WHEREAS, collectively, the parties who provided
testimony in opposition to the proposal are the
“Opposition;” and

WHEREAS, specifically, the Opposition raised the
following primary concerns: (1) the proposal will result in the
expansion of the adjacent business, which has a negative
impact on the surrounding residential uses; and (2) a
conforming residential development is feasible on the site; and

WHEREAS, the subject site is located on an irregular-
shaped lot bounded by 215th Place to the west, 216th Street to
the east, and the tracks for the Long Island Rail Road (“LIRR”)
to the south, within an R3X zoning district; and

WHEREAS, the site has approximately 107 feet of
frontage on 216th Street and 93 feet of frontage on Spruce
Street, a width of approximately 181 feet, and a total lot area of
18,564 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a one-
story commercial office building with a total floor area of 3,395
sq. ft. (0.18 FAR), a partial cellar for use as storage, and 18
accessory parking spaces; and

WHEREAS, the applicant notes that the adjacent parcel
to the north was the subject of a previous variance granted by
the Board under BSA Cal. No. 137-85-A, which allowed the
change of use of the adjacent site to the current contractor’s
establishment (Use Group 16); and

WHEREAS, the applicant further notes that the owner of
the subject site also operates the adjacent contractor’s
establishment, which is operated as Lund Fire Products
(“Lund”); and

WHEREAS, the applicant notes that Lund currently
operates three related business operations out of the adjacent
contractor’s establishment: (1) fire systems installation,
consisting of the planning and installation of fire suppression
equipment in new and existing buildings; (2) a portable fire
extinguisher business, which provides and services portable
fire extinguishers; and (3) a fire alarm business, which designs,
installs and services fire alarm systems; and

WHEREAS, the applicant initially proposed to construct
a one-story, 7,133 sq. ft. (0.38 FAR) warehouse building (Use
Group 16) with 12 accessory parking spaces, to be used by the
adjacent contractor’s establishment for storage and parking in
connection with the existing business; and

WHEREAS, specifically, the applicant proposed to
relocate Lund’s entire fire systems installation portion of the
business from the adjacent contractor’s establishment to the

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proposed new building, which consists of the operation of six to eight trucks and the storage of a variety of equipment and material required in connection with the fire protection installation service, as well as the storage of related files and plans; and

WHEREAS, during the course of the hearing process and in response to concerns raised by the Board and the Opposition, the applicant provided an interim proposal consisting of a one-story commercial building limited to Use Group 6 office use, with a floor area of 6,790 sq. ft. (0.37 FAR) and with 12 accessory off-street parking spaces; the applicant submitted a second interim proposal which maintained the proposed 6,790 sq. ft. commercial office building but provided an additional 19 accessory parking spaces (31 total spaces) within the bed of the mapped but unbuilt 41st Avenue; and

WHEREAS, in response to additional concerns raised by the Board regarding the size of the proposed building and the number of parking spaces, the applicant submitted revised plans reflecting the current proposal for a one-story commercial office building (Use Group 6) with a floor area of 3,395 sq. ft. (0.18 FAR) and 18 accessory parking spaces; and

WHEREAS, because commercial use is not permitted in the subject R3X zoning district, the applicant seeks a use variance to permit the proposed Use Group 6 use; 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 development: (1) the site is an irregularly shaped lot; (2) the northern portion of the lot is a mapped but unbuilt portion of 41st Avenue which is encumbered by an existing easement in favor of the Department of Environmental Protection ("DEP"); and (4) the site abuts LIRR tracks; and

WHEREAS, as to the site's irregular shape, the applicant states that the depth of the site tapers from a maximum depth of approximately 107 feet along the western lot line to 93 feet along the eastern lot line; and

WHEREAS, as to the existence of the mapped street and easement, the applicant states that a 45-ft. wide mapped but unbuilt portion of 41st Avenue is located on the northern portion of the site, for the entire length of the lot, and that an existing 30-ft. wide easement in favor of DEP is located within the bed of the mapped but unbuilt 41st Avenue; and

WHEREAS, the applicant represents that due to the presence of the mapped street and easement, approximately half of the lot area cannot be developed as-of-right without an application to the Board under the General City Law to permit construction on the northern portion of the site; and

WHEREAS, the applicant further represents that an application to permit construction in the bed of the mapped street under the General City Law is not feasible due to the existence of the DEP easement; and

WHEREAS, the applicant states that the remaining portion of the lot that can be developed as-of-right is constrained by the irregular shape of the lot, as the southern boundary which abuts the LIRR tracks tapers from east to west, further limiting development of the western portion of the site; and

WHEREAS, the applicant states that the DEP easement

forces the development to be located up against the LIRR tracks and would result in underdeveloped yards for a conforming development; and

WHEREAS, the applicant states that, due to the aforementioned unique site conditions, as-of-right development of the site would be limited to five detached two-story homes located between the existing commercial building to the north and the LIRR tracks to the south, with depths ranging between 8.25 feet and 24.41 feet, and floor areas between 492 sq. ft. and 1,236 sq. ft.; and

WHEREAS, in addition to the shape of the site, the applicant states that the site is also encumbered by its location immediately north of active LIRR tracks and west of a railroad power substation; and

WHEREAS, the applicant represents that the railroad presence inhibits as-of-right development due to the decrease in desirability of any potential residential development and limitations on the arrangement of possible development; and

WHEREAS, specifically, the applicant states that the existence of the mapped street and DEP easement on the northern portion of the site shifts any as-of-right development to the south of the site, closer to the LIRR tracks, and the shallow depth and irregular shape of the site does not afford the possibility of providing large rear yards that could minimize the impact of the daily train traffic; and

WHEREAS, the applicant further states that the railroad tracks abutting the site are located at grade, which increases their impact; and

WHEREAS, the applicant submitted a photographic survey of lots abutting the LIRR tracks between the Clearview Expressway and the Cross Island Parkway, which reflects that the vast majority of such lots are located either significantly above or below the grade of the railroad tracks, and that the few lots that are at grade with the railroad tracks contain non-residential uses; and

WHEREAS, the applicant also submitted a noise study as evidence of the excessive noise levels created by the adjacent railroad tracks; and

WHEREAS, the applicant notes that the lots to the west of the site, which were developed with four residential buildings abutting the LIRR tracks, were constructed under the prior R3-2 zoning district and were able to orient the homes away from the LIRR tracks, which the applicant is unable to do because of the location of the mapped but unbuilt 41st Avenue and the DEP easement; and

WHEREAS, the applicant submitted a letter from a real estate broker stating that residential development of the site would not be financially feasible due to the unique site conditions; 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 submitted a feasibility study which analyzed: (1) an as-of-right residential development, consisting of five detached single-family homes; (2) the originally proposed one-story 7,133 sq. ft. warehouse building

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with 12 accessory parking spaces; and (3) a one-story 6,790 sq. ft. commercial office building with 12 accessory parking spaces; and

WHEREAS, the study concluded that the conforming scenario would not result in a reasonable return, but that the Use Group 16 warehouse scenario and Use Group 6 office building scenario would realize a reasonable return; and

WHEREAS, at the Board's request, the applicant revised its plans to reflect the current proposal for a one-story 3,395 sq. ft. commercial office building with 18 accessory parking spaces, which the applicant represents will also realize 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 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 represents that the surrounding area is occupied by a mix of residential, commercial, and transportation-related uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that immediately to the south of the site are LIRR tracks, and south of the tracks are a garage, schools, a cemetery, a post office, and residential buildings; and

WHEREAS, the radius diagram submitted by the applicant also reflects that immediately to the east of the site are a railroad power substation and large railroad yard used for storage by the LIRR, and immediately to the north of the site is a Use Group 16 contractor's establishment; and

WHEREAS, accordingly, the applicant states that the subject site is largely isolated from the existing residential uses in the surrounding area; and

WHEREAS, the applicant further states that the residential uses in the vicinity of the site are a mix of attached and detached homes ranging from two to three stories, and that the bulk of the proposed one-story office building fits within the character of the surrounding neighborhood; and

WHEREAS, at hearing, the Opposition testified that the existing contractor's establishment is not compatible with the surrounding community because: (1) trucks use the residential streets for deliveries during the day and late at night; (2) garbage is picked up from the site very early in the morning or late at night; (3) employees' vehicles block residential driveways; and (4) operation of the site results in increased congestion on the surrounding residential streets; and

WHEREAS, based on these concerns, the Opposition contended that the originally proposed Use Group 16 warehouse building would result in an expansion of the adjacent contractor's establishment business; and

WHEREAS, accordingly, the Board directed the applicant to revise its proposal to eliminate the proposed Use Group 16 warehouse use from the site; and

WHEREAS, in response, the applicant submitted revised

plans reflecting a one-story commercial office building with a floor area of 6,790 sq. ft. and with 12 accessory parking spaces; and

WHEREAS, at hearing, the Board raised concerns that the revised proposal did not provide adequate off-street parking to alleviate the current shortage of off-street parking and that the size of the proposed office building was excessive; and

WHEREAS, in response, the applicant submitted revised plans which reduced the size of the proposed Use Group 6 office building to 3,395 sq. ft. (0.18 FAR), and which increased the number of accessory off-street parking spaces to 18; and

WHEREAS, the applicant states that the proposed building will be occupied by employees of Lund, but that no expansion of the existing business is proposed, and use of the building will be limited to Use Group 6B office use; and

WHEREAS, the applicant further states that the proposed building will provide additional space to alleviate the cramped conditions of the adjacent contractor's establishment and will provide additional parking spaces to alleviate the current shortage of off-street parking; and

WHEREAS, at hearing, the Board directed the applicant to install gates to secure the site after business hours, and to provide landscaping throughout the site and street trees along the 215th Place and 216th Street frontages; and

WHEREAS, in response, the applicant submitted revised plans reflecting the installation of gates with a width of 24 feet at both the 215th Place and 216th Street frontages, which will be locked after business hours, and the addition of landscaping and street trees; 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 site's unique physical conditions; and

WHEREAS, as noted above, the applicant originally proposed to construct a one-story, 7,133 sq. ft. (0.38 FAR) warehouse building (Use Group 16) with 12 accessory parking spaces, to be used by the adjacent contractor's establishment for the relocation of the fire system installation portion of the business; and

WHEREAS, during the course of the hearing process the applicant revised its plans on multiple occasions in response to concerns raised by the Board, ultimately submitting the current proposal for a one-story commercial office building (Use Group 6) with a floor area of 3,395 sq. ft. (0.18 FAR) and 18 accessory parking spaces; and

WHEREAS, accordingly, 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 6 NYCRR, Part 617.2; 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) 09BSA014Q dated November 8, 2010; 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 ZR § 72-21 and grants a variance to permit, on a site within an R3X zoning district, the construction of a one-story commercial office building (Use Group 6) which does not conform to district use regulations, 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 August 18, 2011" – nine (9) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 3,395 sq. ft. (0.18 FAR), and 18 accessory parking spaces, as indicated on the BSA-approved plans;

THAT use of the site shall be limited to Use Group 6B offices associated with the operation of Lund Fire Products;

THAT any change in the operator of the building shall require the prior approval of the Board;

THAT the hours of operation shall be limited to Monday through Friday, from 7:00 a.m. to 7:00 p.m.;

THAT the site shall be secured after business hours;

THAT there shall be no signage permitted on the site;

THAT all exterior lighting shall be directed downward and away from adjacent residential uses;

THAT landscaping shall be provided in accordance with the BSA-approved plans, and evergreen shrubs with a height of four feet shall be provided in each of the planting beds;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT 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 23, 2011.

169-09-BZ

CEQR #09-BSA-109X

APPLICANT – Sheldon Lobel, for Saint Georges Crescent, LLC, owner.

SUBJECT – Application June 8, 2009 – Variance (§72-21) to allow a multi-family residential building, contrary to floor area (§23-145), rear yard (§23-47), height and setback (§23-633), rear setback (§23-663), minimum distance between windows and lot lines (§23-861), and maximum number of dwelling units (§23-22) regulations. R8 zoning district.

PREMISES AFFECTED – 186 Saint George's Crescent, east side of St. George's Crescent, 170' southeast of the corner formed by the intersection of Van Cortland Avenue, and Grand Concourse, Block 3312, Lot 12, Borough of Bronx.

COMMUNITY BOARD #7BX

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

Absent: Commissioner Montanez.....1

THE RESOLUTION –

WHEREAS, decision of the Bronx Borough Commissioner, dated June 30, 2011 acting on Department of Buildings Application No. 210062215, reads in pertinent part:

Proposed floor area exceeds the maximum floor area permitted per ZR 23-145;

Proposed rear yard is less than required per ZR 23-47;

Proposed street wall setback of 10' is less than required per ZR 23-633;

Proposed setback from rear yard line is less than required per ZR 23-663;

Proposed distance between legally required window and side lot line is less than proposed per ZR 23-861; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R8 zoning district, a proposed ten-story residential building with 56 dwelling units, which does not comply with the underlying zoning regulations regarding the maximum permitted floor area ratio ("FAR"), minimum rear yard depth, minimum street wall setback, minimum rear yard line setback, and minimum distance between legally required windows and side lot lines, contrary to ZR §§ 23-145, 23-47, 23-633, 23-663 and 23-861; and

WHEREAS, a public hearing was held on this application on March 29, 2011, after due notice by publication in the *City Record*, with continued hearings on May 17, 2011 and June 21, 2011, and then to decision on August 23, 2011;

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and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 7, Bronx, recommends disapproval of the original iteration of this application, citing concerns with the height of the proposed building, the excessive number of waivers requested by the applicant, the possible negative impact of the proposed building with the future development of the lot to the north of the site, and the quality of life impact of the building on the surrounding neighborhood; and

WHEREAS, Bronx Borough President Ruben Diaz, Jr. recommends disapproval of the original iteration of this application, citing concerns with the impact of the building on the light and air of the surrounding residential buildings, the excessive number of waivers requested by the applicant, and the impact on the future development of the lot to the north of the site; and

WHEREAS, the subject site is an irregular-shaped lot located on the east side of St. George's Crescent, between East 206th Street and East Van Cortland Avenue, within an R8 zoning district; and

WHEREAS, the site has 71 feet of frontage along St. George's Crescent, varying lot depths ranging from 39'-11" to 117'-6", and a total lot area of 7,016 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a ten-story 56-unit residential building with the following non-complying parameters: a floor area of 46,750 sq. ft. (6.66 FAR) (the maximum permitted floor area is 42,236 sq. ft. (6.02 FAR)); no rear yard along a portion of the northern rear lot line (a rear yard with a minimum depth of 30'-0" is required); a front setback of 10'-0" above the base height of 77'-0" (a minimum front setback of 15'-0" is required above the maximum base height of 80'-0"); no setback along the northern rear lot line (a minimum rear yard line setback of 10'-0" is required above the maximum base height of 80'-0"); and a distance of 20'-4" between the windows located along the southeast side of the building and the southeastern lot line (a minimum distance of 30'-0" is required between any legally required window and a rear or side lot line); and

WHEREAS, the applicant initially proposed to construct an 11-story building with 68 dwelling units, 52,897 sq. ft. of floor area (7.54 FAR), a base height of 105'-0", and no front setback, which required additional waivers related to the maximum number of dwelling units and the maximum base height for the building; and

WHEREAS, at the direction of the Board, the applicant submitted revised plans reflecting the current proposal, which reduces the height of the building, eliminates the requested waivers related to the maximum number of dwelling units and the maximum base height, and reduces the degree of non-compliance related to FAR and the front setback; and

WHEREAS, because relief from the bulk requirements of the underlying zoning district is necessary, the applicant requests the subject variance; 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 zoning district regulations: (1) the irregular lot configuration and its shallow depth; (2) the significant elevation differences on the site; and (3) the soil conditions on the site; and

WHEREAS, as to the irregular lot configuration, the applicant states that the site is oddly shaped and extremely shallow in the portion of the lot that is most appropriate for development; and

WHEREAS, specifically, the applicant states that the site has varying lot depths ranging from 39'-11" along the western side lot line, approximately 75'-0" in the center of the property, and 117'-6" along the southeastern side lot line; and

WHEREAS, the applicant further states that the majority of the lot has a depth of less than 70'-0", but the site does not qualify for rear yard relief for shallow lots pursuant to ZR § 23-52 because the site has a maximum depth of 117'-6"; and

WHEREAS, the applicant states that a narrow triangular portion of the site is formed by the intersection of the southern rear lot line and the southeastern side lot line, and results in this portion of the site being practically unusable; and

WHEREAS, the applicant further states that the site's location on the curved portion of St. George's Crescent and the presence of a total of five side and rear lot lines which intersect at irregular angles further contributes to the irregular shape of the lot; and

WHEREAS, specifically, the applicant states that the 30'-0" rear yard required along both the northern rear lot line and the southern rear lot line reduces the lot's buildable area by over one-half, as a building footprint of only 3,160 sq. ft. could be constructed out of the total lot area of 7,016 sq. ft. due to the application of the rear yard requirements to the lot's unusual configuration; and

WHEREAS, the applicant states that the required front setback and rear yard setback would necessitate the placement of the circulation core in the middle of the building's floor plate to enable these elements to access all floors; and

WHEREAS, the applicant represents that the placement of the core in the center of such a small and irregularly shaped floor plate creates oddly shaped and inefficient apartments; and

WHEREAS, the applicant states that due to the constraints of the irregular lot configuration, an as-of-right building could only have an FAR of 4.22, far less than the maximum permitted FAR of 6.02; and

WHEREAS, therefore, the applicant states that the application of the rear yard and setback limitations to the lot's irregular configuration prevents the utilization of all permissible floor area and creates floor layouts that are inefficient and poorly arranged; and

WHEREAS, as to the site's steep slope, the applicant states that the site is also burdened by significant elevation differences between the front portion of the lot along St. George's Crescent and the rear of the property; and

WHEREAS, the applicant submitted a survey which reflects that there are significant elevation differences throughout the site, including an elevation difference of 24'-11" in the center of the property, which is the portion of the site

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most suited to development based on the site's irregular lot configuration; and

WHEREAS, the applicant represents that development of the site is further complicated by the presence of sandy soils throughout the lot; and

WHEREAS, specifically, the applicant submitted a geotechnical report stating that two soil borings were taken, which reflect that the soil on the site consists mostly of sandy soils that are underlain by weak boulders and rock; and

WHEREAS, the geotechnical report indicates that the soil at the site has an 8-65 classification with a load bearing capacity of two to four tons per sq. ft., which will not support the weight of either the as-of-right or proposed buildings; and

WHEREAS, the applicant states that the poor load bearing capacity of the site's soils combined with its steep slope (and sloping bedrock) require the excavation of approximately 5,087 bank cubic yards of soil and 1,272 bank cubic yards of rock from the site to reach competent bedrock; and

WHEREAS, the applicant further states that approximately 7,631 linear cubic yards of soil and 1,908 linear cubic yards of rock must be hauled from the site, and that all soil must be transported to an off-site disposal location due to the site's small size; any backfill material will have to be purchased from other sites since the transporting and handling costs of bringing the excavated soil back to this site are too high; and

WHEREAS, the applicant states that extensive concrete foundation columns are required to support any building on the site, due to the sloping conditions; and

WHEREAS, the applicant submitted a cost analysis which indicates that the total increased development costs associated with the steep slope and poor soil conditions on the site are an estimated \$910,400 for an as-of-right building and \$941,990 for the proposed building; and

WHEREAS, the applicant represents that the waivers are required to accommodate sufficient floor area to overcome the premium construction costs while maintaining a building with a bulk that is compatible with neighborhood character; and

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

WHEREAS, the applicant submitted a feasibility study which analyzed the following scenarios: (1) an 11-story (4.22 FAR) as-of-right residential building, without special costs; (2) an 11-story (4.22 FAR) as-of-right residential building, with special costs; (3) a nine-story (6.02 FAR) lesser variance scenario that does not require an FAR waiver; and (4) the proposed ten-story (6.66 FAR) residential building; and

WHEREAS, the study concluded that only the proposed building would generate a reasonable return; and

WHEREAS, based upon its review of the applicant's financial analyses, the Board has determined that because of the subject site'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 surrounding area is characterized by residential buildings of varying heights; and

WHEREAS, specifically, the applicant submitted a 400-ft. radius diagram reflecting that the surrounding area is improved with a number of six- and seven-story residential buildings, most of which are significantly underbuilt; and

WHEREAS, the radius diagram submitted by the applicant also reflects that a 12-story residential building is located to the west of the site on Grand Concourse; and

WHEREAS, the applicant notes that the base height and total height of the proposed building comply with the underlying R8 district regulations; and

WHEREAS, the applicant submitted a survey that identified the height, floor area and FAR of buildings located within the vicinity of the site, which shows that most of the buildings in the surrounding area are underbuilt and while most have a smaller FAR than what is proposed, the existing floor area of the majority of the buildings surveyed exceeds the floor area for the proposed building; and

WHEREAS, the applicant notes that the additional floor area requested for the proposed building only exceeds the permitted maximum floor area and FAR by ten percent; and

WHEREAS, the applicant states that the requested rear yard waiver will not alter the essential character of the neighborhood because the other residential buildings on the subject block do not provide significant rear yards on their sites either; and

WHEREAS, the applicant further states that the amount of open space provided by the proposed building (31 percent of the lot area) is similar to or exceeds the open space provided for other residential buildings on the subject block; and

WHEREAS, specifically, the applicant states that a 30'-0" by 40'-0" courtyard is provided in the northeast corner of the lot; and

WHEREAS, the applicant notes that the portion of the building built to the northern rear lot line abuts the undeveloped portion of the gasoline service station property located to the north of the site; and

WHEREAS, the applicant represents that this adjoining lot will likely remain undeveloped due to its history of use as a gasoline service station and because a Metropolitan Transit Authority subway tunnel runs directly beneath it; and

WHEREAS, in response to the concerns raised by the Community Board and Borough President regarding the height of the building, its impact on the light and air of adjacent residential buildings, and the excessive number or waivers requested for the originally proposed building, the Board notes that the applicant submitted revised plans which reduced the height of the building to such that it complies with R8 district requirements, reduced the floor area of the building by over 6,000 sq. ft., provided a front setback of ten feet, and reduced the number of dwelling units to 56, thereby eliminating the waiver related to the maximum number of dwelling units; and

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WHEREAS, as to the Community Board and Borough President's concerns regarding the impact of the proposed building on the future development of the lot to the north of the site, the Board notes that the size and configuration of the proposed building was determined to be necessary to address the unique physical conditions on the site that create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, at hearing, the Board questioned whether the height of the proposed building could be further reduced by reducing the 10'-6" floor-to-floor heights on the proposed building's eighth and tenth floors; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that the increased floor-to-floor heights are necessary to accommodate the required offsets for the building's electrical, mechanical, plumbing and roof drainage systems due to the difference in apartment layouts created by the ninth floor setback; 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, 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, but is rather a function of the unique physical characteristics of the site; and

WHEREAS, as noted above, the applicant initially proposed to construct an 11-story building with 68 dwelling units, 52,897 sq. ft. of floor area (7.54 FAR), a base height of 105'-0", and no front setback, which required additional waivers related to the maximum number of dwelling units and the maximum base height for the building; and

WHEREAS, at the direction of the Board, the applicant submitted revised plans reflecting the current proposal, which reduces the height of the building, eliminates the requested waivers related to the maximum number of dwelling units and the maximum base height, and reduces the degree of non-compliance related to FAR and the front setback; and

WHEREAS, accordingly, the Board finds that the current 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 617.2; 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) 09BSA109X, dated May 6, 2009; 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) reviewed the project for potential archaeological impacts and requested that an archaeological documentary study be submitted for review and approval; and

WHEREAS, LPC accepted the October 2009 archaeological documentary study and concurs with its recommendation to conduct field testing on the site; and

WHEREAS, a Restrictive Declaration was executed on August 2, 2011 and filed for recording on August 11, 2011; 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 R8 zoning district, a proposed ten-story residential building with 56 dwelling units, which does not comply with the underlying zoning regulations regarding the maximum permitted FAR, minimum rear yard depth, minimum street wall setback, minimum rear yard line setback, and minimum distance between legally required windows and side lot lines, contrary to ZR §§ 23-145, 23-47, 23-633, 23-663 and 23-861; *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 10, 2011"- seventeen (17) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 46,750 sq. ft. (6.66 FAR); a base height of 77'-0"; a total height of 96'-10"; no rear yard along a portion of the northern rear lot line; a minimum front setback of 10'-0" above the base height of 77'-0"; no setback along the northern rear lot line; a minimum distance of 20'-4" between the windows located along the southeast side of the building and the southeastern lot line; and 56 dwelling units, as illustrated on the BSA-approved plans;

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor shall obtain from LPC a Notice to Proceed; and

THAT prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain from LPC a Notice of Satisfaction;

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;

THAT substantial construction be completed in accordance with ZR § 72-23; and

THAT the Department of Buildings must ensure compliance 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 23, 2011.

128-10-BZ

CEQR #11-BSA-004Q

APPLICANT – Eric Palatnik, P.C., for Merhay Yagaduyev, owner; Jewish Center of Kew Gardens Hill Inc., lessee.

SUBJECT – Application July 13, 2010 – Variance (§72-21) to permit proposed synagogue, religious school and Rabbi's residence (*Jewish Center of Kew Gardens*) contrary to floor area and lot coverage (§24-11), height, setback and sky exposure plane (§24-521), front yard (§24-34), side yards (§24-35), side setback (§24-551), and minimum distance between windows (§24-672 and §23-863). R4 zoning district.

PREMISES AFFECTED – 147-58 77th Road, 150th Street and 77th Road, Block 6688, Lot 31, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Trevis Savage.

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

Absent: Commissioner Montanez.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated March 9, 2011, acting on Department of Buildings Application No. 420161247 reads, in pertinent part:

Proposed lot coverage is contrary to ZR 24-11.

Proposed three story building is contrary to ZR 24-521 and does not comply with total height, setback and sky exposure plane pursuant to ZR 24-521.

Proposed front yard is contrary to ZR 24-34.

Proposed side yards are contrary to ZR 24-35.

Non-compliance with the required side setback as per ZR 24-551.

Parking does not comply with 25-31 ZR.

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R4 zoning district, the construction of a three-story building to be occupied by a synagogue (Use Group 4), religious school, and Rabbi's apartment which does not comply with the underlying zoning

district regulations for lot coverage, height and setback, front yard, side yards, side setback, and parking for community facilities, contrary to ZR §§ 24-11, 24-521, 24-34 and 24-35, 24-551 and 25-31; and

WHEREAS, a public hearing was held on this application on December 14, 2010, after due notice by publication in *The City Record*, with continued hearings on March 29, 2011, June 14, 2011 and July 26, 2010, and then to decision on August 23, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Queens, recommends approval of the application, with the condition that the congregation posts signage prohibiting parking in the rear of the building that would block access to the community driveway by nearby residents; and

WHEREAS, City Council Member James F. Gennaro recommends approval of this application; and

WHEREAS, a representative of the Congress of the Bukharian Jews of the USA and Canada provided written testimony in support of this application; and

WHEREAS, this application is being brought on behalf of the Jewish Center of Kew Gardens Hills, Inc. (the "Jewish Center"), a non-profit religious entity; and

WHEREAS, the subject site is located on the southwest corner of 77th Road and 150th Street, within an R4 zoning district; and

WHEREAS, the subject lot has a width of 40 feet, a depth of 100 feet, and a lot area of 4,000 sq. ft.; and

WHEREAS, the subject site is currently occupied by a two-story residential building, which is proposed to be demolished; and

WHEREAS, the applicant proposes to construct a three-story building with the following parameters: a floor area of 7,998 sq. ft. (1.99 FAR); lot coverage of 71 percent (the maximum permitted lot coverage is 60 percent); a total height of 40'-6" (the maximum permitted total height is 35'-0"); a front yard with a depth of 10'-0" along the northern lot line and no front yard along the eastern lot line (a front yard with a minimum depth of 15'-0" is required); a side yard with a width of 8'-0" along the southern lot line and a side yard with a width of 5'-0" along the western lot line (two side yards with minimum depths of 8'-0" each are required); encroachment into the sky exposure plane; and no parking spaces (a minimum of 12 parking spaces are required); and

WHEREAS, the applicant originally proposed to construct a three-story building with a floor area of 9,238 sq. ft. (2.30 FAR) and a total height of 44'-0"; the original proposal would have required an additional waiver for floor area, which exceeded the maximum permitted floor area of 8,000 sq. ft. (2.0 FAR); and

WHEREAS, during the course of the hearing process, the applicant submitted a revised proposal which reduced the floor

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area of the building to 8,838 sq. ft. (2.20 FAR) and reduced the height of the building to 40'-6"; and

WHEREAS, in response to further concerns raised by the Board regarding the size of the proposed building, the applicant submitted revised plans reflecting the current proposal with a floor area of 7,998 sq. ft. (1.99 FAR), thereby eliminating the need for a floor area waiver; and

WHEREAS, the proposal provides for the following uses: (1) a multipurpose area and lobby at the cellar level; (2) a worship area and lobby at the first floor; (3) a worship balcony at the first floor mezzanine; (4) classrooms and offices at the second floor; and (5) a Rabbi's apartment at the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the congregation of approximately 166 families and allow for future growth; (2) to provide classroom space for religious study; and (3) to provide a residence for the synagogue's Rabbi; and

WHEREAS, the applicant states that the congregation currently has a membership of 166 families, which includes approximately 300 adults and approximately 300 children; and

WHEREAS, the applicant represents that it anticipates approximately 75 congregants will attend each weekday prayer session, and approximately 250 congregants will attend services on the Sabbath and holidays; and

WHEREAS, the applicant states that the congregation currently leases space at three separate locations in Queens to accommodate all of its members: (1) 144-11 77th Avenue, which can accommodate 75 people; (2) 147-18 77th Road, which can accommodate 15 people; and (3) 78-15 Parsons Boulevard, which can accommodate 75 people; and

WHEREAS, the applicant represents that, due to the continuing growth of the congregation, even the simultaneous operation of these three locations is insufficient to accommodate the 166 families that currently make up the congregation; and

WHEREAS, the applicant states that the congregation's membership grows by approximately five percent each year, and therefore the requested waivers are necessary to construct a building capable of accommodating the current size of the congregation while allowing for future growth; and

WHEREAS, specifically, the applicant states that the proposed building is capable of accommodating approximately 238 congregants in the worship space, while allowing for sufficient space to house the religious school, Rabbi's apartment, and administrative functions; and

WHEREAS, the applicant submitted as-of-right plans which reflected that a complying building would result in a significantly smaller worship space capable of accommodating only 64 congregants, require the main entrance to be located at the basement level, severely constrain the Rabbi's apartment and administrative functions, and result in the elimination of the religious school; and

WHEREAS, the applicant also submitted plans for a lesser variance alternative that would only require a front yard

waiver, which would result in a worship area capable of accommodating only 212 congregants; and

WHEREAS, the applicant represents that the lesser variance alternative is not capable of satisfying the Jewish Center's programmatic needs because the proposed building, with a worship space that accommodates 238 congregants, provides the minimum amount of space necessary to accommodate the growing congregation which currently totals approximately 300 adult individuals, and that eliminating 26 additional seats would result in a worship space that is too small to accommodate the current congregation, let alone allowing for its future growth; and

WHEREAS, the applicant states that the associated religious school will conduct three different programs of after school classes on Mondays through Thursdays between the hours of 3:00 p.m. and 6:30 p.m.; and

WHEREAS, the applicant further states that the space within the proposed building that is dedicated to the religious school is necessary to accommodate the approximately 300 children congregants who will be attending the programs throughout the course of the week; and

WHEREAS, the applicant represents that the third floor Rabbi's apartment is critical to the Jewish Center's program because it allows the Rabbi to be available to offer religious guidance to members of the congregation at whatever time it may be needed; and

WHEREAS, the Board acknowledges that the synagogue, as a religious institution, is entitled to significant deference under the 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, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Jewish Center 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 Jewish Center 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 that the proposed use is permitted in the subject zoning district; and

WHEREAS, as to bulk, the applicant states that there are a number of community facility uses that are larger than the

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proposed building located on the surrounding blocks; and

WHEREAS, in support of this statement, the applicant submitted a map and photos depicting six community facility buildings in the vicinity of the subject site which are similar in size or larger than the proposed building; and

WHEREAS, the Board notes that two of the community facility buildings in the applicant's study, located at 147-06 76th Avenue and 76-01 150th Street, are located within three blocks of the subject site and are both significantly larger than the proposed building; and

WHEREAS, as to traffic impact and parking, the applicant notes that the traffic impact would be minimal as a majority of congregants live nearby and would walk to services, specifically to worship services on Fridays and Saturdays; and

WHEREAS, the applicant represents that this proposal would meet the requirements for a parking waiver at the City Planning Commission, pursuant to ZR § 25-35 – Waiver for Locally Oriented Houses of Worship, but for the fact that 12 parking spaces are required at the site and a maximum of ten spaces can be waived in the subject R4 zoning district under ZR § 25-35; and

WHEREAS, in support of this assertion, the applicant submitted evidence reflecting that at least 75 percent of the congregants live within three-quarters of a mile of the subject site; and

WHEREAS, accordingly, 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, 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 Jewish Center 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, as noted above, the applicant originally proposed to construct a three-story building with a floor area of 9,238 sq. ft. (2.30 FAR) and a total height of 44'-0"; the original proposal would have required an additional waiver for floor area, which exceeded the maximum permitted floor area of 8,000 sq. ft. (2.0 FAR); and

WHEREAS, at the direction of the Board, the applicant revised its plans to reduce the size of the building on multiple occasions, ultimately submitting the current proposal with a floor area of 7,998 sq. ft. (1.99 FAR), thereby eliminating the need for a floor area waiver; and

WHEREAS, the applicant also submitted plans for a lesser variance scenario which was unable to meet the programmatic needs of the Jewish Center; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Jewish Center 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 6 NYCRR Part 617.2; 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. 11BSA004Q, dated November 16, 2010; 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 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, the construction of a three-story building to be occupied by a synagogue (Use Group 4), religious school, and Rabbi's apartment which does not comply with the underlying zoning district regulations for lot coverage, height and setback, front yard, side yards, side setback, and parking for community facilities, contrary to ZR §§ 24-11, 24-521, 24-34 and 24-35, 24-551 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 May 3, 2011" – (11) sheets, and *on further condition*:

THAT the building parameters shall be: a floor area of 7,998 sq. ft. (1.99 FAR); lot coverage of 71 percent; a total height of 40'-6"; a front yard with a depth of 10'-0" along the northern lot line and no front yard along the eastern lot line; a side yard with a width of 8'-0" along the southern lot line and a side yard with a width of 5'-0" along the western lot line; and no parking spaces, as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4), an accessory Rabbi's apartment, and accessory

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religious classes;

THAT no commercial catering shall take place onsite;

THAT signage shall be posted which prohibits parking in the rear of the building that would block nearby residents' access to the community driveway;

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 construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance 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 23, 2011.

27-11-BZ

CEQR #11-BSA-070M

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 88 Franklin Street Group LLC, owner; Acqua Ancien Bath New York, LLC, lessee.

SUBJECT – Application March 22, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Acqua Ancien Bath*). C6-2A zoning district.

PREMISES AFFECTED – 86-88 Franklin Street, east of intersection of Church Street and Franklin Street, Block 175, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Trevis Savage.

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

Absent: Commissioner Montanez.....1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated May 27, 2011, acting on Department of Buildings Application No. 120551385, reads in pertinent part:

“ZR 32-10. Physical culture establishment is not permitted in this district as of right. Secure special permit pursuant to ZR 73-36 from Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C6-2A zoning district within the Tribeca East Historic District, the establishment of a physical culture establishment (“PCE”) at

the sub-cellar, cellar, first floor and mezzanine of a six-story mixed-use commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 21, 2011 after due notice by publication in *The City Record*, with a continued hearing on July 26, 2011, and then to decision on August 23, 2011; and

WHEREAS, Community Board 1, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Franklin Street, between Church Street and Broadway, in a C6-2A zoning district within the Tribeca East Historic District; and

WHEREAS, the site is occupied by a six-story mixed-use commercial/residential building; and

WHEREAS, the PCE has a total of 5,981 sq. ft. of floor area on the first floor and mezzanine, with an additional 4,395 sq. ft. of floor space located in the cellar and sub-cellar; and

WHEREAS, the PCE will be operated as Acqua Ancien Bath; and

WHEREAS, the proposed hours of operation are 7:00 a.m. to 11:00 p.m., seven days per week; and

WHEREAS, the applicant represents that the services at the PCE will include facilities for the practice of massage by New York State licensed masseurs and masseuses; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission (“LPC”) approving work associated with the proposed PCE, dated August 8, 2011; and

WHEREAS, the Board notes that the proposal does not include any signage and the Board’s approval does not include any signage; and

WHEREAS, the applicant states that if signage is planned in the future, it will secure an additional approval from the LPC, as required; 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 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 617.2; 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, CEQR No.11BSA070M, dated June 10, 2011; and

WHEREAS, the EAS documents 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, 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 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, on a site located in a C6-2A zoning district within the Tribeca East Historic District, the establishment of a physical culture establishment at the sub-cellar, cellar, first floor and mezzanine of a six-story mixed-use commercial/residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 14, 2011"- Seven (9) sheets; and *on further condition*:

THAT the term of this grant shall expire on August 23, 2021;

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 all massages shall be performed by New York State licensed massage therapists;

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

THAT any changes to the BSA-approved plans, including the installation of signage, may be subject to additional review and approval by the Landmarks Preservation Commission;

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);

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 23, 2011.

57-11-BZ

CEQR #11-BSA-090M

APPLICANT – Sheldon Lobel, P.C., for 208 West 125th Street Associates, LLC, owner; 208 West 125th Street Fitness Group, LLC, lessee.

SUBJECT – Application May 2, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C6-3/C4-4D.

PREMISES AFFECTED – 208 West 125th Street and West 124th Street, west of Adam Clayton Powell Boulevard, Block 1930, Lot 37, Borough of Manhattan.

COMMUNITY BOARD #10M

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

Absent: Commissioner Montanez.....1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated March 30, 2011, acting on Department of Buildings Application No. 120629356, reads in pertinent part:

“Proposed change of use to a Physical Culture Establishment which is contrary to ZR 32-10 must be referred to the BSA for approval pursuant to ZR Section 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located partially in a C4-3 zoning district and partially in a C4-4D zoning district within the 125th Street Special District, the operation of a physical culture establishment (PCE) at the cellar and portions of the first and second floor of a two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 19, 2011, after due notice by publication in *The City Record*, and then to decision on August 23, 2011; and

WHEREAS, the subject site is a through lot with frontage on both West 125th Street and West 124th Street, approximately 62 feet west of Adam Clayton Powell Boulevard, partially in a C4-3 zoning district and partially in a C4-4D zoning district within the 125th Street Special District; and

WHEREAS, the site is occupied by a two-story

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commercial building; and

WHEREAS, the PCE will occupy 19,431 sq. ft. of floor area on the first and second floor, with an additional 20,504 sq. ft. of floor space located at the cellar level; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the proposed hours of operation are 24 hours per day, seven days per week; and

WHEREAS, the applicant represents that the services at the PCE include facilities for classes, instruction and programs for physical improvement, body building, weight reduction and aerobics; 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 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 617.2; 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.11BSA090M, dated May 2, 2011; and

WHEREAS, the EAS documents 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, 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 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, on a site located partially in a C4-3 zoning district and partially in a C4-4D zoning district within the 125th Street Special District, the operation of a physical culture establishment at the cellar and portions of the first and second floor of a two-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 14, 2011" – (5) sheets; and *on further condition*:

THAT the term of this grant shall expire on August 23, 2021;

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 above conditions shall appear on the Certificate of Occupancy;

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);

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 23, 2011.

119-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Samson and Rivka Molinsky, owners.

SUBJECT – Application June 28, 2010 – Variance (§72-21) to allow legalization of an enlargement of a residential building, contrary to front yard (§23-45) and height (§23-631) regulations. R2X zoning district.

PREMISES AFFECTED – 787 Cornaga Avenue, southwest corner of Cornaga Avenue and Mador Court, Block 15571, Lot 133, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to September 20, 2011, at 1:30 P.M., for decision, hearing closed.

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196-10-BZ

APPLICANT – James Chin & Associates, LLC, for Turtle Bay Inn, LLC., owner.

SUBJECT – Application October 25, 2010 – Variance (§72-21) to allow ground floor commercial use in an existing residential building, contrary to use regulations (§22-00). R8B zoning district.

PREMISES AFFECTED – 234 East 53rd Street, mid-block parcel located on the south side of 53rd Street, between 2nd and 3rd Avenue, Block 1326, Lot 34, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Chris Wright, James Chin and Robert Pauls.

ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for continued hearing.

227-10-BZ

APPLICANT – Eric Palatnik, P.C., for Power Test Realty Company Limited Partnership, owner.

SUBJECT – Application December 14, 2010 – Reinstatement (§11-411) of a previously approved variance permitting the operation of an automotive service station (UG 16B) (*Getty*) which expired on October 11, 2000; Amendment to legalize fuel dispensing islands; Extension of Time to obtain a certificate of occupancy which expired on November 17, 1993; Waiver of the rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 204-12 Northern Boulevard, Northern Boulevard and 204th Street. Block 7301, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to September 20, 2011, at 1:30 P.M., for decision, hearing closed.

235-10-BZ

APPLICANT – Paul J. Proulux, Esq., c/o Cozen O’Connor, for Avenue K Corporation, owner; TD Bank c/o Facilities Department, lessees.

SUBJECT – Application December 30, 2010 – Variance (§72-21) to allow a commercial use in a residential zone, contrary to use regulations (§22-00). R3-2 zoning district.

PREMISES AFFECTED – 2363 Ralph Avenue, corner of Ralph Avenue and Avenue K, Block 8339, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Paul J. Proulux, Jack Freeman and Jack

Rainey.

ACTION OF THE BOARD – Laid over to September 27, 2011, at 1:30 P.M., for continued hearing.

1-11-BZ

APPLICANT – Martyn & Don Weston Architects, for RAC LLC Realty, owner; Sahadi Importing Company, lessee.

SUBJECT – Application January 3, 2011 – Variance (§72-21) to allow a ground floor enlargement to a pre-existing non complying commercial building, contrary to floor area regulations (§53-31). C2-3/R6 zoning district.

PREMISES AFFECTED – 189-191 Atlantic Avenue, north side of Atlantic Avenue, 240’ east of Clinton Street, Block 276, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Don Weston and Joe Totesco.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to September 20, 2011, at 1:30 P.M., for decision, hearing closed.

2-11-BZ

APPLICANT – Cozen O’Connor, for 117 Seventh Avenue South Property Company, LP, owner.

SUBJECT – Application January 4, 2011 – Variance (§72-21) to allow for a residential and community facility enlargement to an existing commercial building, contrary to setback (§33-432) and open space regulations (§23-14). C4-5 zoning district.

PREMISES AFFECTED – 117 Seventh Avenue South, southeast corner of Seventh Avenue South and West 10th Street, Block 610, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Paul J. Prouly, Howard Hornstein and Jack Freeman.

ACTION OF THE BOARD – Laid over to October 18, 2011, at 1:30 P.M., for continued hearing.

17-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. David Mizrahi, owners.

SUBJECT – Application February 23, 2011 – Special Permit (§73-622) for the enlargement of an existing two family residence, to be converted to a single family residence, contrary to floor area, lot coverage and open space (§23-141(b)) and rear yard (§23-47) regulations. R4/OP zoning district.

PREMISES AFFECTED – 2255 East 2nd Street, East side of East 2nd Street, approximately 145 feet south of Gravesend

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Neck Road. Block 7154, Lots 71 & 72, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Nora Martins.

ACTION OF THE BOARD – Laid over to September 27, 2011, at 1:30 P.M., for continued hearing.

18-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for ZTI Corporation, owner.

SUBJECT – Application February 24, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1025 East 22nd Street, between Avenue I and Avenue J, Block 7586, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to September 20, 2011, at 1:30 P.M., for continued hearing.

21-11-BZ

APPLICANT – Eric Palatnik, P.C., for 1810-12 Voorhies Avenue, LLC, owner.

SUBJECT – Application February 28, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory or diagnostic treatment facility. C1-2/R4 zoning district.

PREMISES AFFECTED – 1810 Voorhies Avenue, south side of Voorhies Avenue, between East 19th Street and Sheepshead Bay Road, Block 8772, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Laid over to September 27, 2011, at 1:30 P.M., for adjourned hearing.

31-11-BZ

APPLICANT – Goldman Harris LLC, for Bronx Sheperds Restoration Corporation, owner.

SUBJECT – Application March 28, 2011 – Variance (§72-21) to allow a mixed use community facility and commercial building, contrary to use (§32-12), floor area (§33-123), rear yard (§33-292), and height and setback (§33-432) regulations. C8-3 zoning district.

PREMISES AFFECTED – 1665 Jerome Avenue, west side of Jerome Avenue between Featherbed Lane and Clifford Lane, Block 2861, Lot 35, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Nadia Alexis.

ACTION OF THE BOARD – Laid over to September 27, 2011, at 1:30 P.M., for adjourned hearing.

56-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Adam Cohen, owner.

SUBJECT – Application April 25, 2011 – Variance (§72-21) for the enlargement of an existing one-family semi-detached residence, contrary to use (§ 22-11) and (§52-22); side yard (§23-461(a)) and floor area (§ 23-141). R2X zoning district.

PREMISES AFFECTED – 957 East 7th Street, East side of East 7th Street, approximately midblock between Avenue and Avenue I. Block 6510, Lot 68. Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Nora Martins.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to September 27, 2011, at 1:30 P.M., for decision, hearing closed.

60-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Zvi Turk and Miriam Turk, owners.

SUBJECT – Application May 5, 2011 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1214 East 29th Street, west side of East 29th Street and Avenue L, Block 7646, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Nora Martins.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown and Commissioner Hinkson...4

Negative:.....0

Absent: Commissioner Montanez.....1

ACTION OF THE BOARD – Laid over to September 27, 2011, at 1:30 P.M., for decision, hearing closed.

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64-11-BZ

APPLICANT – Rampulla Associates Architects, for 3232 49th Realty, LLC, owner; K & G Fitness Group, LLC, lessee.

SUBJECT – Application May 12, 2011 – Special Permit (§73-36) to allow the operation of a physical cultural establishment (*Retro Fitness*). C8-1 zoning district.

PREMISES AFFECTED – 32-28 49th Street, between Northern Boulevard and New Town Road, Block 734, Lot 47, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Phillip L. Rampulla.

ACTION OF THE BOARD – Laid over to September 13, 2011, at 1:30 P.M., for continued hearing.

72-11-BZ

APPLICANT – Walter t. Gorman, P.E., for Tannor and Rothafel Partnership, owner; Lukoil (Getty Service Station), lessee.

SUBJECT – Application May 24, 2011 – Re-Instatement (§11-411) of a previously approved variance permitting the operation of an automotive service station (UG 16B) which expired on October 8, 1994. R3-2 zoning district.

PREMISES AFFECTED - 101-06 Astoria Boulevard, south east corner of 101st Street. Block 1688, Lot 30. Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Laid over to September 20, 2011, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

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Tuesday, September 13, 2011**

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Affecting Calendar Number:

19-11-BZ	1271 East 24 th Street, Brooklyn
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DOCKET

New Case Filed Up to September 13, 2011

123-11-BZ

350 Amsterdam Avenue, west side Amsterdam Avenue between West 76th Street and West 77th Street., Block 1168, Lot(s) 1001/7501, Borough of **Manhattan, Community Board: 07**. Special Permit (ZR §73-36) to allow the operation of a physical culture establishment (SoulCycle). C2-7A & C4-6A zoning districts. C2-7A & C4-6A district.

124-11-BZ

2488 Grand Concourse, located on the east side of Grand Concourse between East 188th Street and Fordham Road., Block 3153, Lot(s) 9, Borough of **Bronx, Community Board: 05**. C4-4 district.

125-11-A

514-516 East 6th Street, south side of East 6th Street, between Avenue A and Avenue B., Block 401, Lot(s) 17, 18, Borough of **Manhattan, Community Board: 03**. Appeal challenging Department of Buildings determination denying the reinstatement of permits that allowed the enlargement to the existing building . R7B zoning district . R7B district.

126-11-BZ

87-89 Chambers Street, midblock bounded by Chambers Street, Church Street, Reade Street and Broadway., Block 149, Lot(s) 7, Borough of **Manhattan, Community Board: 01**. Variance (ZR 72-21) to allow for the construction of a new mixed use building contrary to lot coverage and rear yard equivalent requirements of Section 23-145 and 23-532, respectively, and the accessory off-street parking regulations of Z.R. 13-00. C6-3A Tribeca district.

127-11-BZ

11-38 Foam Place, east side of Foam Place between Central Avenue and Beach 18th Street., Block 15545, Lot(s) 19, Borough of **Queens, Community Board: 14**. Variance (ZR 72-21) to allow for the construction of a new residential building, contrary to rear yard required pursuant to ZR 23-47, and a side yard at grade adjacent to a zoning district boundary required pursuant to ZR 34-233. C4-2 district.

128-11-BZ

1860 East 23rd Street, west side of East 23rd Street, between Avenue R and Avenue S., Block 6828, Lot(s) 31, Borough of **Brooklyn, Community Board: 15**. Application filed pursuant to Section 73-622 of the Zoning Resolution, as amended, to request a special permit to allow the enlargement of a single family residence located in a residential (R3-2) zoning district. R3-2 district.

129-11-BZ

465 Carroll Street, north side of Carroll Street, 100' from the corner of 3rd Avenue., Block 447, Lot(s) 43, Borough of **Brooklyn, Community Board: 06**. Variance (ZR 72-21) to allow for the construction of a residential building contrary to use regulations. M1-2 zoning district M1-2 district.

130-11-BZ

3600 Bedford Avenue, west side of Bedford Avenue, between Avenue N and Avenue O., Block 7678, Lot(s) 90, Borough of **Brooklyn, Community Board: 14**. Application filed pursuant to Section 73-622 of the Zoning Resolution, as amended, to request a special permit to allow the enlargement of a single family residence in a residential (R2) zoning district. R2 district.

131-11-A

464 Arthur Kill Road, 249.79' west of intersection of Arthur Kill Road and Giffords Lane., Block 5450, Lot(s) 35, Borough of **Staten Island, Community Board: 03**. Proposed construction of three two story dwellings with parking located within the bed of a mapped street Pemberton Avenue contrary to General City Law Section 35 . R3-1 Zoning District . Companion cases 132-11-A & 133-11-A R3-1 district.

132-11-A

468 Arthur Kill Road, west of intersection of Arthur Kill Road and Giffords Lane, Block 5450, Lot(s) 36, Borough of **Staten Island, Community Board: 03**. Proposed construction of three two story dwellings with parking located within the bed of a mapped street Pemberton Avenue contrary to General City Law Section 35 . R3-1 Zoning District . Companion cases 131-11-A & 133-11-A R3-1 district.

DOCKET

133-11-A

120 Pemberton Avenue, 249.79' west of intersection of Arthur Kill Road and Giffords Lane., Block 5450, Lot(s) 37, Borough of **Staten Island, Community Board: 03**. Proposed construction of three two story dwellings with parking located within the bed of a mapped street Pemberton Avenue contrary to General City Law Section 35 . R3-1 Zoning District . Companion cases 131-11-A & 132-11-A R3-1 district.

134-11-BZ

335 Madison Avenue, corner of Madison Avenue and East 43rd Street., Block 1278, Lot(s) 20, Borough of **Manhattan, Community Board: 05**. Special Permit (ZR §73-36) to allow the operation of a physical culture establishment (Spa Castle). C5-3 zoning district. C5-3 district.

135-11-BZ

2080 Clove Road, southwest corner of Clove Road and Giles Place., Block 3162, Lot(s) 22, Borough of **Staten Island, Community Board: 02**. Variance (ZR 72-21) to allow for the construction of a commercial use UG6, contrary to use regulations, ZR 22-00. R3-2 district.

136-11-A

2080 Clove Road, southwest corner of Clove Road and Giles Place., Block 3162, Lot(s) 22, Borough of **Staten Island, Community Board: 02**. Application to permit proposed use group 6 development which is located within the mapped but not built portion of a mapped street (Clove Road and Sheridan Avenue) which is contrary to General City Law Section 35. R3-2 Zoning District. Companion application filed under 135-11-BZ for a variance under 72-21 . R3-2 district.

137-11-BZ

455 Carroll Street, mid-block on the north side of Carroll Street between Nevins Street and Third Avenue., Block 447, Lot(s) 47, Borough of **Brooklyn, Community Board: 06**. Variance (ZR 72-21) to allow for the conversion of the second floor and second floor mezzanine of the building from manufacturing and commercial uses to residential use, contrary to ZR 42-10. M1-2 district.

138-11-A

64-01 Woodside Avenue, north side of Woodside Avenue, between 64th and 65th Street., Block 1296, Lot(s) 75, Borough of **Queens, Community Board: 02**. Appeal seeking a common law vested right to complete construction under the prior R6 zoning district regulations . R5D zoning district. R5D district.

139-11-A

63 Hillside Avenue, south side Hillside Avenue, east of mapped Beach 178th Street., Block 16340, Lot(s) 50, Borough of **Queens, Community Board: 14**. Proposed reconstruction and enlargement to the existing single dwelling partially in the bed of the mapped street 12th Avenue is contrary to Article 3, Section 35 of the General City Law. R4 zoning district . R4 district.

140-11-A

69-17 38th Avenue, north side of 38th Avenue, between the BQE and 69th Street., Block 1282, Lot(s) 64, Borough of **Queens, Community Board: 02**. Appeal seeking a common law vested right to complete construction under the prior R6 zoning district regulations . R5D zoning district. R5D district.

141-11-A

69-19 38th Avenue, north side of 38th Avenue, between the BQE and 69th Street., Block 1282, Lot(s) 65, Borough of **Queens, Community Board: 02**. Appeal seeking a common law vested right to complete construction under the prior R6 zoning district regulations. R5D zoning district. R5D district.

142-11-BZ

207 West 75th Street, north side of West 75th Street, between Broadway and Amsterdam Avenue., Block 1167, Lot(s) 28, Borough of **Manhattan, Community Board: 07**. Variance (ZR 72-21) to allow for a new residential building contrary to height and setback, rear setback and lot coverage requirements. C4-6A zoning district. C4-6A 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

SEPTEMBER 27, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 27, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

672-65-BZ

APPLICANT – Joseph Pell Lombardi, for Earth Pledge Fund, owner.

SUBJECT – Application July 20, 2011 – Extension of Term for the continued use of UG6 offices on three floors of a five story residential building which expired on November 13, 2004; Waiver of the Rules. R8B zoning district.

PREMISES AFFECTED – 122 East 38th Street, south side of East 38th Street, 139'5" west of the corner, Block 893, Lot 78, Borough of Manhattan.

COMMUNITY BOARD #6M

224-66-BZ

APPLICANT – Peter Hirshman, for Building Management Co., Inc., owner; Champion Parkind Corp., lessee.

SUBJECT – Application July 8, 2011 – Extension of Term for the continued use of transient parking in a multiple dwelling building which expired on June 14, 2011. R8B zoning district.

PREMISES AFFECTED – 325-335 East 49th Street, aka 328-334 East 50th Street, northside of East 49th Street, 262.33' west of First Avenue, Block 1342, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #6M

269-98-BZ

APPLICANT – Mothiur Rahman, for Fordham Zone Realty LLC, owner.

SUBJECT – Application August 24, 2011 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) for the construction of a two-story building with UG6 commercial use which expired on August 25, 2011. R8 zoning district.

PREMISES AFFECTED – 70 East 184th Street, Southwest corner of East 184th Street and Morris Avenue, Block 3183, Lot 42, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEALS CALENDAR

50-11-A

APPLICANT – Steven Bennett, Esq., for Premchand Parag and Vadewattie Parag, owners.

SUBJECT – Application April 15, 2011 – Appeal seeking a common law vested to continue development under prior zoning district. R4-1 zoning district.

PREMISES AFFECTED – 134-07 87th Avenue, north side of 87th Avenue, 50' east of the corner formed by the intersection of 87th Avenue and 134th Street, Block 9630, Lot 11, Borough of Queens.

COMMUNITY BOARD #9Q

114-11-A

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for Salanter Akiba Riverdale Academy, owner.

SUBJECT – Application August 10, 2011 – Proposed construction of a stone wall, pier, curbs and related footings for an accessory parking area to SAR Academy to be located within the bed of the mapped street (West 245th) contrary to General City Law Section 35. R1-1 Riverdale SNAD Zoning District.

PREMISES AFFECTED – 655 West 254th Street, north side of West 254th Street, between Palisade and Independence Avenues. Block 5947, Lot 1, Borough of Bronx.

COMMUNITY BOARD #8BX

SEPTEMBER 27, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 27, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

35-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.

SUBJECT – Application March 31, 2011– Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Ohel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.

PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105' west of Francis Lewis Boulevard, Block 12825, Lot 149, Borough of Queens.

COMMUNITY BOARD #13Q

CALENDAR

67-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Joseph Kleinman, owner.

SUBJECT – Application May 13, 2011 – Special Permit (§73-622) for the enlargement of existing single family home contrary to floor area and open space (§23-141) side yard and (§23-47) rear yard. R-2 zoning district.

PREMISES AFFECTED – 1430 East 29th Street, West side of 29th Street between Avenue N and Kings Highway. Block 7682, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

74-11-BZ

APPLICANT – James Chin & Associates, LLC, for 1058 Forest Avenue Associates, owners.

SUBJECT – Application May 25, 2011 – Variance (§72-21) to allow for the conversion of a community facility building for office use, contrary to use regulations. R3-2 & R-2 zoning district.

PREMISES AFFECTED – 1058 Forest Avenue, southeast intersection of Forest Avenue and Manor Road in West Brighton, Block 315, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #1SI

Jeff Mulligan, Executive Director

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REGULAR MEETING TUESDAY MORNING, SEPTEMBER 13, 2011 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

662-56-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for
Flatbush Holdings LLC, owner.

SUBJECT – Application April 6, 2011 – Extension of Term
(§11-411) of a previously approved variance which
permitted a public parking lot (UG 8), which expired on
January 23, 2011; Waiver of the Rules. C1-2/R5 zoning
district.

PREMISES AFFECTED – 3875 Flatbush Avenue,
Northerly side of Flatbush Avenue, 100' east of the
intersection of Flatlands Avenue. Block 7821, Lots 21, 23.
Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5

Negative:.....0

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
the operation of a Use Group 8 parking lot; and

WHEREAS, a public hearing was held on this
application on June 14, 2011, after due notice by publication
in *The City Record*, with continued hearings on July 12,
2011 and August 16, 2011, and then to decision on September
13, 2011; and

WHEREAS, Community Board 18, Brooklyn,
recommends approval of this application; and

WHEREAS, the premises and surrounding area had
site and neighborhood examinations by Chair Srinivasan,
Commissioner Montanez, and Commissioner Ottley-Brown;
and

WHEREAS, the subject site is located on the north side
of Flatlands Avenue, between Flatbush Avenue and Harden
Street, partially within a C1-2 (R5) zoning district and partially
within an R5 zoning district; and

WHEREAS, the site consists of two tax lots, with the
subject open parking lot occupying the entirety of tax lot 21
and the eastern portion of tax lot 23; the remainder of tax lot 23
is occupied by a one-story retail building fronting on Flatbush

Avenue; and

WHEREAS, the Board has exercised jurisdiction over
the site since February 26, 1957 when, under the subject
calendar number, the Board granted a variance to permit the
site to be occupied for the parking of motor vehicles, for a term
of five years; and

WHEREAS, subsequently, the grant was amended and
the term extended at various times; and

WHEREAS, most recently, on January 23, 2001, the
Board granted a ten-year extension of term, which expired on
January 23, 2011; and

WHEREAS, the applicant now seeks an additional ten-
year extension of the term; and

WHEREAS, pursuant to ZR § 11-411, the Board may
permit an extension of term; and

WHEREAS, at hearing, the Board directed the applicant
to make the existing fence 100 percent opaque in order to
provide a buffer between the subject parking lot and the
adjacent residential uses, and to ensure that all exterior lighting
would be directed downward and away from the adjacent
residences; and

WHEREAS, in response, the applicant submitted revised
plans reflecting that the fence will be 100 percent opaque; 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 February 26, 1957, so that as
amended this portion of the resolution shall read: “to extend
the term for ten years from January 23, 2011, to expire on
January 23, 2021; *on condition* that all use and operations
shall substantially conform to plans filed with this
application marked ‘Received March 31, 2011’-(1) sheet;
and *on further condition*:

THAT the term of the grant shall expire on January 23,
2021;

THAT the fence separating the site from adjacent
residences shall be 100 percent opaque, as illustrated on the
BSA-approved plans;

THAT all exterior lighting shall be directed downward
and away from adjacent residential uses;

THAT the site shall be maintained free of debris and
graffiti;

THAT there shall be no overnight parking or storage of
motor vehicles permitted on the site;

THAT the above conditions shall appear on the
certificate of occupancy;

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

THAT the Department of Buildings must ensure
compliance 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. 2112/56)

Adopted by the Board of Standards and Appeals
September 13, 2011.

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586-87-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Frasca Real Estate Incorporated, owner; 65th Street Auto Service Center, Incorporated, lessee.

SUBJECT – Application April 5, 2011 – Extension of Term (§11-411) for the continued operation of an existing gasoline service station (*Emporium*) with lubritorium, auto repairs and the sale of new/used cars which expired on July 12, 2008; waiver of the rules. R5B/C2-3 zoning district.

PREMISES AFFECTED – 1302/12 65th Street, southeast corner of intersection of 65th Street and 13th Avenue, Block 5754, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

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 the operation of a gasoline service station with lubritorium, auto repairs and the sale of cars; and

WHEREAS, a public hearing was held on this application on June 7, 2011, after due notice by publication in *The City Record*, with continued hearings on July 12, 2011 and August 16, 2011, and then to decision on September 13, 2011; and

WHEREAS, Community Board 10, Brooklyn, recommends approval of this application, with the following conditions: (1) that the sidewalks and curbs serving the site be kept in repair at the applicant’s expense; (2) that there be no repair or parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; (3) that there be no razor ribbon or barbed wire installed on the fence surrounding the area used for storage and display of cars for sale; (4) that the premises be kept clean and free of graffiti; (5) that outdoor lighting be directed down and away from adjacent residences; (6) that no dogs be kept on the site; (7) that no automobile alarms be installed on the site; (8) that no seats, benches, or vending machines be installed or located outside the building on the site; and (9) that the hours of operation, except for gasoline sales, be limited to 8:00 a.m. to 6:00 p.m., seven days per week; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the southeast corner of 65th Street and 13th Avenue, within a C2-3 (R5B) zoning district; and

WHEREAS, the site is occupied by a gasoline service station with lubritorium, auto repairs, and the sale of cars; and

WHEREAS, the Board has exercised jurisdiction over the site since October 22, 1957 when, under BSA Cal. No. 449-41-BZ, the Board granted a variance to permit the site to be occupied by a gasoline service station with accessory uses, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, on July 12, 1988, under the subject calendar number, the Board permitted the reestablishment of the variance for a gasoline service station, lubritorium, minor motor vehicle repairs with hand tools only, non-automatic car laundry, sales place for automobile accessories, parking of motor vehicles awaiting service and an office, and legalized the addition of the sales and display of used cars, for a term of ten years; and

WHEREAS, most recently, on July 25, 2000, the Board granted an extension of term and an amendment to permit a modification of the site layout, which expired on July 12, 2008; and

WHEREAS, the applicant now seeks an additional ten-year extension of the term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, at hearing, the Board directed the applicant to: (1) remove the advertising sign located at the southeast portion of the site and bring the site in compliance with the underlying C2 district signage regulations; and (2) remove the boat from the site and provide an affidavit from the owner stating that boat sales and storage will not be permitted on the site; and

WHEREAS, in response, the applicant submitted photographs, revised plans, and a signage analysis reflecting that the advertising sign has been removed and that the proposed signage complies with C2 regulations, and submitted an affidavit from the owner stating that the boat has been removed from the site and that neither boat sales nor boat storage will be permitted on the site; and

WHEREAS, as to the concerns raised by the Community Board, the applicant states that the site is in compliance with all of the Community Board’s conditions, and submitted a chart reflecting that the site is also in compliance with all other relevant conditions from the Board’s previous grants; 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 July 12, 1988, so that as amended this portion of the resolution shall read: “to extend the term for ten years from July 12, 2008, to expire on July 12, 2018; *on condition* that all use and operations shall substantially conform to plans filed with this application marked ‘Received July 6, 2011’-(1) sheet and ‘August 8, 2011’-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on July 12, 2018;

THAT all signage on the site shall comply with C2

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district regulations;

THAT the sidewalks and curbs serving the site shall be kept in repair at the applicant's expense;

THAT there shall be no repair or parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic;

THAT there shall be no razor ribbon or barbed wire installed on the fence surrounding the area used for storage and display of cars for sale;

THAT the premises shall be kept clean and free of graffiti;

THAT outdoor lighting shall be directed down and away from adjacent residences;

THAT no dogs shall be kept on the site;

THAT no automobile alarms shall be installed on the site;

THAT no seats, benches, or vending machines shall be installed or located outside the subject building;

THAT the hours of operation, except for gasoline sales, shall be limited to 8:00 a.m. to 6:00 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; and

THAT the Department of Buildings must ensure compliance 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. 4641/1955)

Adopted by the Board of Standards and Appeals September 13, 2011.

259-06-BZ

APPLICANT – Fredrick A. Becker, for Ahi Ezer Congregation, owner.

SUBJECT – Application July 11, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the enlargement of an existing one and two-story synagogue which expired on June 12, 2011. R-5 (OP) zoning district.

PREMISES AFFECTED – 1885-1891 Ocean Parkway, northeast corner of Ocean Parkway and Avenue S, Block 682, Lot 60, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a

previously granted variance to permit, in an R5 zoning district within the Special Ocean Parkway District, the enlargement of an existing one- and two-story synagogue, which expired on June 12, 2011; and

WHEREAS, a public hearing was held on this application on August 16, 2011, after due notice by publication in *The City Record*, and then to decision on September 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, the subject site is located on the northeast corner of Ocean Parkway and Avenue S, in an R5 zoning district within the Special Ocean Parkway District; and

WHEREAS, the Board has exercised jurisdiction over the site since June 12, 2007 when, under the subject calendar number, the Board granted a variance to permit the proposed enlargement of an existing one- and two-story synagogue, which does not comply with applicable zoning requirements for floor area ratio, open space, lot coverage, side yards, front yards, wall height, setback, sky exposure plane, parking and landscaping, contrary to ZR §§ 23-141(b), 23-464, 23-662, 113-12, 23-45, 23-631, 25-18, 25-31 and 113-30; and

WHEREAS, substantial construction was to be completed by June 12, 2011, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to financing delays, construction has not yet commenced on the site and additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction 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, dated June 12, 2007, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction for a term of four years, to expire on June 12, 2015; *on condition:*

THAT substantial construction shall be completed by June 12, 2015;

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. 302146997)

Adopted by the Board of Standards and Appeals, September 13, 2011.

MINUTES

302-06-BZ

APPLICANT – Harold Weinberg, for Mirrer Yeshiva, owner.

SUBJECT – Application July 8, 2011 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a mezzanine and a two-story enlargement over the existing two-story community facility building which expired on June 12, 2011. R6A in OP zoning district.

PREMISES AFFECTED – 1791 Ocean Parkway, between Ocean Parkway, Avenue R and East 7th Street, Block 6663, Lot 46, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a previously granted variance to permit, in an R6A zoning district within the Special Ocean Parkway District, the enlargement of an existing yeshiva (Use Group 3) and synagogue (Use Group 4), which expired on June 12, 2011; and

WHEREAS, a public hearing was held on this application on August 16, 2011, after due notice by publication in *The City Record*, and then to decision on September 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, the subject through-block site is located on the north side of Avenue R, with frontage on Ocean Parkway and East 77th Street, in an R6A zoning district within the Special Ocean Parkway District; and

WHEREAS, the Board has exercised jurisdiction over the site since June 12, 2007 when, under the subject calendar number, the Board granted a variance to permit the proposed enlargement of an existing yeshiva (Use Group 3) and synagogue (Use Group 4), which does not comply with applicable zoning requirements for floor area ratio, front yards, setback, sky exposure plane, and perimeter wall and total height, contrary to ZR §§ 54-31, 113-51, 113-542, 23-631 and 24-11; and

WHEREAS, substantial construction was to be completed by June 12, 2011, in accordance with ZR § 72-23; and

WHEREAS, most recently, on July 22, 2008, the Board granted an amendment to permit a correction to the floor area calculations on the BSA-approved plans; and

WHEREAS, the applicant states that the proposed construction is approximately 40 percent complete, but that due

to financing delays additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction 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, dated June 12, 2007, so that as amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years, to expire on June 12, 2015; *on condition:*

THAT substantial construction shall be completed by June 12, 2015;

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. 301275046)

Adopted by the Board of Standards and Appeals, September 13, 2011.

677-53-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for James Marchetti, owner.

SUBJECT – Application April 22, 2010 – Extension of Term (§11-411) of a Variance for the operation of a UG16 Auto Body Repair Shop (*Carriage House*) with incidental painting and spraying which expired on March 24, 2007; Extension of Time to Obtain a Certificate of Occupancy which expired on January 13, 1999; Amendment (§11-412) to enlarge the building; Waiver of the Rules. R4/C2-2 zoning district.

PREMISES AFFECTED – 61-26/30 Fresh Meadow Lane, west side of Fresh Meadow Lane, 289’ northerly of the intersection with 65th Avenue, Block 6901, Lot 48, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to October 18, 2011, at 10 A.M., for decision, hearing closed.

MINUTES

329-59-BZ

APPLICANT – Mango & Iacoviello, LLP, for Coliseum Tenants Corporation c/o Punia & Marx, Incorporate, owner; Central Parking Systems of New York, Incorporated, lessee. SUBJECT – Application June 1, 2011 – Extension of Term for the continued operation of transient parking in a multiple dwelling which expired on November 4, 2008; an Extension of Time to obtain a Certificate of Occupancy which expired on January 15, 2003 and waiver of rules. R8/C6-6(MID) zoning district.

PREMISES AFFECTED – 910-924 Ninth Avenue aka 22-44 West 60th Street, Block 1049, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Anthony Mango.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 18, 2011, at 10 A.M., for decision, hearing closed.

502-60-BZ

APPLICANT – Patrick O' Connell P.E. for Raymond Edwards, owner; Angel R. Hernandez, lessee.

SUBJECT – Application February 23, 2011 – Extension of Term (§11-411) of a variance permitting the use of a parking lot (UG 8) for parking and storage of more than five (5) motor vehicles which expired on January 20, 2011. C2-4/R7-2 zoning district.

PREMISES AFFECTED – 4452 Broadway, Broadway & Fairview Avenue. Block 2170, Lot 62 & 400. Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to October 18, 2011, at 10 A.M., for continued hearing.

1045-64-BZ

APPLICANT – Hal Dorfman, R.A., for Kips Bay Tower Associates, owner.

SUBJECT – Application June 10, 2011 – Extension of Term for the continued operation of transient parking which expired on June 21, 2011. R8 zoning district.

PREMISES AFFECTED – 300-330 East 33rd Street, Northwest corner of East 33rd Street and First Avenue. Block 936, Lot 7501. Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Robert A. Jacobs and Peter Hirshman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 18, 2011, at 10 A.M., for decision, hearing closed.

624-68-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for MMT Realty Associates LLC, owner.

SUBJECT – Application June 7, 2011 – Extension of Term of a Variance (§72-21) to permit wholesale plumbing supply (UG16), stores and office (UG6) which expired on January 13, 2011; Extension of Time to obtain a Certificate of Occupancy and waiver of the rules. R3-2 zoning district.

PREMISES AFFECTED – 188-07 Northern Boulevard, north side of Northern Boulevard between Utopia Parkway and 189th Street, Block 5364, Lots 1, 5, 7, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to October 25, 2011, at 10 A.M., for continued hearing.

742-70-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 830 Bay Street, LLC, owner.

SUBJECT – Application May 27, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of an automotive service station which expired on May 18, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on February 26, 2009 and waiver of the rules. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 830 Bay Street, southwest corner of Bay Street and Vanderbilt Avenue, Block 2836, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to October 18, 2011, at 10 A.M., for continued hearing.

118-95-BZ

APPLICANT – Carl A Sulfaro, for White Castle System, Incorporated, owner.

SUBJECT – Application April 11, 2011 – Extension of Term of a previously granted Special Permit (§73-243) for the continued operation of a drive-thru facility at an eating and drinking establishment (*White Castle*) which expires on July 25, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on May 22, 2008; Waiver of the rules. C1-2/R6 zoning district.

PREMISES AFFECTED – 89-03 57th Avenue, southeast corner of Queens Boulevard and 57th Avenue, Block 1845, Lot 45, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES – None.

MINUTES

ACTION OF THE BOARD – Laid over to October 25, 2011, at 10 A.M., for continued hearing.

351-05-BZ

APPLICANT – Simons & Wright LLC, for Atlas Packaging Solutions Holding Co., Inc., owner.

SUBJECT – Application August 11, 2011 – Extension of Time to Complete Construction of a Variance (§72-21) for the construction of six-unit, four story residential building which expired on August 22, 2010; Waiver of the rules. M2-1 zoning district.

PREMISES AFFECTED – 146 Conover Street, northeast side of Conover Street, between Sullivan and King Streets, Block 554, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Emily Simons.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to September 27, 2011, at 10 A.M., for decision, hearing closed.

51-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 70-50 Kissena Boulevard LLC, owner.

SUBJECT – Application May 26, 2011 – Amendment to a Variance (§72-21) to legalize the change of use from a (UG6) one-story retail building to a (UG3) community facility with changes to the exterior façade and interior layout. R4 zoning district.

PREMISES AFFECTED – 70-44/52 Kissena Boulevard, southeast corner of 70th Road and Kissena Boulevard, Block 6656, Lot 52, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 18, 2011, at 10 A.M., for decision, hearing closed.

265-08-BZ

APPLICANT – Richard Bass/Herrick, Feinstein, LLP for 70 Wyckoff, LLC, owner.

SUBJECT – Application August 11, 2011 – Extension of Time to obtain a Certificate of Occupancy of a Variance (§72-21) for the legalization of residential units in a

manufacturing building which expired on August 9, 2011. M1-1 zoning district.

PREMISES AFFECTED – 70 Wyckoff Avenue, south east corner of Wyckoff Avenue and Suydam Street. Block 3221, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Richard Bass.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to September 27, 2011, at 10 A.M., for decision, hearing closed.

13-09-BZ

APPLICANT – Moshe M. Friedman, P.E. for Congregations Tehilos Yotzchok, owner.

SUBJECT – Application May 27, 2011 – Amendment to a previously approved variance (§72-21) to allow a synagogue contrary to Floor & Lot Coverage (§24-11), Front Yard (§24-34) and Side Yard (§24-35). R5 zoning district.

PREMISES AFFECTED – 5611 21st Street, East side 95' -8" North of intersection of 21st Avenue and 57th Street. Block 5495, Lot 430, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Mosh Friedman.

ACTION OF THE BOARD – Laid over to September 27, 2011, at 10 A.M., for continued hearing.

APPEALS CALENDAR

224-10-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative, Incorporated, owners, John & Daniel Lynch, lessee.

SUBJECT – Application December 7, 2010 – Proposed reconstruction and enlargement not fronting on a legally mapped street contrary to General City Law Section 36 and the building and private disposal system is located within the bed of a mapped street contrary to General City Law Section 35 and Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 173 Reid Avenue, east side of Reid Avenue 245.0 north of Breezy Point Boulevard. Block 16359, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Joseph A. Sherry.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated November 17, 2010, acting on Department of Buildings Application No. 420205405, reads in pertinent part:

A-1 - The proposed enlargement is on a site located partially in the bed of a mapped street therefore no permit or Certificate of Occupancy can be issued as per Art 3. Section 35 of the General City Law.

A-2 - 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 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.

A-3 - The private disposal system is in the bed of a proposed mapped street contrary to Department of Buildings Policy; and

WHEREAS, a public hearing was held on this application on August 16, 2011, after due notice by publication in the *City Record*, with a continued hearing on September 13, 2011, and then to closure and decision on the same date; and

WHEREAS, by letter dated August 1, 2011, the Fire Department states that it has reviewed the subject proposal and has no objections provided the following conditions are met: (1) the entire building be fully sprinklered in conformity with the sprinkler provisions of Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code; and (2) the entire building be provided with smoke alarms in accordance with Section 907.2.10 of the NYC Building Code; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the entire building will be fully sprinklered and that hard-wired smoke detectors will be installed; and

WHEREAS, by letter dated December 30, 2010, the Department of Environmental Protection states it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated April 11, 2011, the Department of Transportation (“DOT”) states it has reviewed the subject proposal and has no objections; and

WHEREAS, DOT further states that the applicant’s property is not included in the agency’s ten-year capital plan; and

WHEREAS, accordingly, the Board has determined 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, 2010, acting on

Department of Buildings Application No. 420205405, is modified by the power vested in the Board by Section 35 and 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 26, 2011” - 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 home shall be sprinklered in accordance with the BSA-approved plans;

THAT hard wire smoke detectors shall be installed in accordance with the BSA-approved plans;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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 13, 2011.

77-11-A

APPLICANT – Akerman Senterfitt LLP, for 3516 Development LLC, owner.

SUBJECT – Application May 27, 2011 – Appeal seeking a determination that the property owner has acquired a common law vested right to continue development under the prior R6 zoning regulations. R6B zoning district.

PREMISES AFFECTED – 35-16 Astoria Boulevard, South side of Astoria Boulevard between 35th and 36th Streets. Block 633, Lots 39 & 140, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Jessica Laser.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of a six-story mixed-use residential/community facility building under the common law doctrine of vested rights; and

WHEREAS, this application was brought subsequent to a

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companion application under BSA Cal. No. 116-10-BZY, which was 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 separate applications were filed and that the applicant withdrew the application for the statutory vested rights case on March 1, 2011; the record is the same for both cases; and

WHEREAS, a public hearing was held on this application on June 21, 2011, after due notice by publication in *The City Record*, with continued hearings on July 19, 2011 and August 16, 2011, and then to decision on September 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, the site is located on the south side of Astoria Boulevard, between 35th Street and 36th Street, and has a lot area of 3,418 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a six-story mixed-use residential/community facility building with a floor area of 11,798 sq. ft. (3.4 FAR), and a height of 59'-10" (the "Building"); and

WHEREAS, the subject site 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 with respect to floor area and height; and

WHEREAS, however, on May 25, 2010 (the "Enactment Date"), the City Council voted to adopt the Astoria Rezoning, which rezoned the site to R6B, as noted above; and

WHEREAS, the Building does not comply with the R6B zoning district parameters as to floor area and height; 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 applicant states that New Building Permit No. 420139843-01-NB (the "New Building Permit"), which authorized the development of a six-story mixed-use residential/community facility building pursuant to R6 zoning district regulations was issued on May 11, 2010; and

WHEREAS, the New Building Permit lapsed by operation of law on the Enactment Date because the plans did not comply with the new R6B zoning district regulations and the Department of Buildings ("DOB") determined that the Building's foundation was not complete; and

WHEREAS, by letter dated August 17, 2011, DOB stated that the New Building Permit was lawfully issued, authorizing construction of the Building prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date; and

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (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

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 prior to the Enactment Date, the owner had completed 50 percent of the total work required for the foundation, consisting of the following: the excavation of 1,076 cubic yards of total fill, or 85 percent of the required excavation work, installation of 100 percent of the 32 required H-piles; installation of 100 percent of the 131.5 linear feet of shoring work; and the pouring of 93.29 cubic yards of concrete, or 35 percent of the concrete required for the foundation; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site showing the amount of work completed prior to the Enactment Date, concrete pour tickets, an excavation and foundation diagram, affidavits from the project manager and the owner, construction contracts, copies of cancelled checks, and invoices; and

WHEREAS, the applicant states that the site was not 100 percent excavated prior to the Enactment Date because approximately 190 cubic yards of total fill, or 15 percent, was kept in place to create a construction ramp to the site from curb level at Astoria Boulevard; thus, the applicant could not satisfy the threshold requirement of ZR § 11-331 that excavation be completed, and the applicant filed the subject application under the common law doctrine of vested rights; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the Enactment Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; and

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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 and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that prior to the Enactment Date, the owner expended \$228,692, including hard and soft costs and irrevocable commitments, out of \$1,686,550 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, copies of cancelled checks, and invoices; and

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the owner had paid or contractually incurred \$114,652 for the work performed at the site as of the Enactment Date, representing 50 percent of the foundation-related hard costs; and

WHEREAS, the applicant further states that the owner paid an additional \$114,040 in soft costs related to the work performed at the site as of the Enactment Date; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately 14 percent of the projected total cost; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with 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 serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that if the owner is not permitted to vest under the former R6 zoning, the floor area would decrease from the proposed 11,798 sq. ft. (3.4 FAR) to 6,837 sq. ft. (2.0 FAR); and

WHEREAS, the applicant states that the 4,961 sq. ft. loss in floor area would result in a loss of \$1,927,863 in residential floor area and \$750,400 in community facility floor area; and

WHEREAS, the applicant notes that the estimated reduction in construction costs from a complying development would be approximately \$223,442; and

WHEREAS, accordingly, the total estimated loss that would result if vesting were not permitted, taking into account the reduced construction costs associated with a complying development, would be approximately \$2,454,821; and

WHEREAS, the Board agrees that the reduction in floor area of the Building, coupled with the need to redesign, constitutes a serious economic loss, and that the evidence 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.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of New Building Permit No. 420139843-01-NB, 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 two years from the date of this grant.

Adopted by the Board of Standards and Appeals, September 13, 2011.

182-06-A thru 211-06-A

APPLICANT – Akerman Senterfitt, LLP, for Boymelgreen Beachfront Community, LLC, owners.

SUBJECT – Application April 18, 2011 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously-granted Common Law Vesting which expired March 19, 2011. R4A zoning district
PREMISES AFFECTED – 126, 128, 130, 134, 136, 140, 146, 148, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 161, and 163 Beach 5th Street. 150, 152, 154, 156, 158, 160, and 162 Beach 6th Street and 511 SeaGirt Avenue Block 15609, Lots 1, 3, 6, 8, 10, 12, 14, 16, 18, 58, 63, 64, 65, 66, 67, and 68 and Block 15608, Lots 1, 40, 42, 45, 51, 52, 53, 57, 58, 61, 63, 65, 67, and 69. Borough the Queens

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Jessica Laser.

ACTION OF THE BOARD – Laid over to October 25, 2011, at 10 A.M., for continued hearing.

219-10-A

APPLICANT – Sheldon Lobel, P.C., for 74-76 Adelphi Realty LLC, owner.

SUBJECT – Application November 24, 2010 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.

PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, between Park and Myrtle Avenues, Block 2044, Lots 52, 53, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to October

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18, 2011, at 10 A.M., for decision, hearing closed.

69-11-A & 70-11-A

APPLICANT – Sheldon Lobel, P.C., for Fiesta Latina Sports Bar Corporation, owner.

SUBJECT – Application May 23, 2011 – Appeal seeking a determination that the owner of has acquired a common law vested right to continue development commenced under the prior R6 zoning district. R4-1 Zoning District.

PREMISES AFFECTED – 88-11 & 88-13 173rd Street, East side of 173rd Street between 89th Avenue and Warwick Circle. Block 9830, Lot 22, 23 (tentative), Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Josh Rhinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 18, 2011, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING

TUESDAY AFTERNOON, SEPTEMBER 13, 2011

1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

177-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLC, for Cee Jay Real Estate Development, owner.

SUBJECT – Application September 9, 2010 – Variance (§72-21) for the construction of a detached three-story single family home, contrary to open space (§23-141); front yard (§23-45) and side yard (§23-461). R3A zoning district.

PREMISES AFFECTED – 8 Orange Avenue, south west corner of Decker Avenue and Orange Avenue, Block 1061, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated August 9, 2010 acting on Department of Buildings Application No. 520034542, reads in pertinent part:

Front yard is non-compliant in that a second front yard with a depth of 10 feet is required along Orange Avenue and not provided. ZR 23-45.

Lot coverage is non-compliant in that lot coverage is governed by yard regulations. Since the front...yards are non-compliant, the lot coverage is therefore non-compliant. ZR 23-14; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3A zoning district, the proposed construction of a two-story single-family home that does not provide the required front yards or lot coverage, contrary to ZR §§ 23-45 and 23-14; and

WHEREAS, a public hearing was held on this application on March 29, 2011 after due notice by publication in *The City Record*, with continued hearings on May 10, 2011, July 12, 2011 and August 16, 2011, and then to decision on September 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Staten Island, recommends disapproval of this application, citing concerns that the proposed home is out of character with the surrounding neighborhood and the proposed curb cuts will create a hazardous traffic condition; and

WHEREAS, certain members of the community testified in opposition to this application (the “Opposition”), citing the following primary concerns: (1) the proposed home is not compatible with neighborhood character; and (2) the proposed home would infringe upon the adjacent home’s light and air; and

WHEREAS, the site is located on the northeast corner of Orange Avenue and Decker Avenue, within an R3A zoning district; and

WHEREAS, the subject site is an irregularly shaped lot with a width ranging between 17’-2” and 11’-7”, a depth of approximately 164’-0”, and a total lot area of 2,359 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story single-family home on the site; and

WHEREAS, the proposed home will have the following complying parameters: 1,344 sq. ft. of floor area (0.57 FAR) (the maximum permitted FAR is 0.60); a front yard with a depth of 18’-11” along the eastern lot line (a front yard with a depth of 18’-11” is the minimum required); a side yard with a width of 86’-1½” along the western lot line and a side yard with a width of 3’-2” along the southern lot line (one side yard with a width of 8’-0” is the minimum

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required); an open area of 8'-0" between the proposed home and the residential building on the adjacent lot (a minimum open area of 8'-0" is required); a street wall height of 17'-2" (the maximum permitted street wall height is 26'-0"); a total height of 22'-3" (the maximum permitted total height is 35'-0"); and two parking spaces; and

WHEREAS, however, the applicant proposes to provide no front yard along the northern lot line (a front yard with a minimum depth of 10'-0" is required), which results in non-complying lot coverage; and

WHEREAS, the applicant originally proposed to construct a three-story home with a floor area of 1,407 sq. ft. (0.6 FAR), a front yard with a depth of 18'-0" along the eastern lot line, a street wall height of 26'-0", a total height of 30'-11", and two parking spaces at the front of the home along Decker Avenue; and

WHEREAS, at the Board's direction, the applicant revised the plans on several occasions, ultimately submitting the current proposal which provides a compliant front yard along Decker Avenue, reduces the height of the proposed home to two stories and 22'-3", and relocates the two parking spaces to the rear of the home along Orange Avenue in compliance with ZR § 25-622; and

WHEREAS, the Board notes that the original DOB objection submitted by the applicant included an objection under ZR § 23-46, requiring that a minimum open area of 10'-0" be provided between the proposed home and the residential building on the adjacent lot; and

WHEREAS, due to a recent text amendment to the Zoning Resolution, ZR § 23-46 now requires a minimum open area of only 8'-0" between the proposed home and the residential building on the adjacent lot; and

WHEREAS, accordingly, the proposed home, which provides the required open area of 8'-0" between the residential building on the adjacent lot, complies with ZR § 23-46; and

WHEREAS, the applicant has provided documentation establishing that the subject lot is an undersized lot pursuant to ZR § 23-32; and

WHEREAS, the Board notes that ZR § 23-33 eliminates lot area and width requirements for single-family homes where the zoning lot was owned separately and individually from all adjoining tracts of land both on December 15, 1961 and on the date of the application for a building permit; and

WHEREAS, a title search submitted by the applicant reflects that the site has existed in its current configuration since before December 15, 1961 and its ownership has been independent of the ownership of the adjoining lots; and

WHEREAS, the Board notes that ZR § 23-33 would eliminate a lot area and width requirement for a single-family dwelling, but not the yard and lot coverage requirements; and

WHEREAS, the applicant states that the requested relief is necessary, for reasons stated below; thus, the instant application was filed; 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 site is an irregularly shaped, narrow corner lot; and

WHEREAS, the applicant represents that the requested waivers are necessary to develop the site with a habitable home; and

WHEREAS, specifically, the applicant represents that the pre-existing lot width ranging between 11'-7" and 17'-2" cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that the subject site is a corner lot, which requires two front yards of 18'-11" and 10'-0", respectively; and

WHEREAS, the applicant further states that the proposed home has a maximum exterior width of only 13'-0", and that compliance with the applicable yard regulations and corresponding lot coverage requirements would result in an infeasible home with a width of only 1'-0"; and

WHEREAS, accordingly, the applicant represents that the yard and lot coverage waivers are necessary to create a home of a reasonable 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 front yard regulations; and

WHEREAS, the Board has determined that because of the subject site'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, or impact adjacent uses; and

WHEREAS, the applicant states that the surrounding community is characterized by detached single-family homes ranging in height from one to three stories; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development and that that it complies with all applicable zoning regulations, with the exception of front yard and lot coverage; and

WHEREAS, specifically, the applicant notes that the proposed home complies with the R3A zoning district regulations for use, FAR, side yards, height, and parking; and

WHEREAS, the Board notes that the lot has approximately 164'-0" of frontage along Orange Avenue while the non-compliant front yard only extends for the 58'-2" length of the proposed home, or approximately 35 percent of the Orange Avenue frontage; accordingly, nearly 106'-0" of frontage along Orange Avenue will not be affected by the front yard non-compliance, as it will be left undeveloped; and

WHEREAS, the applicant submitted a corner lot study reflecting that there are at least 12 corner lots within three blocks of the site that do not provide two compliant front yards; and

WHEREAS, the corner lot study submitted by the applicant also reflects that, similar to the proposed home, the non-compliant front yard for each of the 12 corner lots noted in the study is located adjacent to the side of the home situated along the deepest portion of the lot, thereby minimizing the extent of its impact; and

WHEREAS, at hearing, the Board directed the applicant to provide the entrance to the home at the Decker Avenue frontage, which is consistent with surrounding homes located

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on corner lots along Decker Avenue; and

WHEREAS, in response, the applicant submitted revised plans reflecting the addition of a covered porch and entrance along Decker Avenue, consistent with surrounding homes on corner lots along Decker Avenue; and

WHEREAS, in response to the concerns raised by the Opposition that the site is too small to be developed, the Board notes that the subject lot is viable for development pursuant to the Zoning Resolution despite its undersized nature by means of its grandfathered status based on the lot's existence in its current configuration and its individual ownership prior to December 15, 1961; and

WHEREAS, the Board further notes that the title search submitted by the applicant reflects that the subject lot was owned by the City from 1954 until its unrestricted disposition to a private party in 1993; therefore, if the City did not intend for the subject lot to be developed it could have retained ownership of the lot; and

WHEREAS, in response to the concerns raised by the Opposition regarding the effect of the proposed development on the adjacent home, the Board notes that the proposed 3'-2" side yard along the southern lot line provides 8'-0" of open space between the proposed home and the adjacent home; and

WHEREAS, the Board further notes that the applicant submitted several different design proposals throughout the hearing process and that the current proposal provides as much open space between the proposed home and the adjacent home on Decker Avenue as possible, while still providing for a habitable home on the subject site; and

WHEREAS, as to the Community Board's concerns regarding traffic impacts resulting from the proposed curb cut, the Board notes that the curb cut was relocated from Decker Avenue to the rear of the site along Orange Avenue, and that it will be approximately 150 feet from the intersection of these streets; and

WHEREAS, therefore, 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, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's irregular shape and narrow width; 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 historic lot dimensions; and

WHEREAS, as noted above, the applicant originally proposed to construct a three-story home with a floor area of 1,407 sq. ft. (0.6 FAR), a non-compliant front yard along the eastern lot line, a total height of 30'-11", and non-complying parking spaces along Decker Avenue; and

WHEREAS, during the course of the hearing process, the applicant revised its plans on several occasions, ultimately submitting the current proposal for a two-story home with a floor area of 1,344 sq. ft. (0.57 FAR), a complying front yard along the eastern lot line, a total height of 22'-3", and complying parking spaces; and

WHEREAS, 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, in an R3A zoning district, a two-story single-family home that does not provide the required front yards or lot coverage, contrary to ZR §§ 23-45 and 23-14; *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 August 3, 2011"- twelve (12) sheet; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum of 1,344 sq. ft. of floor area (0.57 FAR); a side yard with a width of 86'-1½" along the western lot line; a side yard with a width of 3'-2" along the southern lot line; a front yard with a depth of 18'-11" along the eastern lot line; no front yard along the northern lot line; a street wall height of 17'-2"; a total height of 22'-3"; and parking for a minimum of two cars, as per 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;

THAT significant construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance 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 13, 2011.

4-11-BZ

CEQR #11-BSA-051K

APPLICANT – Law Office of Fredrick A. Becker, for 1747 East 2nd Street, LLC, owner.

SUBJECT – Application January 10, 2011 – Variance (§72-21) to allow a three-story synagogue, contrary to lot coverage (§24-11), floor area (§113-51), wall height and total height (§113-55), front yard (§113-542), side yards (§113-543), encroachment into required setback and sky exposure plane (§113-55), and parking (§25-18, §25-31, and §113-561). R5 zoning district.

PREMISES AFFECTED – 1747-1751 East 2nd Street, aka 389 Quentin Road, northeast corner of East 2nd Street and Quentin Road, Block 6634, Lot 49, Borough of Brooklyn.

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COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 12, 2011, acting on Department of Buildings Application No. 320197381 reads, in pertinent part:

1. Proposed plans are contrary to ZR 113-51 in that the proposed floor area exceeds the maximum permitted.
2. Proposed plans are contrary to ZR 24-11 in that the proposed lot coverage is greater than the maximum permitted.
3. Proposed plans are contrary to ZR 113-55 in that the proposed wall height is greater than the maximum permitted.
4. Proposed plans are contrary to ZR 113-55 in that the proposed total height is greater than the maximum permitted.
5. Proposed plans are contrary to ZR 113-542 in that the proposed front yard is less than the minimum required.
6. Proposed plans are contrary to ZR 113-11 in that the proposed side yards are less than the minimum required.
7. Proposed plans are contrary to ZR 113-55 in that the proposed building encroaches into the required setback and sky exposure plane.
8. Proposed plans are contrary to ZR 25-18, ZR 25-31 and 113-561 in that the proposed number of parking spaces is less than the minimum required number of parking spaces; and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site in an R5 zoning district within the Special Ocean Parkway Sub-District, the construction of a three-story building to be occupied by a synagogue (Use Group 4), which does not comply with the underlying zoning district regulations for floor area, lot coverage, height and setback, sky exposure plane, front yard, side yards, and parking for community facilities, contrary to ZR §§ 113-51, 24-11, 113-55, 113-542, 113-11, 25-18, 25-31 and 113-561; and

WHEREAS, a public hearing was held on this application on June 21, 2011, after due notice by publication in *The City Record*, with continued hearings on July 19, 2011 and August 16, 2011, and then to decision on September 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and

Commissioner Ottley-Brown; and

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

WHEREAS, this application is being brought on behalf of the Quentin Road Synagogue (the “Synagogue”), a non-profit religious entity; and

WHEREAS, the subject site is located on the northeast corner of Quentin Road and East 2nd Street, in an R5 zoning district within the Special Ocean Parkway Sub-District; and

WHEREAS, the subject lot has a width of 40 feet, a depth of 100 feet, and a lot area of 4,000 sq. ft.; and

WHEREAS, the subject site is currently occupied by a two-story semi-detached residential building, which is proposed to be demolished; and

WHEREAS, the applicant proposes to construct a three-story building with the following parameters: a floor area of 8,748 sq. ft. (2.19 FAR) (the maximum permitted floor area is 6,000 sq. ft. (1.5 FAR)); lot coverage of 84 percent (the maximum permitted lot coverage is 60 percent); a wall height of 32’-0” along East 2nd Street and 39’-0” along Quentin Road (the maximum permitted wall height is 21’-0”); a total height of 48’-0” (the maximum permitted total height is 35’-0”); a front yard with a depth of 14’-0” along East 2nd Street and a front yard with a depth of 1’-0” along Quentin Road (two front yards with minimum depths of 14’-0” and 10’-0”, respectively, are required); no side yards (two side yards with minimum widths of 2’-0” and 20’-0”, respectively, are required); encroachment into the sky exposure plane; and no parking spaces (a minimum of 42 parking spaces are required); and

WHEREAS, the applicant originally proposed to construct a three-story building with a floor area of 10,081 sq. ft. (2.52 FAR), lot coverage of 88 percent, a maximum wall height of 39’-6”, a total height of 52’-0”; a front yard with a depth of 10’-0” along East 2nd Street, and no front yard along Quentin Road; and

WHEREAS, in response to concerns raised by the Board throughout the hearing process, the applicant revised its plans to reflect the current proposal; and

WHEREAS, the proposal provides for the following uses: (1) a multi-purpose room at the cellar level; (2) the main sanctuary at the first floor; (3) a worship gallery for female congregants at the second floor; and (4) a Beit Midrash at the third floor; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variances: (1) to accommodate the congregation of approximately 214 families and allow for future growth; (2) to provide a separate worship space for male and female congregants; and (3) to provide space for religious studies and bible classes; and

WHEREAS, the applicant states that the congregation currently has a membership of 214 families; and

WHEREAS, the applicant states that the congregation has been renting part of a building located at 1741 East 3rd Street since approximately 2003, but that they are now forced to relocate because the current facility does not have sufficient capacity to accommodate the growing congregation, as it only

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provides seating for approximately 200 people, or less than one seat per family; and

WHEREAS, the applicant further states that the current facility does not provide a suitable separation between the men's and women's worship areas, as a portable divider is used to create the separation in a single room; and

WHEREAS, the applicant notes that the current facility also does not provide any study rooms or Beit Midrash, and does not provide any space for religious events other than services, forcing such events to take place at alternate locations which damages the cohesiveness of the congregation; and

WHEREAS, the applicant states that the requested waivers enable the Synagogue to construct a building that can accommodate its growing congregation as well as provide a separate worship space for men and women, as required by religious doctrine, and a Beit Midrash with study rooms and an office on the third floor; and

WHEREAS, the applicant represents that worship space which separates men and women is critical to its religious practice; and

WHEREAS, the applicant further represents that the proposed Beit Midrash is necessary to meet the Synagogue's programmatic needs because it allows the congregation to provide additional space for lectures, religious services and bible classes, as well as providing an office for the Synagogue's Rabbi; and

WHEREAS, the applicant states that the requested waivers are necessary to provide enough space to meet the programmatic needs of the congregation; and

WHEREAS, specifically, the applicant states that the requested floor area, lot coverage and yard waivers will allow the proposed synagogue to provide floor plates large enough to accommodate approximately 222 men in the main sanctuary, 167 women in the gallery, and 187 people in the Beit Midrash at full capacity, which is the minimum space required to provide the congregation with sufficient worship space; and

WHEREAS, the applicant further states that the requested height and sky exposure plane waivers are necessary to provide a third floor that can accommodate additional religious services, study spaces, and an office for the Rabbi; and

WHEREAS, the applicant submitted as-of-right plans which reflected that a complying building would result in a significantly smaller building with a worship space too constrained to accommodate the size of the congregation, and would result in the elimination of the third floor; and

WHEREAS, the Board acknowledges that the synagogue, as a religious institution, is entitled to significant deference under the 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, specifically, as held in Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an

application; and

WHEREAS, based upon the above, the Board finds that 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 that the proposed use is permitted in the subject zoning district; and

WHEREAS, as to bulk, the applicant submitted a 400-ft. radius diagram which reflects that there are three- and four-story buildings across the street from the subject site on East 2nd Street, including a four-story commercial building with no front yard directly across from the site on the corner of East 2nd Street and Quentin Road; and

WHEREAS, the radius diagram submitted by the applicant also reflects that a three-story synagogue is located one block from the site on East 3rd Street; and

WHEREAS, the applicant also submitted a floor area table which reflects that at least four buildings in the vicinity of the subject site exceed the permitted 1.5 FAR, and two of the buildings (1742 East 2nd Street and 1747 East 3rd Street) exceed the 2.4 FAR proposed for the subject synagogue; and

WHEREAS, the applicant states that there is a 23-ft. easement abutting the site to the east, which provides a buffer between the eastern lot line of the proposed synagogue and the adjacent homes located on Quentin Road; and

WHEREAS, the applicant further states that the proposed building will remain attached to the adjacent building on East 2nd Street, which has no lot line windows and currently extends nearly to the front of the existing garage on the subject site; and

WHEREAS, at hearing, the Board directed the applicant to reduce the height of the building and provide a front yard with a depth of 14'-0" along East 2nd Street, in order to match the adjacent residences on that street; and

WHEREAS, in response, the applicant submitted revised plans which reduced the total height of the building to 48'-0" and provided a front yard with a depth of 14'-0" along East 2nd Street; and

WHEREAS, as to traffic impact and parking, the applicant notes that the traffic impact would be minimal as a majority of congregants live nearby and would walk to services, specifically to worship services on Fridays and Saturdays; and

WHEREAS, the applicant represents that this proposal would meet the requirements for a parking waiver at the City Planning Commission, pursuant to ZR § 25-35 – Waiver for Locally Oriented Houses of Worship, but for the fact that a maximum of ten spaces can be waived in the subject R5 zoning district under ZR § 25-35; and

WHEREAS, in support of this assertion, the applicant

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submitted evidence reflecting that at least 75 percent of the congregants live within three-quarters of a mile of the subject site; and

WHEREAS, accordingly, 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, 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 Synagogue 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, as noted above, the applicant originally proposed to construct a three-story building with a floor area of 10,081 sq. ft. (2.52 FAR), lot coverage of 88 percent, a total height of 52'-0"; a front yard with a depth of 10'-0" along East 2nd Street, and no front yard along Quentin Road; and

WHEREAS, at the direction of the Board, the applicant revised its plans to reduce the size of the building on multiple occasions, ultimately submitting the current proposal with a floor area of 8,748 sq. ft. (2.19 FAR), lot coverage of 84 percent, a total height of 48'-0", a complying front yard with a depth of 14'-0" along East 2nd Street, and a front yard with a depth of 1'-0" along Quentin Road; and

WHEREAS, accordingly, the Board finds the requested waivers 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 6 NYCRR Part 617.2; 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. 11BSA051K, dated January 10, 2011; 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 each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, on a site in an R5 zoning district within the Special Ocean Parkway Sub-District, the construction of a three-story building to be occupied by a synagogue (Use Group 4), which does not comply with the underlying zoning district regulations for floor area, lot coverage, height and setback, sky exposure plane, front yard, side yards, and parking for community facilities, contrary to ZR §§ 113-51, 24-11, 113-55, 113-542, 113-11, 25-18, 25-31 and 113-561; *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 23, 2011" – (10) sheets and "Received September 8, 2011" – (1) sheet and *on further condition*:

THAT the building parameters shall be: a maximum floor area of 8,748 sq. ft. (2.19 FAR); a maximum lot coverage of 84 percent; a maximum wall height of 32'-0" along East 2nd Street and 39'-0" along Quentin Road; a maximum total height of 48'-0"; a front yard with a minimum depth of 14'-0" along East 2nd Street; a front yard with a minimum depth of 1'-0" along Quentin Road; encroachment into the sky exposure plane; and no parking spaces, as illustrated on the BSA-approved plans;

THAT any change in control or ownership of the building shall require the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4);

THAT no commercial catering shall take place onsite;

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 construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance 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 13, 2011.

38-11-BZ

APPLICANT – Eric Palatnik, P.C., for Arveh Schimmer, owner.

SUBJECT – Application April 5, 2011 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted into a single family home, contrary to floor area and open space (§23-141(a)); side yard (§23-461(a)) and less than the required rear yard (§23-47). R-2

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zoning district.

PREMISES AFFECTED – 1368 East 27th Street, between Avenue M and N, Block 7662, Lot 80, 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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 17, 2011, acting on Department of Buildings Application No. 320274494, reads in pertinent part:

Proposed plans are contrary to Z.R. 23-141(a) in that the proposed floor area ratio (FAR) exceeds the permitted 50%.

Proposed plans are contrary to Z.R. 23-141(a) in that the proposed open space ratio (OSR) is less than the required 150%.

Plans are contrary to Z.R. 23-461(a) in that the existing minimum side yard is less than the required minimum 5'-0".

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 two-family home and its conversion into a single-family home, which does not comply with the zoning requirements for 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 July 12, 2011 after due notice by publication in *The City Record*, with a continued hearing on August 16, 2011, and then to decision on September 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 27th Street, between Avenue M and Avenue N, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a two-family home with a floor area of 2,687 sq. ft. (0.67 FAR); 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 2,687 sq. ft. (0.67 FAR) to 3,978 sq. ft. (0.99

FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 56 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 3'-4" and to provide a side yard with a width of 9'-8" along the southern lot line (two side yards with minimum widths of 5'-0" and 8'-0", respectively, are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, at hearing, the Board raised concerns about the amount of the original home that is being retained and the structural stability of the existing portions of the home that will remain; and

WHEREAS, in response, the applicant submitted revised plans and a letter from the architect stating that the northern exterior wall will remain, accounting for approximately 34 percent of the existing perimeter wall, and that this wall will be stabilized laterally throughout the proposed construction; and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant provided an analysis of the FAR of homes in the surrounding area, which reflects that a significant number of the homes on the subject block and on adjacent block 7663 which front on East 27th Street have non-compliant FARs and that there are four homes on the subject block with frontage on East 27th Street which have an FAR of 0.98 or greater; and

WHEREAS, based upon its review of the record, 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, within an R2 zoning district, the enlargement of a two-family home and its conversion into a single-family home, which does not comply with the zoning requirements for floor area ratio,

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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 June 21, 2011'-(12) sheets and 'August 2, 2011'-(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,978 sq. ft. (0.99 FAR); an open space ratio of 56 percent; a side yard with a minimum width of 3'-4" along the northern lot line; a side yard with a minimum width of 9'-8" along the southern lot line; and a rear yard with a minimum depth of 20'-0", 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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 13, 2011.

51-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Susan Sherer and Shimishon Sherer, owners.

SUBJECT – Application April 18, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence, contrary to floor area and open space (§23-141); and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1226 East 26th Street, west side of 26th Street, between Avenue L and Avenue M, Block 7643, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra A. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 5, 2011, acting on Department of Buildings Application No. 320279916, 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 is less than the minimum required rear yard of 30 feet; 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 home which does not comply with the zoning requirements for 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 July 9, 2011 after due notice by publication in *The City Record*, with a continued hearing on August 16, 2011, and then to decision on September 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 26th Street, between Avenue L and Avenue M, within an R2 zoning district; and

WHEREAS, on May 2, 2000, under BSA Cal. No. 146-99-BZ, the Board granted an application for a special permit allowing the enlargement of the existing single-family home at the site; and

WHEREAS, the applicant states that the construction approved under the previous grant was never performed, and the owner now proposes to enlarge the existing home pursuant to the current application; and

WHEREAS, the subject site has a total lot area of 3,750 sq. ft., and is occupied by a single-family home with a floor area of 2,349 sq. ft. (0.63 FAR); 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 2,349 sq. ft. (0.63 FAR) to 3,760 sq. ft. (1.0 FAR); the maximum permitted floor area is 1,875 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 57 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, based upon its review of the record, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor

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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, within an R2 zoning district, the enlargement of a single-family home which does not comply with the zoning requirements for floor area ratio, 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, 2011"-(11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,760 sq. ft. (1.0 FAR); an open space ratio of 57 percent; and a rear yard with a minimum depth of 20'-0", 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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 13, 2011.

65-11-BZ

CEQR #11-BSA-095X

APPLICANT – Sheldon Lobel, P.C., for Vornado Gun Hill Road LLC, for Gun Hill Road Fitness Group, lessee.

SUBJECT – Application May 12, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*) in an existing one-story building. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1750 East Gun Hill Road, frontage on East Gun Hill Road, Gunther Avenue, and Bergen Avenue, Block 4494, Lot 1, Borough of Bronx.

COMMUNITY BOARD #11BX

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, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated April 12, 2011, acting on Department of Buildings Application No. 201077592, reads in pertinent part:

“Proposed use as a physical culture establishment is contrary to ZR Section 32-10 and must be referred to the BSA for approval pursuant to ZR Section 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C2-1 (R3-2) zoning district, the operation of a physical culture establishment (PCE) on a portion of the first floor of a one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 16, 2011, after due notice by publication in *The City Record*, and then to decision on September 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on an irregularly-shaped corner lot bounded by East Gun Hill Road to the north, Gunther Avenue to the west, and Mace Avenue to the south, within a C2-1 (R3-2) zoning district; and

WHEREAS, the subject site has a total lot area of 322,465 sq. ft. and is occupied by a shopping center consisting of three separate buildings: (1) a one-story commercial building located on the southeast corner of the zoning lot; (2) a small one-story commercial building located along the East Gun Hill Road frontage; and (3) a large one-story building located at the rear portion of the zoning lot; and

WHEREAS, the proposed PCE will occupy 16,259 sq. ft. of floor area on a portion of the first floor of the large one-story commercial building located at the rear portion of the zoning lot; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the proposed hours of operation for the PCE are: 24 hours a day from Monday at 12:00 a.m. through Friday at 10:00 p.m.; and Saturday and Sunday, from 7:00

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a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; 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 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 617.2; 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. 11BSA095X, dated May 12, 2011; and

WHEREAS, the EAS documents 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, 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 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, on a site located within a C2-1 (R3-2) zoning district, the operation of a physical culture establishment on a portion of the first floor of a one-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 28, 2011 - (7) sheets and *on further condition*:

THAT the term of this grant shall expire on September 13, 2021;

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 all massages shall be performed by New York State licensed massage therapists;

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

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT substantial construction shall be completed in accordance with ZR §73-70;

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

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 13, 2011.

68-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Rivkie Weingarten and Nachum Weingarten, owners.

SUBJECT – Application April 16, 2011 – Special Permit (§73-622) for enlargement of existing single family home, contrary to floor area, lot coverage and open space (§23-141); rear yard (§23-47) and side yard (§23-461). R3-2 zoning district.

PREMISES AFFECTED – 1636 East 23rd Street, between Avenue P and Quentin Road, Block 6785, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 15, 2011, acting on Department of Buildings Application No. 320281510, reads in pertinent part:

“Proposed floor area is contrary to ZR 23-141.

Proposed open space ratio is contrary to ZR 23-

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141.

Proposed lot coverage is contrary to ZR 23-141.

Proposed rear yard is contrary to ZR 23-47.

Proposed side yard is contrary to ZR 23-461(a);”
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 home, which does not comply with the zoning requirements for floor area, open space ratio, lot coverage, 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 August 16, 2011, after due notice by publication in *The City Record*, and then to decision on September 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

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

WHEREAS, the subject site is located on the west side of East 23rd Street, between Avenue P and Quentin Road, within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 1,660 sq. ft. (0.42 FAR); 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 1,660 sq. ft. (0.42 FAR) to 3,987 sq. ft. (1.0 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 50 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide lot coverage of 50 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to maintain the existing side yard along the southern lot line with a width of 4’-1¼” (a minimum width of 5’-0” is required for each side yard) and to provide a side yard with a width of 5’-6½” along the northern lot line; and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-0” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, based upon its review of the record, 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, within an R3-2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, lot coverage, 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 August 25, 2011”-(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,987 sq. ft. (1.0 FAR); an open space ratio of 50 percent; lot coverage of 50 percent; a side yard with a minimum width of 4’-1¼” along the southern lot line; a side yard with a minimum width of 5’-6½” along the northern lot line; and a rear yard with a minimum depth of 20’-0”, 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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 13, 2011.

230-09-BZ

APPLICANT – Peter Hirshman, for Mr. Filipp T Tortora, owner.

SUBJECT – Application July 20, 2009 – Variance (§72-21) for the construction of a three story, three family residence, contrary to front yard regulations (§23-45). R-5 zoning district.

PREMISES AFFECTED – 1700 White Plains Road,

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northeast corner of White Plains and Van Nest Avenue, Block 4033, Lot 31, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Peter Hirshman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 18, 2011, at 1:30 P.M., for decision, hearing closed.

194-10-BZ

APPLICANT – Eric Palatnik, P.C., for Revekka Kreposterman, owner.

SUBJECT – Application October 26, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 175 Exeter Street, north of Oriental Avenue, Block 8737, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Judith Balon.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 18, 2011, at 1:30 P.M., for decision, hearing closed.

196-10-BZ

APPLICANT – James Chin & Associates, LLC, for Turtle Bay Inn, LLC., owner.

SUBJECT – Application October 25, 2010 – Variance (§72-21) to allow ground floor commercial use in an existing residential building, contrary to use regulations (§22-00). R8B zoning district.

PREMISES AFFECTED – 234 East 53rd Street, mid-block parcel located on the south side of 53rd Street, between 2nd and 3rd Avenue, Block 1326, Lot 34, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Chris Wright and Barbara Cohen.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 18, 2011, at 1:30 P.M., for decision, hearing closed.

6-11-BZ

APPLICANT – Paul Bonfilio, for Denis Forde, Rockchapel Reality, LLC, owner.

SUBJECT – Application January 19, 2011 – Variance (§72-21) to permit the construction of a one family detached residence on a vacant corner tax lot contrary to ZR §23-711 for minimum distance between buildings on the same zoning lot; ZR §23-461 for less than the required width of a side yard on a corner lot and ZR §23-89(b) less than the required open area between two buildings. R2A zoning district.

PREMISES AFFECTED – 50-20 216th Street, corner of 51st Avenue, Block 7395, Lot 13, 16, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Paul Bonfilio.

For Opposition: Xavier San Migual, Michael Feiner, Armando Coutinlo, Elen Feiser, Andrea R Kovzynski, Nancy Tognan, Joseph Lubomski and other.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 18, 2011, at 1:30 P.M., for decision, hearing closed.

43-11-BZ

APPLICANT – Harold Weinberg, for David Waknin, owner.

SUBJECT – Application April 12, 2011 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a single family home contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1296 East 21st Street, west side 220' south of Avenue R, between Avenues R and S, Block 6826, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

ACTION OF THE BOARD – Laid over to September 27, 2011, at 1:30 P.M., for continued hearing.

54-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Bay Parkway Group LLC, owner.

SUBJECT – Application April 21, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory diagnostic or treatment facility building. R6/C1-3 zoning district.

PREMISES AFFECTED – 6010 Bay Parkway, west side of Bay Parkway between 60th Street and 61st Street, Block 5522, Lot 36 & 32, Borough of Brooklyn.

COMMUNITY BOARD #12BK

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APPEARANCES –

For Applicant: Lyra J. Altman and Jim Heineman.

For Opposition: Council Member David G. Greenfield, Msgr. David L. Casseto, Anna Cali, Natalie DeNicola, Lorraine Macia, Madelon Vitucci, Louaire Cardozo, Jackie Santulli, Vivian Biondolillo and others.

ACTION OF THE BOARD – Laid over to October 18, 2011, at 1:30 P.M., for continued hearing.

58-11-BZ

APPLICANT – Friedman & Gotbaum, LLP, for The Trustees of The Spence School, Incorporated, owner.

SUBJECT – Application May 4, 2011 – Variance (§72-21) to permit the expansion of a (UG 3) community facility (*The Spence School*) contrary to lot coverage (§24-11) and rear yard equivalent (§24-382). R8B zoning district.

PREMISES AFFECTED – 20-22 East 91st Street, South side of East 91st Street, 62.17 ft. westerly from the corner formed by the intersection of the southerly side of 91st Street & the westerly side of Madison Avenue. Block 1502, Lot 59 & 12, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Shelly Friedman, Michael Neiman, Gregg Poke, Bodie Brizendine, Doug Brophy, Michele Krauthamer, Jose DeJesus, Michele Murphy, M. Barry Schneider, Jon Lindsey, Judy Schneider, Sarah O'Hagan, Jennifer Conovitz, Laurie Gordon Mandelbaum and Franklin Speyer.

For Opposition: Ross Moskowitz, Christopher Rizzo, Chloe Levy, Caroline Harris, George Jones, A. Dietrich, Roger M. Levin, Lo van der Valk, Garfield Miller, John C. Calderon, Michael Simon.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 25, 2011, at 1:30 P.M., for decision, hearing closed.

64-11-BZ

APPLICANT – Rampulla Associates Architects, for 3232 49th Realty, LLC, owner; K & G Fitness Group, LLC, lessee.

SUBJECT – Application May 12, 2011 – Special Permit (§73-36) to allow the operation of a physical cultural establishment (*Retro Fitness*). C8-1 zoning district.

PREMISES AFFECTED – 32-28 49th Street, between Northern Boulevard and New Town Road, Block 734, Lot 47, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Phillip L. Rampulla.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 20, 2011, at 1:30 P.M., for decision, hearing closed.

82-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Livaho Choueka, owner.

SUBJECT – Application June 8, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141); side yard (§23-461); rear yard (§23-47) regulations. R5 zoning district.

PREMISES AFFECTED – 2020 Homecrest Avenue, west side of Homecrest Avenue, 165' south of Avenue T, Block 7316, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 25, 2011, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

This resolution adopted on July 12, 2011, under Calendar No. 19-11-BZ and printed in Volume 96, Bulletin Nos. 27-29, is hereby corrected to read as follows:

19-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Brown and Yechiel Fastag, owners.

SUBJECT – Application February 24, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence, contrary to floor area and open space (§23-141); side yards (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1271 East 24th Street, east side of East 24th Street, between Avenue L and Avenue M, Block 7642, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 7, 2011, acting on Department of Buildings Application No. 320245542, 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 of 150.

Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required rear yard of 30 feet.

Proposed plans are contrary to ZR 23-461 in that the proposed side yard straight-line extension is less than the 5 foot minimum side yard permitted;”

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 home, which does not comply with the zoning requirements for 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 May 17, 2011 after due notice by publication in *The City Record*, with a continued hearing on June 14, 2011, and then to decision on July 12, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and

Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 24th Street, between Avenue L and Avenue M, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 3,750 sq. ft., and is occupied by a single-family home with a floor area of 1,999 sq. ft. (0.53 FAR); 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 1,999 sq. ft. (0.53 FAR) to 3,764 sq. ft. (1.0 FAR); the maximum permitted floor area is 1,875 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 52 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard along the southern lot line with a width of 4’-2½” (a minimum width of 5’-0” is required for each side yard); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-0” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, based upon its review of the record, 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, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, 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

MINUTES

marked "Received June 1, 2011"-(11) sheets and "June 27, 2011"-(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,764 sq. ft. (1.0 FAR); an open space ratio of 52 percent; a side yard with a minimum width of 4'-2½" along the southern lot line; and a rear yard with a minimum depth of 20'-0", 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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 12, 2011.

***The resolution has been revised to correct the open space ratio calculations, which read : "...57 percent..." now reads: "...52 percent..." . Corrected and Printed in Bulletin Nos. 36-38, Vol. 96, dated September 22, 2011.**

BULLETIN

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September 28, 2011

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DOCKET

New Case Filed Up to September 20, 2011

143-11-A

20 Harborlights Court, east side of Harborlights Court, east of Howard Avenue., Block 615, Lot(s) 36, Borough of **Staten Island, Community Board: 1**. Appeal challenging the Fire Department determination denying a waiver of the requirement that the grade of the fire apparatus road shall not exceed 10 percent as per NYCFire Code Section FC 503.2.7. R-2 Zoning District . R-2 district.

144-11-A

25 Harborlights Court, east side of Harborlights Court, east of Howard Avenue., Block 615, Lot(s) 34, Borough of **Staten Island, Community Board: 1**. Appeal challenging the Fire Department determination denying a waiver of the requirement that the grade of the fire apparatus road shall not exceed 10 percent as per NYCFire Code Section FC 503.2.7. R-2 Zoning District . R-2 district.

145-11-A

35 Harborlights Court, East side of Harborlights, east of Howard Avenue., Block 615, Lot(s) 35, Borough of **Staten Island, Community Board: 1**. Appeal challenging the Fire Department determination denying a waiver of the requirement that the grade of the fire apparatus road shall not exceed 10 percent as per NYCFire Code Section FC 503.2.7. R-2 Zoning District . R-2 district.

146-11-A

40 Harborlights Court, East side of Harborlights Court, east of Howard Avenue., Block 615, Lot(s) 37, Borough of **Staten Island, Community Board: 1**. Appeal challenging the Fire Department determination denying a waiver of the requirement that the grade of the fire apparatus road shall not exceed 10 percent as per NYCFire Code Section FC 503.2.7. R-2 Zoning District . R-2 district.

147-11-BZ

24-47 95th Street, east side of 95th Street between 24th and 25th Avenues, Block 1106, Lot(s) 44, Borough of **Queens, Community Board: 3**. Application filed pursuant to Z.R. Section 72-21 to permit the construction of a single-family residence at the premises which is contrary to the applicable floor area and side yard requirements. R3-2 district.

148-11-A

32 Kildare Walk, west side Kildare Walk, 183' north of Breezy Point., Block 16350, Lot(s) p/o400, Borough of **Queens, Community Board: 14**. The proposed reconstruction and enlargement of an existing single family dwelling not fronting a mapped street is contrary to Article 3, Section 36 of the General City Law. The proposed upgrade of an existing non-conforming private disposal system partially in the bed of the service road is contrary to Building Department policy. R4 zoning district . R4 district.

149-11-A

1789 St. John's Place, located on the northeast corner of the intersection formed by St. John's Place and Eastern Parkway., Block 1471, Lot(s) 65, Borough of **Brooklyn, Community Board: 16**. Application filed pursuant to New York City Charter Sections 666.7 to vary the prohibition against construction within 30' of the street line of Eastern Parkway as set forth in Administrative Code Section 18-112 and cited in New York City Building Code Section 3201.3.1, to allow the construction of three 2-family homes at the premises.R6 zoning district. R6 district.

150-11-A

1793 St. John's Place, northeast corner of the intersection formed by St. John's Place and Eastern Parkway., Block 1471, Lot(s) 67, Borough of **Brooklyn, Community Board: 16**. Application filed pursuant to New York City Charter Sections 666.7 to vary the prohibition against construction within 30' of the street line of Eastern Parkway as set forth in Administrative Code §18-112 and cited in New York City Building Code §3201.3.1, to allow the construction of three 2-family homes at the premises. R6 zoning district. R6 district.

151-11-A

1797 St. John's Place, northeast corner of the intersection formed by St. Johns Place and Eastern Parkway., Block 1471, Lot(s) 68, Borough of **Brooklyn, Community Board: 16**. Application filed pursuant to New York City Charter Sections 666.7 to vary the prohibition against construction within 30' of the street line of Eastern Parkway as set forth in Administrative Code §18-112 and cited in New York City Building Code §3201.3.1, to allow the construction of three 2-family homes at the premises.R6 zoning district. R6 district.

DOCKET

152-11-BZ

240 East 38th Street, East 37th Street, Second Avenue, East 38th Street and Tunnel Exit Street, Block 918, Lot(s) 1001-1026, Borough of **Manhattan, Community Board: 6.** Variance (§72-21) to allow certain modifications to the bonusable plazas and arcades associated with the existing building, contrary to ZR 37-625. C1-9 zoning district. C1-9(TA) 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

OCTOBER 18, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 18, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

529-52-BZ

APPLICANT - Alfonso Duarte, P.E., for Alacorn-Mordini Enterprises Inc., owner.
SUBJECT – Application June 7, 2011 – Extension of Term for a Variance in an C2-3/R6 district.
PREMISES AFFECTED – 77-11 Roosevelt Avenue, north west corner Roosevelt Avenue & 78th Street. Block 1288, Lot 39, Borough of Queens.
COMMUNITY BOARD #3Q

335-59-BZ

APPLICANT – Alfonso Duarte P.E., for 3485 Atlantic Avenue Realty Corp., owner; Royal Motor Mart Inc., lessee.
SUBJECT – Application July 11, 2011 – Pursuant to ZR §11-411 for an Extension of Term for the continued operation of a lot used for the storage and sale of used cars which expired on December 7, 2009. R-5 zoning district.
PREMISES AFFECTED – 3485/95 Atlantic Avenue, North-East corner Nichols Avenue. Block 4151, Lot 1, Borough of Brooklyn.
COMMUNITY BOARD #5BK

727-59-BZ

APPLICANT – Sheldon Lobel, P.C., for Square-Arch Realty Corp., owner.
SUBJECT – Application August 11, 2011 – This application seeks to extend the term of the previously granted variance which permits transient parking in the garage of the residential building at the premises.
PREMISES AFFECTED – 2 Fifth Avenue, corner through lot fronting on Fifth Avenue, Washington Square North and West 8th Street. Block 551, Lot 1, Borough of Manhattan.
COMMUNITY BOARD #2M

252-71-BZ

APPLICANT – Alfonso Duarte, for Alan Pearlstein, owner.
SUBJECT – Application June 23, 2011 – Extension of Term (§11-411) for an additional 10 years to extend the term of variance as per the previous approvals by the Board.
PREMISES AFFECTED – 190-18 Northern Boulevard, Southside Northern Boulevard between 189th and 192nd Streets. Block 5513, Lot 22, Borough of Queens.
COMMUNITY BOARD #11Q

OCTOBER 18, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 18, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

39-11-BZ

APPLICANT – Bryan Cave LLP, for Kimball Group, LLC, owner.
SUBJECT – Application April 8, 2011 – Variance (§72-21) to legalize a mixed use building, contrary to floor area (§24-162), parking (ZR §25-31), permitted obstructions (§24-33/23-44), open space access (§12-10), side yard setback (§24-55), distance required from windows to lot line (§23-861). R4 zoning district.
PREMISES AFFECTED – 2230-2234 Kimball Street, between Avenue U and Avenue V. Block 8556, Lot 55, Borough of Brooklyn.
COMMUNITY BOARD #18BK

76-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Eli Braha, owner.
SUBJECT – Application May 26, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141); rear yard (§23-47) and side yard (§23-461). R4/OP zoning district.
PREMISES AFFECTED – 2263 East 2nd Street, approximately 235' south of Gravesend Neck Road, Block 7154, Lot 68, Borough of Brooklyn.
COMMUNITY BOARD #15BK

106-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Tag Court Square, LLC, owner; Long Island City Fitness Group, LLC, owner.
SUBJECT – Application August 2, 2011 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Planet Fitness*). M1-5/R7-3 (Special Long Island City Mixed Use District) zoning district.
PREMISES AFFECTED – 27-28 Thomson Avenue, triangular zoning lot with frontages on Thomson Street and Court Square, adjacent to Sunnyside Yards. Block 82, Lots 7501 (1001), Borough of Queens.
COMMUNITY BOARD #2Q

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, SEPTEMBER 20, 2011 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

827-55-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products, Incorporated, owner.

SUBJECT – Application October 5, 2010 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*British Petroleum*) which expires on January 31, 2011. R3-2 zoning district.

PREMISES AFFECTED – 245-20 139th Avenue, southwest corner of Conduit Avenue. Block 13614, Lot 23, 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 Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term for a previously granted variance for a gasoline service station with accessory uses, that expired on January 31, 2011; and

WHEREAS, a public hearing was held on this application on December 14, 2010, after due notice by publication in *The City Record*, with continued hearings on January 25, 2011, June 7, 2011, July 12, 2011 and August 23, 2011, and then to decision on September 20, 2011; and

WHEREAS, Community Board 13, Queens, recommends disapproval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the southwest corner of 246th Street and Conduit Avenue at 139th Avenue, within an R3-2 zoning district; and

WHEREAS, the site is occupied by a gasoline service station with accessory uses (Use Group 16); and

WHEREAS, the Board has exercised jurisdiction over the site since January 31, 1956 when, under the subject calendar number, the Board granted a variance to permit the site to be occupied by a gasoline service station with accessory uses; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on September 10, 2002, the Board granted a ten-year extension of term, which expired on January 31, 2011; and

WHEREAS, the applicant now seeks an additional ten-year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, at hearing, the Board raised concerns about the following site conditions: (1) parked cars on the sidewalk, (2) signage in excess of the Board approval, and (3) the presence of graffiti; and

WHEREAS, in response, the applicant submitted (1) evidence that the owner installed wheel stops to prevent parking on the sidewalk and (2) photographs of the site, which reflect the removal of excess signage and graffiti; 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 *reopens* and *amends* the resolution, dated January 31, 1956, so that as amended this portion of the resolution shall read: “to extend the term for ten years from January 31, 2011, to expire on January 31, 2021; *on condition* that all use and operations shall substantially conform to plans filed with this application marked ‘May 24, 2011’-(3) sheets; and *on further condition*:

THAT the term of the grant shall expire on January 31, 2021;

THAT all exterior lighting shall be directed downward and away from adjacent residential uses;

THAT the site shall be maintained free of debris and graffiti;

THAT all signage shall comply with the Board-approved signage plan;

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; and

THAT the Department of Buildings must ensure compliance 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. 401419924)

Adopted by the Board of Standards and Appeals September 20, 2011.

58-99-BZ

APPLICANT – Sheldon Lobel, P.C., for Cumberland Farms, Incorporated, owner.

SUBJECT – Application May 19, 2011 – Extension of Term (§11-411) for a gasoline service station (*Gulf*) which expired on October 26, 2009; Amendment to the previously approved plans to remove a canopy and Waiver of the Rules. R3-2 zoning district.

MINUTES

PREMISES AFFECTED – 18-10 Utopia Parkway, Entire block is bounded by utopia Parkway, 18th Avenue, 169th Street and 19th Avenue. Block 5743, Lot 75, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for a gasoline service station (Use Group 16) with accessory uses, and an amendment to permit minor modifications to the BSA-approved plans; and

WHEREAS, a public hearing was held on this application on August 16, 2011, after due notice by publication in *The City Record*, and then to decision on September 20, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, the site occupies the entirety of Block 5743, bounded by 169th Street to the west, 18th Avenue to the north, Utopia Parkway to the east, and 20th Avenue to the south, within a C1-2 (R3-2) zoning district; and

WHEREAS, the site is currently occupied by a gasoline service station (Use Group 16) with accessory uses; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 1, 1959 when, under BSA Cal. No. 182-52-BZ, the Board granted a variance to permit the construction of a gasoline service with accessory uses, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, on October 26, 1999, under the subject calendar number, the Board granted an application under ZR § 11-411 to re-establish the expired variance for a gasoline service station use and automobile repair facility use, to expire October 26, 2009; and

WHEREAS, most recently, on February 25, 2003, the Board granted an extension of time to obtain a certificate of occupancy and an amendment to permit the erection of a metal canopy over new concrete pump islands; and

WHEREAS, the applicant now seeks to extend the term for an additional ten years; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, the applicant also requests an amendment to reflect that the work permitted under the most recent grant was never commenced; and

WHEREAS, specifically, the applicant states that the two new pump islands and the metal canopy permitted under the February 25, 2003 grant were never constructed; accordingly, the applicant seeks an amendment to legalize the existing conditions; and

WHEREAS, based upon its review of the record, 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 October 26, 1999, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from October 26, 2009, to expire on October 26, 2019; *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 19, 2011’-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 26, 2019;

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

THAT 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. 402280580)

Adopted by the Board of Standards and Appeals, September 20, 2011.

201-02-BZ

APPLICANT – Eric Palatnik, P.C., for Papa Page, LLC, owner.

SUBJECT – Application July 20, 2011 – Extension of Time to Complete Construction of a Variance (§72-21) for the construction of a new automotive service station with accessory convenience store which expired on May 22, 2011 and a waiver of the rules. C1-1/R3X (SRD) zoning district. PREMISES AFFECTED – 6778 Hylan Boulevard, between Page Avenue and Culotta. Block 7734, Lot 13 & 20, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension

MINUTES

of time to complete construction and obtain a certificate of occupancy for a previously granted variance to permit, in C1-1 (R3X) zoning district, the construction of an automotive service station (Use Group 16B) with an accessory convenience store, which expired on May 22, 2011; and

WHEREAS, a public hearing was held on this application on August 23, 2011, after due notice by publication in *The City Record*, and then to decision on September 20, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, the subject site is located on the southeast corner of Hylan Boulevard and Page Avenue, within a C1-1 (R3X) zoning district; and

WHEREAS, on January 28, 2003, under the subject calendar number, the Board granted a variance to permit the construction of an automotive service station with an accessory convenience store; and

WHEREAS, most recently, on May 22, 2007, the Board granted an extension of time to complete construction and obtain a certificate of occupancy, which expired on May 22, 2011; and

WHEREAS, the applicant now seeks an additional extension of time to complete construction and obtain a new certificate of occupancy; and

WHEREAS, the applicant states that additional time is necessary to complete the project due to financing delays; and

WHEREAS, the applicant also seeks an amendment to reflect a change in the Department of Buildings ("DOB") application number since the Board's initial grant, from DOB Application No. 500496643 to DOB Application No. 520046539; and

WHEREAS, the applicant states that there are no proposed changes to the BSA-approved plans, but that a new application number was required at DOB due to the delay in commencing construction under the original application number; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction 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 28, 2003, so that as amended this portion of the resolution shall read: "to grant an extension of the time to complete construction for a term of four years, to expire on September 20, 2015; *on condition*:

THAT substantial construction shall be completed by September 20, 2015;

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. 520046539)

Adopted by the Board of Standards and Appeals, September 20, 2011.

742-59-BZ

APPLICANT – Harold L. Robertson, for David B. Levy/136 E. 55th Street, Inc.

SUBJECT – Application July 14, 2011 – Extension of Term for the continued use of 50 transient parking spaces within an accessory garage in a multiple dwelling building which expired on June 13, 2011. C6-6 zoning district.

PREMISES AFFECTED – 136 East 55th Street, Lexington Avenue and East 55th Street. Block 1309, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Harold L. Robertson.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 25, 2011, at 10 A.M., for decision, hearing closed.

593-69-BZ

APPLICANT – Eric Palatnik, P.C., for Metro New York Dealer Stations, LLC, owner.

SUBJECT – Application May 27, 2011 – Amendment (§11-413) to convert automotive repair bays to an accessory convenience store at an existing gasoline service station (*Shell*). C2-2/R5 zoning district.

PREMISES AFFECTED – 108-01 Atlantic Avenue, Between 108th and 109th Street. Block 9315, Lot 23, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 25, 2011, at 10 A.M., for postponed hearing.

86-92-BZ

APPLICANT – Randy M. Gulkis, DDS, owner.

SUBJECT – Application April 29, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of a UG6B dental office which expired on June 11, 2011. R3X zoning district.

PREMISES AFFECTED – 15 First Street, a triangle formed by First Street to the east, Richmond to west and Rose Street to the south. Block 4190, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

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For Applicant: Randy M. Gulkis.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 18, 2011, at 10 A.M., for decision, hearing closed.

93-95-BZ

APPLICANT – Akerman Senterfeit, for 149-58 Realty Company, owner.

SUBJECT – Application April 18, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of a (UG 6a) eating and drinking establishment and (UG 9) catering establishment which expired on June 10, 2007 and waiver of the rules. R3A zoning district.

PREMISES AFFECTED – 149-56/58 Cross Island Parkway, between 149th and 150th Streets. Block 4662, Lot 36 & 38. Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Jessica Loeser.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 25, 2011, at 10 A.M., for decision, hearing closed.

92-99-BZ, 94-99-BZ, 96-99-BZ, 98-99-BZ, 100-99-BZ, 102-99-BZ

APPLICANT – Sheldon Lobel, P.C., for Walden Terrace Inc., owner.

SUBJECT – Application June 24, 2011 – Extension of Term for the continued use of transient parking spaces in a multi-unit residential building which expired on May 30, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on May 30, 2011, and Waiver of the Rules. R7-1 zoning district.

PREMISES AFFECTED – 98-09, 98-25, 98-41, 98-51, 98-33, 98-19, 64th Avenue, western portion of the block bounded by the 64th Avenue to the north, 64th Road to the south, 98th Street to the west and 99th Street to the east. Block 2101 & 2100, Lot 1, 16, 24, 29, 21, 15, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to October

25, 2011, at 10 A.M., for decision, hearing closed.

200-00-BZ

APPLICANT – Eric Palatnik, P.C., for Blans Development Corporation, owners.

SUBJECT – Application August 25, 2011 – Extension of Time to obtain a Certificate of Occupancy of a variance (§72-21) to operate a Physical Culture Establishment (*Squash Fitness Center*) which expired on June 8, 2011; Waiver of the Rules. C1-4(R6B) zoning district.

PREMISES AFFECTED – 107-24 37th Avenue, southwest corner of 37th Avenue and 108th Street, aka 37-16 108th Street. Block 1773, Lot 10, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 25, 2011, at 10 A.M., for decision, hearing closed.

75-06-BZ

APPLICANT – Eric Palatnik, P.C., for Cord Meyer Development Company, owner.

SUBJECT – Application April 27, 2011 – Extension of Time to complete construction of a variance (§72-21) for a mixed use building contrary to FAR, open space and sky exposure plane regulations, and an amendment to eliminate a sub-cellar and modify the building envelope. C1-2/R7-1 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 –

For Applicant: Eric Palatnik and Anthony Morali.

ACTION OF THE BOARD – Laid over to October 25, 2011, at 10 A.M., for continued hearing.

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APPEALS CALENDAR

95-11-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner.

SUBJECT – Application June 30, 2011 – Reconstruction and enlargement of a single family dwelling located within the bed of a mapped street, contrary to General City Law Section 35. R4 zoning district.

PREMISES AFFECTED – 385 Bayside Drive, 30’ east of mapped Beach 182nd Street. Block 16340, Lot p/o 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 22, 2011, acting on Department of Buildings Application No. 420354128, reads in pertinent part:

A-1 The existing building to be reconstructed and altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35

A-2 The proposed upgraded private disposal system is in the bed of a mapped street and or unmapped service road contrary to General City Law Article 3, Section 35 and Department of Buildings Policy; and

WHEREAS, a public hearing was held on this application on September 20, 2011, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated July 13, 2011, the Fire Department states that it has reviewed the subject proposal and has no objections provided the following conditions are met: (1) the entire building be fully sprinklered in conformity with the sprinkler provisions New York City Fire Code Section 503.8.2, Local Law 10 of 1999 as well as Reference Standard 17-2B of the New York City Building Code; and (2) the entire building be provided with interconnected smoke alarms in accordance with Section 907.2.10 of the NYC Building Code; and

WHEREAS, by letter dated July 22, 2011, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated August 16, 2011, the Department of Transportation (“DOT”) states that it has no objection to the subject proposal; and

WHEREAS, DOT states that the subject lot is not currently included in the agency’s Capital Improvement Program; and

WHEREAS, accordingly, the Board has determined 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 22, 2011, acting on Department of Buildings Application No. 420354128, 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 30, 2011”– 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 the home shall be sprinklered and smoke alarms shall be installed 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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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 20, 2011.

100-11-A

APPLICANT – Deidre Duffy, for Breezy Point Cooperative, Incorporated, owner; John and Roseann Kennedy, lessees.

SUBJECT – Application July 7, 2011 – Reconstruction of a single family home located within the bed of a mapped street, contrary to General City Law Section 35. R4 Zoning District.

PREMISES AFFECTED – 157 Ocean Avenue, east side of Ocean Avenue, 74’ south of Oceanside Avenue. Block 16530, Lot 400, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Deidre Duffy.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 21, 2011 acting on Department of Buildings Application No. 420347262, reads in pertinent part:

“A-1 The existing building to be altered and enlarged

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lies within the bed of a mapped street contrary to General City Law Article 3, Section 35;

A-2 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 September 20, 2011, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated July 25, 2011, the Fire Department states that it waives the requirement for a sprinkler system for the subject home and has no further objections to the proposal; and

WHEREAS, by letter dated July 22, 2011, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated August 16, 2011, the Department of Transportation ("DOT") states that it has no objection to the subject proposal; and

WHEREAS, DOT further states that the subject lot is not currently included in the agency's Capital Improvement Program; and

WHEREAS, accordingly, the Board has determined 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 21, 2011, acting on Department of Buildings Application No. 420347262, 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 11, 2011" - 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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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 20, 2011.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING TUESDAY AFTERNOON, SEPTEMBER 20, 2011 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

119-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Samson and Rivka Molinsky, owners.

SUBJECT – Application June 28, 2010 – Variance (§72-21) to allow legalization of an enlargement of a residential building, contrary to front yard (§23-45) and height (§23-631) regulations. R2X zoning district.

PREMISES AFFECTED – 787 Cornaga Avenue, southwest corner of Cornaga Avenue and Mador Court. Block 15571, Lot 133, Borough of Queens.

COMMUNITY BOARD #14Q

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, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated May 27, 2010, acting on Department of Buildings Application No. 402388073, reads in pertinent part:

1. Proposed plans are contrary to Z.R. 23-45 in that the proposed front yard along Mador Court is less than the minimum required front yard of 15'-0" in an R2X district.
2. Proposed plans are contrary to Z.R. 23-631(b) in that the proposed perimeter wall height exceeds the maximum perimeter wall height of 21'-0" in an R2X district; and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R2X zoning district, the legalization of the enlargement of a two-story single-family home that does not comply with the underlying zoning regulations for the front yard and perimeter wall height, contrary to ZR §§ 23-45 and 23-631(b); and

WHEREAS, a public hearing was held on this application on March 15, 2011, after due notice by publication in *The City Record*, with continued hearings on June 14, 2011 and August 23, 2011, and then to decision on September 20, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown;

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and

WHEREAS, Community Board 14, Queens, recommends approval of this application; and

WHEREAS, New York State Assembly Member Audrey I. Pheffer recommends approval of this application; and

WHEREAS, certain members of the community provided oral and written testimony in support of this application; and

WHEREAS, the site is located on the northwest corner of the intersection of Cornaga Avenue and Mador Court, in an R2X zoning district; and

WHEREAS, the site has 50'-9" of frontage on Cornaga Avenue, a depth 100 feet, and a total lot area of 5,195 sq. ft.; and

WHEREAS, the site is occupied by a two-story single-family home, with a partially completed enlargement; and

WHEREAS, the original home on the site, built in approximately 1925, had a floor area of 1,957 sq. ft. (0.38 FAR), an existing non-complying front yard with a depth of 5'-6" along the eastern lot line, and an existing non-complying perimeter wall height of 22'-3" (the "Original Home"); and

WHEREAS, the applicant states that a portion of the Original Home was damaged by a fire in April 2005, which led to the renovation and subject enlargement of the home; and

WHEREAS, the applicant notes that construction on the subject enlargement commenced following the Department of Building's ("DOB") issuance of a building permit on July 28, 2006, and continued until DOB issued a stop work order on December 7, 2006, before ultimately revoking the permit on September 9, 2008; and

WHEREAS, as discussed in greater detail below, the revocation of the permit was based on DOB's determination that Mador Court qualified as a "street" pursuant to ZR § 12-10(d), and therefore a front yard with a minimum depth of 15'-0" was required along the Mador Court frontage; and

WHEREAS, the applicant notes that at the time of the original DOB approval in 2006, the site was zoned R2, however, the zoning of the site was changed to an R2X district pursuant to the Far Rockaway Neighborhoods Rezoning on August 14, 2008; and

WHEREAS, the applicant states that the rezoning resulted in a second non-compliance because the maximum permitted wall height for the site was reduced from 25'-0" in the prior R2 district to 21'-0" in the current R2X district; and

WHEREAS, the applicant proposes to legalize the enlargement of the home, which extends the legal non-complying front yard along the eastern lot line and the existing perimeter wall height of the home; and

WHEREAS, the proposed home will have the following complying parameters: 2,463 sq. ft. of floor area (0.48 FAR) (the maximum permitted FAR is 1.02), 3,933 sq. ft. of open space (the minimum required open space is 3,695 sq. ft.), a front yard with a depth of 19'-4" along the northern lot line (a front yard with a minimum depth of 15'-0" is required), a side yard with a width of 40'-8" along the southern lot line and a side yard with a width of 9'-11" along the western lot line (two side yards with minimum widths of 8'-0" and 2'-0", respectively, are required), and

one parking spot; and

WHEREAS, however, the applicant proposes to extend the legal non-complying front yard with a depth of 5'-6" along the eastern lot line (a front yard with a minimum depth of 15'-0" is required), and to extend the legal non-complying perimeter wall height of 22'-3" (the maximum permitted perimeter wall height is 21'-0"); and

WHEREAS, the applicant states that requested 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 narrow width and underbuilt nature of the existing home; (2) the site's location on a corner lot; and (3) the practical difficulties that would result from enlarging the home at the rear or along the western lot line; and

WHEREAS, as to the underbuilt size of the Original Home, the applicant states that the subject site has a width of 50'-9" and a lot area of 5,195 sq. ft., and that the Original Home is significantly underbuilt at 1,957 sq. ft. (0.38 FAR), given that the underlying zoning district permits 0.85 FAR (with bonus floor area available up to 1.02 FAR); and

WHEREAS, the applicant notes that the proposed enlargement would only add 506 sq. ft. of floor area, bringing the home to a total floor area of 2,463 sq. ft. (0.48 FAR), which remains significantly less than what is permitted in the underlying R2X district; and

WHEREAS, the applicant states that, although the size of the subject lot is typical in the surrounding area, because the site is a corner lot it requires two front yards of 15'-0" each; and

WHEREAS, the applicant further states that the front yard requirement along Mador Court at the eastern lot line, in conjunction with the existence of a driveway easement that benefits the adjoining property owner and prohibits construction on the westerly 8'-0" of the lot, requires that any enlargement occur at the front or rear of the home, and limits any complying enlargement to a width of 26'-0"; and

WHEREAS, the applicant represents that an enlargement along the western side of the home is further restricted because it would require significant interior demolition and the redesign of the first and second floor layouts to accommodate the relocation of the home's stair in order to efficiently utilize the space created by the enlargement; and

WHEREAS, the applicant notes that the main portion of the Original Home has a depth of 34'-3" and a width of 26'-0", with a one-story projection along the eastern side of the home that increases the width to 35'-0" at the front of the home, while the rear home maintained a width of 26'-0"; and

WHEREAS, the applicant states that the requested waiver merely enables the owner to provide a front yard along Mador Court that matches the existing non-complying front yard of 5'-6", to allow for the in-fill on the first floor and the vertical extension of the second floor at the existing non-complying width of 35'-0"; and

WHEREAS, the applicant represents that the narrow

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width of the Original Home creates a hardship because the overwhelming character in the surrounding area is for wider homes, and the narrow home creates problems regarding the layout, light and air, and livability of the subject home; and

WHEREAS, the applicant submitted a corner lot survey which analyzed 79 corner lots that are improved with single or two-family homes within the subject R2X zoning district, which reflects that the average lot width of the properties surveyed is 72'-0" and the average building front width is 41'-0", which is significantly greater than the subject lot width of 50'-9" and the maximum permitted width of any enlargement to the home of 26'-0"; and

WHEREAS, the survey submitted by the applicant also reflects that 58 of the homes surveyed (73 percent) have an existing building front width that is equal to or greater than the 35'-0" width proposed, and that of the homes that do not have a building front width of at least 35'-0", 14 homes can be enlarged within the permitted yard envelope to have a maximum building front width of 35'-0" or greater; therefore, a total of 91 percent of the homes surveyed either have a front width of at least 35'-0", or have the capability to enlarge to that width as-of-right; and

WHEREAS, the survey further reflects that, including the subject site, only four of the homes surveyed (five percent) have an existing or maximum front width under 30'-0"; and

WHEREAS, the Board observes that the majority of interior lots range between 45'-0" to 48'-0" in width and are able to accommodate homes with maximum widths ranging between 35'-0" and 38'-0"; and

WHEREAS, the applicant notes that the Original Home's width of 35'-0" is similar to other homes in the surrounding area, but because the width results in an existing non-complying front yard, any additional enlargement would be restricted to 26'-0" in width and would be required to be located at the rear of the site due to the existence of the driveway easement and the practical difficulties associated with an enlargement along the western lot line; and

WHEREAS, the applicant states that an enlargement at the rear would also result in practical difficulties because: (1) the kitchen would need to be relocated and reconfigured to accommodate a rear enlargement; (2) extensive interior demolition and room reconfiguration would be required at the first floor in order to create an open layout where the front of the home is not cut-off from the rear; (3) extensive interior and exterior wall demolition would be required at the second floor in order to create appropriate room layouts; and (4) a more extensive foundation system would be required for a rear enlargement, as opposed to the proposed enlargement which utilizes the existing foundation to support the enlargement; and

WHEREAS, accordingly, the applicant states that locating the enlargement along the eastern portion of the home is the only feasible way to enlarge the home; and

WHEREAS, as to the perimeter wall height, the applicant states that the requested waiver would merely allow the extension of the existing non-complying perimeter wall height to the enlarged portions of the home; and

WHEREAS, the applicant further states that compliance with the current perimeter wall height requirement of 21'-0"

would result in a practical difficulty in enlarging the home because the applicant would not be able to maintain the existing heights of the floors or roof; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable side yard regulations; and

WHEREAS, the applicant also included an assertion that the practical difficulty and unnecessary hardship in developing the site arise from the reliance in good faith on DOB's approval of its plans and subsequent issuance of a building permit for the proposed enlargement at the site; and

WHEREAS, the applicant's good faith reliance argument is premised on the following: (1) the architect had multiple meetings with DOB prior to the initial approval and permit issuance, but after a subsequent review, which initially resulted in no action, DOB ultimately issued objections stating that Mador Court was a street per ZR § 12-10(d) and therefore the enlargement was located in the required front yard; and (2) the architect's interpretation that Mador Court did not qualify as a "street" under the Zoning Resolution and therefore the subject lot was an interior lot rather than a corner lot, and thus not subject to front yard regulations along the Mador Court frontage; and

WHEREAS, the Board notes that subsection (d) of the ZR § 12-10 definition of "street" states that a street includes: "any other public way that on December 15, 1961, was performing the functions usually associated with a way established on the City Map;" and

WHEREAS, as to the DOB approval process, the project architect states that although the DOB-approved plans make no reference to Mador Court, the plans originally filed with the DOB application labeled the Mador Court right-of-way as "Mador Court (30' Wide Easement)," but that during one of the initial plan examination meetings the plan examiner requested that the reference to "Mador Court" be removed from the drawing because it was not shown on the City Map and was identified on the property survey as an easement; and

WHEREAS, as to the interpretation of the definition of "street," the applicant contends that the architect reasonably believed that Mador Court was not a zoning "street" under ZR § 12-10(d); and

WHEREAS, the architect states that he determined that Mador Court did not qualify as a "street" under the ZR § 12-10(d) definition of "street" because Mador Court was a private right-of-way established by private easement rights that was only dedicated to public use in September 1991, and therefore he did not believe it was a public way as of December 15, 1961; and

WHEREAS, the Board identifies the key questions that have emerged in the good faith reliance inquiry as: (1) whether the permit was void on its face; (2) whether there was any way the applicant could have known about the invalidity of the permit; and (3) whether there were multiple municipal assurances of validity; and

WHEREAS, the Board finds that the applicant has not met the standard to establish that a hardship was incurred

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due to good faith reliance on DOB's approval; and

WHEREAS, primarily, the Board finds that the applicant does not satisfy the analysis due to the second element regarding constructive notice as to the zoning regulation at issue; specifically, the Board disagrees with the applicant that Mador Court's official dedication to public use in September 1991 allows for its characterization as something other than a public way "performing the functions usually associated with a way established on the City Map" on December 15, 1961; and

WHEREAS, the Board notes that the applicant has not appealed DOB's determination that Mador Court meets the ZR § 12-10(d) definition of "street," but rather relies on what it asserts is the architect's reasonable interpretation; and

WHEREAS, the Board finds that an architect's reasonable interpretation is not a substitute for the absence of constructive notice in the good faith reliance inquiry; and

WHEREAS, the Board further notes that the evidence in the record fails to establish that DOB accepted the architect's interpretation that Mador Court did not qualify as a "street" under ZR § 12-10(d), or that DOB instructed the architect to remove the reference to Mador Court from the plans and treat it as an easement; and

WHEREAS, accordingly, the Board rejects the applicant's claim that it relied in good faith on DOB's approval of the plans and subsequent issuance of a building permit; and

WHEREAS, however, as noted above, the applicant asserted that the site is also constrained by unique physical conditions and suffers an unnecessary hardship such that the requested variance is warranted even without a claim based on good faith reliance; 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, or impact adjacent uses; and

WHEREAS, the applicant notes that the requested waivers are merely extensions of legal non-complying conditions, and that the proposed bulk is compatible with nearby residential development; and

WHEREAS, the applicant submitted a chart reflecting the front yard depths of homes having frontage on Mador Court with a corresponding map indicating their location, which reflects that the front yard depths for these homes range from 11'-2" to 17'-5" as measured from the edge of the Mador Court curb; and

WHEREAS, the applicant represents that although the proposed front yard along Mador Court is less than the other front yards on Mador Court, the subject home has always had a non-complying front yard of 5'-6" (6'-6" from the edge of the Mador Court curb), and that the requested waiver only seeks to legalize the extension of the already existing non-compliance; and

WHEREAS, the applicant notes that it obtained forms of

consent supporting the subject application from 77 out of the 90 properties located within a 400-ft. radius of the site, including all but one of the properties on Mador Court; and

WHEREAS, the applicant states that the proposed waivers will not have an adverse impact on the property located directly across from the site, at 775 Cornaga Avenue, because both of these homes front on Cornaga Avenue and there is over 50'-0" between the Mador Court street walls of the two homes; and

WHEREAS, therefore, 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, 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 proposal complies with all R2X zoning district regulations except for the required front yard and perimeter wall height on a portion of the lot; 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 R2X zoning district, the legalization of the enlargement of a two-story single-family home that does not comply with the underlying zoning regulations related to the front yard and perimeter wall height, contrary to ZR §§ 23-45 and 23-631(b); *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 16, 2011"– eleven (11) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: 2,463 sq. ft. of floor area (0.48 FAR); a front yard with a depth of 19'-4" along the northern lot line; a front yard with a minimum depth of 5'-6" along the eastern lot line; a side yard with a width of 40'-8" along the southern lot line; a side yard with a width of 9'-11" along the western lot line; and a perimeter wall height of 22'-3", as per 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

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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 20, 2011.

227-10-BZ

APPLICANT – Eric Palatnik, P.C., for Power Test Realty Company Limited Partnership, owner.

SUBJECT – Application December 14, 2010 – Reinstatement (§11-411) of a previously approved variance permitting the operation of an automotive service station (UG 16B) (*Getty*) which expired on October 11, 2000; Amendment to legalize fuel dispensing islands; Extension of Time to obtain a certificate of occupancy which expired on November 17, 1993; Waiver of the rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 204-12 Northern Boulevard, Northern Boulevard and 204th Street. Block 7301, Lot 11, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated November 18, 2010, acting on Department of Buildings Application No. 420279200, reads in pertinent part:

“Comply with BSA – to extend term of variance granted by the Board of Standards and Appeals BSA Cal. No. 212-51-BZ and obtain new certificate of occupancy;” and

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reinstatement, an extension of term, an extension of time to obtain a certificate of occupancy, and an amendment to permit minor modifications to the approved plans for a prior Board approval of an automobile service station with accessory uses (Use Group 16) in a C2-2 (R3-2) zoning district, pursuant to ZR § 11-411; and

WHEREAS, a public hearing was held on this application on March 1, 2011, after due notice by publication in the *City Record*, with continued hearings on April 12, 2011, May 17, 2011, July 12, 2011 and August 23, 2011 and then to decision on September 20, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Queens, recommends disapproval of this application, citing the following concerns: (1) commercial trucks are parked on the

site; (2) old tires are stored on the property; and (3) the fence is in disrepair; and

WHEREAS, members of the surrounding community provided testimony in opposition to this application; and

WHEREAS, the premises is located on the south side of Northern Boulevard, between 204th Street and the Clearview Expressway, within a C2-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 11, 1955 when, under BSA Cal. No. 212-51-BZ, the Board granted a variance to permit the site to be occupied as a gasoline service station with accessory uses, for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended at various times; and

WHEREAS, most recently, on November 17, 1992, the Board granted a ten-year extension of term, which expired on October 11, 2000; and

WHEREAS, the term of the variance has not been extended since its expiration on October 11, 2000, and

WHEREAS, the applicant represents, however, that the use of the site as a gasoline service station with accessory uses has been continuous since the initial grant; and

WHEREAS, the applicant now proposes to reinstate the prior grant; and

WHEREAS, the applicant has requested a ten-year extension of term and extension of time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance for a term of not more than ten years; and

WHEREAS, the applicant also requests an amendment to reflect the replacement of the two old pump islands with four new pump islands; and

WHEREAS, at hearing, the Board directed the applicant to address the Community Board’s concerns regarding truck parking, fencing, and site maintenance, and raised additional concerns about the lack of landscaping, the lack of screening for the adjacent residents, and the excessive signage on the site; and

WHEREAS, in response, the applicant submitted photographs and revised plans reflecting the removal of the tires and other debris from the site, the installation of new fencing with privacy slats, the addition of landscaping, a reduction in the signage to comply with the underlying C2 district signage regulations, and that parking on the site is limited to vehicles awaiting service; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR § 11-411.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, 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 to permit the reinstatement, extension of term, extension of time to obtain a certificate of occupancy, and amendment to the previously-approved plans for a prior

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Board approval of an automobile service station with accessory uses (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 August 12, 2011"-(8) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years, to expire on September 20, 2021;

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

THAT all signage on the shall comply with C2 district regulations;

THAT parking on the site shall be limited to vehicles awaiting service;

THAT landscaping and fencing shall be maintained in accordance with the BSA-approved plans;

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

THAT a new certificate of occupancy be obtained by September 20, 2012;

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;

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 20, 2011.

1-11-BZ

APPLICANT – Martyn & Don Weston Architects, for RAC LLC Realty, owner; Sahadi Importing Company, lessee.

SUBJECT – Application January 3, 2011 – Variance (§72-21) to allow a ground floor enlargement to a pre-existing non complying commercial building, contrary to floor area regulations (§53-31). C2-3/R6 zoning district.

PREMISES AFFECTED – 189-191 Atlantic Avenue, north side of Atlantic Avenue, 240' east of Clinton Street. Block 276, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Don Weston and Charles Sahadi.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 13, 2010, acting on

Department of Buildings Application No. 320235795, reads in pertinent part:

"Proposal to add floor area to an existing non complying building will increase the degree of non compliance and is contrary to Section 53-31 ZR and must be referred to the Board of Standards and Appeals;" and

WHEREAS, this is an application under ZR § 72-21, to permit, in a C2-3 (R6) zoning district within the Brooklyn Heights Historic District, the enlargement of a pre-existing non-complying commercial building, which increases the degree of non-compliance with regard to floor area regulations, contrary to ZR § 53-31; and

WHEREAS, a public hearing was held on this application on April 12, 2011 after due notice by publication in *The City Record*, with continued hearings on June 7, 2011, July 12, 2011, and August 23, 2011, and then to decision on September 20, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

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

WHEREAS, City Council Member Stephen T. Levin recommends approval of this application; and

WHEREAS, certain members of the community provided testimony in support of this application; and

WHEREAS, the subject site is located on the north side of Atlantic Avenue, between Clinton Street and Court Street, in a C2-3 (R6) zoning district within the Brooklyn Heights Historic District; and

WHEREAS, the site has 50 feet of frontage on Atlantic Avenue, a depth of 80 feet, and a total lot area of 4,000 sq. ft.; and

WHEREAS, the site is occupied by a five-story mixed-use building with two Use Group 6 stores at the ground floor and residential units above; and

WHEREAS, the subject building has a pre-existing non-complying total floor area of 14,510 sq. ft. (3.63 FAR) (the maximum permitted total floor area is 8,080 sq. ft. (2.02 FAR)), with a residential floor area of 11,320 sq. ft. (2.83 FAR) (the maximum permitted residential floor area is 8,080 sq. ft. (2.02 FAR)), and a commercial floor area of 3,190 sq. ft. (0.80 FAR) (the maximum permitted commercial floor area is 8,000 sq. ft. (2.0 FAR)); and

WHEREAS, the applicant states that the subject building, which was constructed in 1886, was designed with two separate, rectangular building sections on the east and west side of the building, each approximately 20'-0" in width, with an internal central stair case and a courtyard with a width of 10'-0" located between the two building sections; and

WHEREAS, the applicant notes that the ground floor commercial space in the western section of the building (the "Western Storefront") is currently occupied by a Use Group 6 retail store that is operated in conjunction with ground floor commercial space for the adjacent building to the west, at 187 Atlantic Avenue; and

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WHEREAS, the applicant states that the ground floor commercial space in the eastern section of the building (the "Eastern Storefront") is currently vacant; and

WHEREAS, the applicant states that the Western Storefront was connected to the portion of the store located at 187 Atlantic Avenue in 1985, pursuant to an Alteration Permit issued by the Department of Buildings ("DOB"); and

WHEREAS, however, the applicant states that due to the subject building's unique configuration, there is no connection between the Eastern Storefront and Western Storefront, and therefore the Eastern Storefront is cut-off from the retail store which operates in the Western Storefront; and

WHEREAS, on January 11, 2000, under BSA Cal. No. 46-99-BZ, the Board granted a variance to permit a 270 sq. ft. ground floor enlargement to provide a connection between the two ground floor storefronts; and

WHEREAS, a condition of that grant was that substantial construction be completed by January 11, 2004, pursuant to ZR § 72-23; and

WHEREAS, the applicant states that construction on the enlargement was never commenced due to funding delays; and

WHEREAS, because the prior variance has expired, the Board required the filing of the subject application for a new variance; and

WHEREAS, the applicant now proposes to construct a 270 sq. ft. enlargement at the ground floor of the subject building in order to provide a ground floor connection between the Eastern Storefront and Western Storefront, which will increase the total floor area of the building from 14,510 sq. ft. (3.63 FAR) to 14,780 sq. ft. (3.69 FAR); and

WHEREAS, the proposed enlargement will increase the degree of non-compliance with the total floor area for the site, thus the applicant seeks a variance to permit the enlargement; 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 development: (1) the obsolete design of the building; and (2) the resultant separated retail spaces with small commercial frontage space; and

WHEREAS, as to the obsolete building design, the applicant states that the building was constructed in 1886 and that the long narrow outer courtyard that abuts a central stair accessing the upper floors cuts the building into two separate parts; and

WHEREAS, the applicant states that this condition is unique to the subject building, and that no other site within a 400-ft. radius is occupied by a single building divided into two separate and undersized storefronts at the first floor; and

WHEREAS, the applicant further states that the unique design of the building results in two separate commercial storefronts with approximately 20'-0" of frontage each; and

WHEREAS, the applicant states that the small commercial frontage space which results from the unique building design creates a hardship for the Eastern Storefront because it cannot support a viable retail space separated from the remainder of the store; and

WHEREAS, the applicant represents that the surrounding

area consists primarily of larger storefronts, and that the requested waiver is necessary in order to compete with the larger stores in the vicinity of the site by connecting the Eastern Storefront and the Western Storefront; and

WHEREAS, in support of this statement, the applicant submitted a survey which reflects that large stores with more than 25 feet of frontage constitute 60 percent of the frontage space on commercial streets in the surrounding area; and

WHEREAS, the applicant states that the unique design of the building results in two separate retail units on the ground floor divided by the central stair and outer courtyard, which prevents any connection between the Eastern Storefront and Western Storefront without either enlarging into the outer courtyard or rebuilding the central stair; and

WHEREAS, the applicant states that providing a connection between the two storefronts by rebuilding the central stair results in practical difficulties because: (1) the new stair would have to be completely rebuilt in order to meet the present code requirements; (2) rebuilding the stair would require that all 16 of the residential units above the ground floor be vacated for more than four months; (3) a substantial amount of floor area from the two front apartments on the second floor would be eliminated in order to allow for the transition of the new stair; and (4) the cost associated with rebuilding the stair, relocating the load bearing walls, and rearranging the apartment layouts would be prohibitive; and

WHEREAS, accordingly, the only feasible way to connect the two storefronts is by constructing a small one-story enlargement within the rear courtyard; and

WHEREAS, the applicant notes that the requested waiver merely enables the owner to connect the existing retail spaces by allowing for the in-fill of the rear courtyard at the first floor through the addition of a 270 sq. ft. enlargement, which only increases the degree of floor area non-compliance by four percent; and

WHEREAS, the Board notes that in addition to the evidence submitted in support of the subject application, it also accepts its own determination that the finding set forth at ZR § 72-21(a) was met under BSA Cal. No. 46-99-BZ, which approved the applicant's request for an identical enlargement under substantially similar facts on January 11, 2000; and

WHEREAS, based upon the above, the Board finds that the obsolete design of the building creates unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study which analyzed: (1) the existing scenario, consisting of two separated stores; (2) a complying scenario, consisting of one large store connected through a rebuilt central stair; and (3) the proposed scenario, consisting of one large store connected through a ground floor enlargement at the rear courtyard; and

WHEREAS, the study concluded that the existing and complying scenarios would not result in a reasonable return, but that the proposed building would realize 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

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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 represents that the surrounding area is occupied by a mix of residential, commercial, and community facility uses; and

WHEREAS, the applicant states that the proposed 10'-0" by 27'-0" one-story enlargement will be constructed entirely within the existing rear courtyard of the subject building, and therefore will not be able to be seen either from the street or from adjoining rear yards; and

WHEREAS, the applicant further states that the enlargement will merely in-fill the narrow outer courtyard on the first floor level and will be below the level of the adjoining property's rear garden wall; and

WHEREAS, the applicant states that the proposed enlargement will only add 270 sq. ft. of floor area, which constitutes only a four percent increase in the degree of non-compliance with the total floor area permitted on the site; and

WHEREAS, the applicant further states that the total commercial floor area will only be increased up to 3,460 sq. ft. (0.86 FAR), which is still well below the maximum permitted commercial FAR of 2.0; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the subject property; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission ("LPC") approving work associated with the proposed enlargement, dated April 1, 2011; 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 site's unique physical conditions; and

WHEREAS, 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.

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 each and every one of the required findings under ZR § 72-21 and grants a variance to permit, in a C2-3 (R6) zoning district within the Brooklyn Heights Historic District, the enlargement of a pre-existing non-complying commercial building, which increases the degree of non-compliance with regard to floor area regulations, contrary to ZR § 53-31; *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 January 3, 2011" – (3) sheets and "August 15, 2011"-(1) sheet; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 14,780 sq. ft. (3.69 FAR); a residential floor area of 11,320 sq. ft. (2.83 FAR); and a commercial floor area of 3,460 sq. ft. (0.86 FAR), as indicated on the BSA-approved plans;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT 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 20, 2011.

64-11-BZ CEQR #11-BSA-094Q

APPLICANT – Rampulla Associates Architects, for 3232 49th Realty, LLC, owner; K & G Fitness Group, LLC, lessee.

SUBJECT – Application May 12, 2011 – Special Permit (§73-36) to allow the operation of a physical cultural establishment (*Retro Fitness*). C8-1 zoning district.

PREMISES AFFECTED – 32-28 49th Street, between Northern Boulevard and New Town Road. Block 734, Lot 47, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 15, 2011, acting on Department of Buildings Application No. 420335998, reads in pertinent part:

"The subject property to be used as a physical cultural health establishment is contrary to Section 32-10 ZR and requires a special permit from the NYC Board of Standards & Appeals pursuant to Section 73-36; and;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located within a C8-1 zoning district, the operation of a physical culture establishment

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(PCE) on a portion of the first floor of a one-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 23, 2011, after due notice by publication in *The City Record*, with a continued hearing on September 13, 2011, and then to decision on September 20, 2011; and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of 49th Street, between Northern Boulevard and Newtown Road, within a C8-1 zoning district; and

WHEREAS, the subject site has a total lot area of 30,000 sq. ft. and is occupied by a one-story commercial building; and

WHEREAS, the proposed PCE will occupy 15,000 sq. ft. of floor area on a portion of the first floor of the one-story commercial building located on the site; and

WHEREAS, the PCE will be operated as Retro Fitness; and

WHEREAS, the proposed hours of operation for the PCE are: Monday through Friday, from 6:00 a.m. to 11:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 10:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; 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 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 617.2; 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. 11BSA094Q, dated July 13, 2011; and

WHEREAS, the EAS documents 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, 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 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, on a site located within a C8-1 zoning district, the operation of a physical culture establishment on a portion of the first floor of a one-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received August 30, 2011 - (1) sheet "Received August 18, 2011 - (2) sheets and *on further condition*:

THAT the term of this grant shall expire on September 20, 2021;

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 all massages shall be performed by New York State licensed massage therapists;

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

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT substantial construction shall be completed in accordance with ZR §73-70;

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

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 20, 2011.

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231-10-BZ

APPLICANT – Eric Palatnik, PC, for WIEDC (Williamsburg Infant & Early Childhood Development Center), owners.

SUBJECT – Application December 17, 2010 – Variance (§72-21) to permit the development of a six-story school (*Williamsburg Infant and Early Childhood Development center*), contrary to use regulations (§42-11); floor area (§43-122), rear yard (§43-26), and wall height, total height, number of stories, setback, and sky exposure plane (§43-43). M1-1 zoning district.

PREMISES AFFECTED – 430-440 Park Avenue, Between Kent Avenue and Franklin Avenue. Block 1898, Tent. Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik, Council Member Steven Levin, Assemblyman Joseph Lentol, Rabbi David Wiederman, Gilly Youner, David Lichtman, Esther Israel and Eliezer Israel.

ACTION OF THE BOARD – Laid over to November 15, 2011, at 1:30 P.M., for continued hearing.

18-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for ZTI Corporation, owner.

SUBJECT – Application February 24, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1025 East 22nd Street, between Avenue I and Avenue J. Block 7586, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to October 25, 2011, at 1:30 P.M., for decision, hearing closed.

47-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for USA Outreach Corp., by Shaya Cohen, owner.

SUBJECT – Application April 13, 2011– Variance (§72-21) to allow a three-story yeshiva (*Yeshiva Zichron Aryeh*) with dormitories, contrary to use (§22-13), floor area (§§23-141 and 24-111), side setback (§24-551) and parking regulations (§25-31). R2 zoning district.

PREMISES AFFECTED – 1213 Bay 25th Street, west side of Bay 25th Street, between Bayswater Avenue and Healy Avenue. Block 15720, Lot 67, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Lyra J. Altman and David Shteierman.

For Opposition: Enid Glabman, Olatunji Ojekunle, Eugene Falik and Jay Staple.

ACTION OF THE BOARD – Laid over to October 25, 2011, at 1:30 P.M., for continued hearing.

48-11-BZ

APPLICANT – Richard C. Bonsignore, for Joseph Moinian, owner; Mendez Boxing New York, lessee.

SUBJECT – Application April 13, 2011– Special Permit (§73-36) to allow the operation of a physical culture establishment (*Mendez Boxing*). C5-2 zoning district.

PREMISES AFFECTED – 60 Madison Avenue, aka 54-60 Madison Avenue, aka 23-25 East 26th Street, aka 18-20 East 27th Street, North side of Madison Avenue at East 26th Street and the north east corner to East 27th Street. Block 856, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Richard C. Bonsignore.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to October 25, 2011, at 1:30 P.M., for decision, hearing closed.

72-11-BZ

APPLICANT – Walter t. Gorman, P.E., for Tannor and Rothafel Partnership, owner; Lukoil (Getty Service Station), lessee.

SUBJECT – Application May 24, 2011 – Re-Instatement (§11-411) of a previously approved variance permitting the operation of an automotive service station (UG 16B) which expired on October 8, 1994. R3-2 zoning district.

PREMISES AFFECTED - 101-06 Astoria Boulevard, south east corner of 101st Street. Block 1688, Lot 30. Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: John Ronan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to October 25, 2011, at 1:30 P.M., for decision, hearing closed.

MINUTES

94-11-BZ

APPLICANT – Victor K. Han, RA, AIA, for 149 Northern Plaza, LLC & Seungho Kim, owners. New York Spa & Sauna Corp., lessee.

SUBJECT – Application June 27, 2011 – Special Permit (§73-36) to allow a physical culture establishment (*New York Spa & Sauna*). C2-2/R6A&R5 zoning district.

PREMISES AFFECTED – 149-06 Northern Boulevard, Southeast of Northern Boulevard, 0' Southeast of 149th. Block 5017, Lot 11, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Victor K. Han.

ACTION OF THE BOARD – Laid over to November 15, 2011, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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October 5, 2011

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31-10-BZ 85-15 Queens Boulevard, aka 51-35 Reeder Street, Queens
230-10-BZ 177 Kensington Street, Brooklyn
235-10-BZ 2363 Ralph Avenue, Brooklyn
17-11-BZ 2255 East 2nd Street, Brooklyn
21-11-BZ 1810 Voorhies Avenue, Brooklyn
31-11-BZ 1665 Jerome Avenue, Bronx
35-11-BZ 226-10 Francis Lewis Boulevard, Queens
43-11-BZ 1296 East 21st Street, Brooklyn
67-11-BZ 1430 East 29th Street, Brooklyn
74-11-BZ 1058 Forest Avenue, Staten Island

Correction640

Affecting Calendar Number:

237-06-BZ 1462 East 26th Street, Brooklyn

DOCKET

New Case Filed Up to September 27, 2011

153-11-BZ

27-11 30th Avenue, between 27th Street and 39th Street., Block 575, Lot(s) 23, Borough of **Brooklyn, Community Board: 4**. Application seeks a special permit pursuant to Sections 11-411 and 11-413 to re-instate an auto repair use previously approved by the Board; to enlarge the existing one story building, an additional 120 sf; and to legalize an existing metal canopy. C1-3 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

OCTOBER 25, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 25, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

390-61-BZ

APPLICANT – Peter Hirshman, for Rapid Park Industries, owner.

SUBJECT – Application February 22, 2011 – Amendment (§11-413) of a previously granted variance for a UG8 parking garage (Rapid Park Industries) in an R8B zoning district. The amendment proposes to permit the addition of a auto rental establishment (UG8) in the cellar level. Extension of time to obtain a certificate of occupancy which expired on June 29, 2008. R8B zoning district.

PREMISES AFFECTED – 148-150 East 33rd Street, south side of East 33rd Street, 151.9' east of East 33rd Street and Lexington Avenue. Block 888, Lot 51. Borough of Manhattan.

COMMUNITY BOARD #6M

608-85-BZ

APPLICANT – Sheldon Lobel, P.C., for J.C. Organization, LLC, owner.

SUBJECT – Application July 18, 2011 – Extension of Term of a previously granted Variance (72-21) which permitted a custom Woodworking Shop (UG 16) which expired on June 17, 2011; an Amendment to permit a change of use to a (UG16) General Contractors Establishment and to allow the expansion of two existing mezzanines to create a full second floor. R5 zoning district.

PREMISES AFFECTED – 33-56 11th Street, located on the west side of 11th Street, 235' south of 33rd Street, Block 319, Lot 36, Borough of Queens.

COMMUNITY BOARD #1Q

17-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Cropsey and Mitchell, owners; TSI Brooklyn Belt LLC dba New York Sports Club, lessee.

SUBJECT – Application July 21, 2011 – Extension of Term of a previously granted Special Permit (73-36) for the continued operation of a Physical Culture Establishment (New York Sports Club), on portions of the first floor and second floor of the subject premises, which expired on December 29, 2008; Waiver of the Rules. M3-1 zoning district.

PREMISES AFFECTED – 1736 Leif Ericson Drive, west side of Leif Ericson Drive, south of Bay Parkway, block 6419, Lot 198, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEALS CALENDAR

138-11-A

APPLICANT – Sheldon Lobel, P.C., for 64-01 Woodside Realty, Inc., owner.

SUBJECT – Application September 7, 2011 – Appeal seeking a common law vested right to complete construction under the prior R6 zoning district regulations. R5D zoning district.

PREMISES AFFECTED – 64-01 Woodside Avenue, between 64th and 65th Street, Block 1295, Lot 75, Borough of Queens.

COMMUNITY BOARD #2Q

140-11-A & 141-11-A

APPLICANT – Sheldon Lobel, P.C., for BQM Management, LLC, owner.

SUBJECT – Application September 8, 2011 – Appeal seeking a common law vested right to complete construction under the prior R6 zoning district regulations. R5D zoning district.

PREMISES AFFECTED – 69-17 & 69-19 38th Avenue, between the BQE and 69th Street, Block 1282, Lot 64 & 65, Borough of Queens.

COMMUNITY BOARD #2Q

OCTOBER 25, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 25, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

81-11-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Parkchester Preservation Co., LP, owner; Blink Metropolitan Avenue, Inc., lessee.

SUBJECT – Application June 7, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Blink Fitness*). C4-2 zoning district.

PREMISES AFFECTED – 1380 Metropolitan Avenue aka 44/64 Metropolitan Oval, south side of Parkchester Road, 200' east of intersection of Parkchester Road and Metropolitan Avenue, Block 3938, Lot 7501, Borough of the Bronx.

COMMUNITY BOARD #9BX

CALENDAR

126-11-BZ

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for 87 Chambers LLC and IBC Chambers LLC, owners.

SUBJECT – Application August 19, 2011 – Variance (ZR §72-21) to allow for the construction of a new mixed use building contrary to lot coverage and rear yard equivalent requirements of §23-145 and §23-532, respectively, and the accessory off-street parking regulations of Z.R. §13-00.

PREMISES AFFECTED – 87-89 Chambers Street, midblock bounded by Chambers Street, Church Street, Reade Street and Broadway, Block 149, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #1M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 27, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

713-55-BZ

APPLICANT – Walter T. Gorman, P.E., for East River Petroleum Realty LLC, owner; Brendan Utopia Mobil, lessee.

SUBJECT – Application May 3, 2011 – Extension of Term (§11-411) of a variance for the continued operation of a gasoline service station (*Mobil*) which expired on December 11, 2011. C2-2/R3-1 zoning district.

PREMISES AFFECTED – 181-05 Horace Harding Expressway, north side block front between Utopia and 182nd Street, Block 7065, Lot 8, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Kieron Bachan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of the term of a previously granted variance for a gasoline service station, which expires on December 11, 2011; and

WHEREAS, a public hearing was held on this application on July 26, 2011 after due notice by publication in *The City Record*, with a continued hearing on August 23, 201, and then to decision on September 27, 2011; and

WHEREAS, Community Board 11, Queens, recommends approval of this application, with the following conditions: (1) graffiti at the rear of the station and any other graffiti be removed; (2) only vehicles awaiting service be parked on the site; (3) no commercial vehicles or renting of parking spaces be permitted on the site; and (4) no sale of beer or alcohol be permitted on the site; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application, with conditions as stipulated by the Community Board; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, the site is located on the north side of the Horace Harding Expressway between Utopia Parkway and 182nd Street, in a C2-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 11, 1956, when, under the subject calendar number, the Board granted a variance to permit the occupation of the premises by a gasoline station and accessory uses; and

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

WHEREAS, on May 21, 2002, the Board granted an extension of term for a period of ten years, which expires on December 11, 2011; and

WHEREAS, most recently, on July 29, 2008, the Board granted an extension of time to obtain a certificate of occupancy, to expire on January 29, 2009; and

WHEREAS, the applicant now seeks an additional ten-year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, in response to the concerns raised by the applicant submitted a photograph reflecting the removal of the graffiti at the site, and agreed to comply with the other conditions stipulated by the Community Board and Queens Borough President regarding site maintenance and parking; and

WHEREAS, however, the applicant requests that a condition prohibiting the sale of alcohol or beer not be included because the sale of alcoholic beverages is appropriately regulated on the State level by the New York State Liquor Authority; 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 *reopens* and *amends* the resolution, dated December 11, 1956, so that as amended this portion of the resolution shall read: “to extend the term for ten years from December 11, 2011, to expire on December 11, 2021; *on condition* that all use and operations shall substantially conform to plans filed with this application marked ‘May 3, 2011’-(6) sheets; and *on further condition*:

THAT the term of the grant shall expire on December 11, 2021;

THAT the site shall be maintained free of debris and graffiti;

THAT parking on the site shall be limited to vehicles awaiting service, and no commercial vehicles or renting of parking spaces shall be permitted;

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

THAT the Department of Buildings must ensure compliance 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. 420344121)

Adopted by the Board of Standards and Appeals September 27, 2011.

MINUTES

351-05-BZ

APPLICANT – Simons & Wright LLC, for Atlas Packaging Solutions Holding Co., Inc., owner.

SUBJECT – Application August 11, 2011 – Extension of Time to Complete Construction of a Variance (§72-21) for the construction of six-unit, four story residential building which expired on August 22, 2010; Waiver of the rules. M2-1 zoning district.

PREMISES AFFECTED – 146 Conover Street, northeast side of Conover Street, between Sullivan and King 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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 of a previously granted variance to permit, in an M2-1 zoning district, the construction of a four-story residential building with six dwelling units, which expired on August 22, 2010; and

WHEREAS, a public hearing was held on this application on September 13, 2011, after due notice by publication in *The City Record*, and then to decision on September 27, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the south side of Conover Street between King Street and Sullivan Street, within an M2-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since August 22, 2006 when, under the subject calendar number, the Board granted a variance to permit the proposed construction of a four-story residential building with six dwelling units, which did not comply with the underlying use regulations, contrary to ZR § 42-10; and

WHEREAS, substantial construction was to be completed by August 22, 2010, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that due to financing delays, additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction 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 August 22, 2006, so that as

amended this portion of the resolution shall read: “to grant an extension of the time to complete construction for a term of four years from the date of this grant, to expire on September 27, 2015; on condition:

THAT substantial construction shall be completed by September 27, 2015;

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. 302050394)

Adopted by the Board of Standards and Appeals, September 27, 2011.

265-08-BZ

APPLICANT – Richard Bass/Herrick, Feinstein, LLP for 70 Wyckoff, LLC, owner.

SUBJECT – Application August 11, 2011 – Extension of Time to obtain a Certificate of Occupancy of a Variance (§72-21) for the legalization of residential units in a manufacturing building which expired on August 9, 2011. M1-1 zoning district.

PREMISES AFFECTED – 70 Wyckoff Avenue, south east corner of Wyckoff Avenue and Suydam Street. Block 3221, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #4BK

APPEARANCES –

For Applicant: Richard Bass.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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 four-story residential building; and

WHEREAS, a public hearing was held on this application on September 13, 2011, after due notice by publication in *The City Record*, and then to decision on September 27, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Ottley-Brown; and

WHEREAS, the site is located on the southeast corner of Wyckoff Avenue and Suydam Street, within an M1-1 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 23, 2009 when, under the subject

MINUTES

calendar number, the Board granted a variance to legalize the residential conversion of an existing four-story manufacturing building; a condition of the grant was that a new certificate of occupancy be obtained by December 23, 2009; and

WHEREAS, most recently, on February 9, 2010, the Board granted an extension of time to obtain a certificate of occupancy, which expired on August 9, 2011; and

WHEREAS, the applicant now seeks an additional extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that delays resulting from the need to resolve Department of Buildings (“DOB”) objections, obtain permits to implement DOB requirements, complete the required physical changes, and schedule the required DOB inspections prevented the owner from obtaining a new certificate of occupancy within the prescribed time frame; and

WHEREAS, the applicant submitted evidence reflecting that nearly all of the required physical changes have been implemented, and that the applicant is in the process of scheduling DOB inspections for the work performed, including the sprinkler system, electrical system, plumbing system, and for general construction; and

WHEREAS, accordingly, the applicant requests an additional two years to obtain a certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to obtain a certificate of occupancy 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, dated June 23, 2009, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to September 27, 2013; *on condition* that the use and operation of the site shall comply with BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by September 27, 2013;

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

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 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. 310199969)

Adopted by the Board of Standards and Appeals September 27, 2011.

281-39-BZ

APPLICANT – Eric Palatnik, P.C., for 1599 Lexington Avenue Corporation, owner.

SUBJECT – Application May 3, 2011 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) with accessory uses which expired on May 18, 2009; Waiver of the Rules. C1/R7-2 zoning district.

PREMISES AFFECTED – 1605 Lexington Avenue, southeast corner of 102nd Street, Block 1629, Lot 150, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to November 1, 2011, at 10 A.M., for continued hearing.

672-65-BZ

APPLICANT – Joseph Pell Lombardi, for Earth Pledge Fund, owner.

SUBJECT – Application July 20, 2011 – Extension of Term for the continued use of UG6 offices on three floors of a five-story residential building which expired on November 13, 2004; Waiver of the Rules. R8B zoning district.

PREMISES AFFECTED – 122 East 38th Street, south side of East 38th Street, 139’5” west of the corner, Block 893, Lot 78, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Joseph Pell Lombardi.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to November 1, 2011, at 10 A.M., for decision, hearing closed.

224-66-BZ

APPLICANT – Peter Hirshman, for Building Management Co., Inc., owner; Champion Parkind Corp., lessee.

SUBJECT – Application July 8, 2011 – Extension of Term for the continued use of transient parking in a multiple dwelling building which expired on June 14, 2011. R8B zoning district.

PREMISES AFFECTED – 325-335 East 49th Street, aka 328-334 East 50th Street, northside of East 49th Street, 262.33’ west of First Avenue, Block 1342, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Peter Hirshman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

MINUTES

Negative:.....0
ACTION OF THE BOARD – Laid over to November 1, 2011, at 10 A.M., for decision, hearing closed.

926-86-BZ

APPLICANT – Sheldon Lobel, P.C., for Manes Bayside Realty LLC, owner.

SUBJECT – Application November 1, 2010 – Extension of Term of a variance for the operation of an automotive dealership with accessory repairs (UG 16B) which expired on November 4, 2010; Extension of time to obtain a Certificate of Occupancy which expired on January 6, 2006; Waiver of the Rules. C2-2/R6-B/R3X zoning district.

PREMISES AFFECTED – 217-07 Northern Boulevard, block front on the northerly side of Northern Boulevard between 217th Street and 218th Street, Block 6320, Lot 18, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to October 25, 2011, at 10 A.M., for continued hearing.

172-96-BZ

APPLICANT – Law Office of Mitchell Ross, for Don Mitchell, owner; D/B/A Mitchell Iron Works, lessee.

SUBJECT – Application June 29, 2011 – Extension of Time to obtain a Certificate of Occupancy for an existing (UG 16) welding shop which expired on May 17, 2010; Waiver of the Rules. C1-3/R6 zoning district.

PREMISES AFFECTED – 597/599 Marcy Avenue, southeast corner of March and Vernon Avenue, Block 1759, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Mitchell S. Ross.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 1, 2011, at 10 A.M., for decision, hearing closed.

188-96-BZ

APPLICANT – Mitchell S. Ross, Esq., for 444 Soundview Services Stations, Incorporated c/o William McCombs, owner; Scott Greco, lessee.

SUBJECT – Application June 22, 2010 – Extension of Term (§11-411) of a variance for the continued operation of a Gasoline Service Station (*Gulf*) with accessory convenience store which expired January 6, 2008; Waiver of the rules. R5 zoning district.

PREMISES AFFECTED – 444 Soundview Avenue, north side of Soundview Avenue and west of Underhill Avenue,

Block 3498, Lot 51, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Laid over to November 15, 2011, at 10 A.M., for continued hearing.

269-98-BZ

APPLICANT – Mothiur Rahman, for Fordham Zone Realty LLC, owner.

SUBJECT – Application August 24, 2011 – Extension of Time to obtain a Certificate of Occupancy for a Variance (§72-21) for the construction of a two-story building with UG6 commercial use which expired on August 25, 2011. R8 zoning district.

PREMISES AFFECTED – 70 East 184th Street, Southwest corner of East 184th Street and Morris Avenue, Block 3183, Lot 42, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Mothiur Rahman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 1, 2011, at 10 A.M., for decision, hearing closed.

13-09-BZ

APPLICANT – Moshe M. Friedman, P.E. for Congregations Tehilos Yotzchok, owner.

SUBJECT – Application May 27, 2011 – Amendment to a previously approved variance (§72-21) to allow a synagogue contrary to Floor & Lot Coverage (§24-11), Front Yard (§24-34) and Side Yard (§24-35). R5 zoning district

PREMISES AFFECTED – 5611 21st Street, East side 95' -8" North of intersection of 21st Avenue and 57th Street. Block 5495, Lot 430, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Tzvi Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 1, 2011, at 10 A.M., for decision, hearing closed.

MINUTES

APPEALS CALENDAR

176-10-A

APPLICANT – Sheldon Lobel, P.C., for LIV Realty LLC, owner.

SUBJECT – Application September 8, 2010 – Proposed construction of a residential building not fronting a mapped street, contrary to General City Law Section 36. R6 zoning District.

PREMISES AFFECTED – 62 Brighton 2nd Place, east side, Block 8662, Lot 155, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to October 18, 2011, at 10 A.M., for decision, hearing closed.

40-11-A

APPLICANT – Bryan Cave LLP, Margery Perlmutter, Esq., for CPW Retail, LLC c/o American Continental Properties, LLC, owner.

SUBJECT – Application April 8, 2011 – Appeal challenging the Department of Building’s determination that non-conforming commercial use was discontinued pursuant to ZR §52-61. R10A & C4-7 LSD Zoning district.

PREMISES AFFECTED – 25 Central Park West, West 62nd and West 63rd Streets, Block 1115, Lot 7501(2) Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Steven Bennett.

ACTION OF THE BOARD – Laid over to October 18, 2011, at 10 A.M., for adjourned hearing.

50-11-A

APPLICANT – Steven Bennett, Esq., for Premchand Parag and Vadewattie Parag, owners.

SUBJECT – Application April 15, 2011 – Appeal seeking a common law vested right to continue development under prior zoning (§23-541). R4-1 zoning district.

PREMISES AFFECTED – 134-07 87th Avenue, north side of 87th Avenue, 50’ east of the corner formed by the intersection of 87th Avenue and 134th Street, Block 9630, Lot 11, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES – None.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 1, 2011, at 10 A.M., for decision, hearing closed.

114-11-A

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for Salanter Akiba Riverdale Academy, owner.

SUBJECT – Application August 10, 2011 – Proposed construction of stone wall, pier, curbs and related footings for an accessory parking area to SAR Academy to be located within the bed of the mapped street (West 245th), contrary to General City Law Section 35. R1-1/Riverdale SNAD zoning district.

PREMISES AFFECTED – 655 West 254th Street, north side of West 254th Street, between Palisade and Independence Avenues. Block 5947, Lot 1, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to October 18, 2011, at 10 A.M., for postponed hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING TUESDAY AFTERNOON, SEPTEMBER 27, 2011 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

236-09-BZ

APPLICANT – Marvin Mitzner, Esq. for Crosstown West 28 LLC, owner.

SUBJECT – Application July 31, 2009 – Variance (§72-21) to allow for a 29 story mixed use commercial and residential building contrary to use regulations (§42-00), floor area (§43-12), rear yard equivalent (§43-28), height (§43-43), tower regulations (§43-45) and parking (§13-10). M1-6 zoning district.

PREMISES AFFECTED – 140-148 West 28th Street, south side of West 28th Street, between 6th Avenue and 7th Avenue, block 803, Lots 62 and 65, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Marvin Mitzner.

ACTION OF THE BOARD – Application withdrawn with prejudice.

THE VOTE TO WITHDRAW –

MINUTES

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough
Commissioner, dated August 4, 2009, acting on Department of
Buildings Application No. 120041481, reads in pertinent part:

ZR 42-00 – A residential use is not permitted, ‘as-
of-right,’ in an 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
construction of a mixed use commercial and residential
building contrary to use regulations; and

WHEREAS, the applicant filed the variance application
on July 31, 2009; and

WHEREAS, the Board issued a Notice of Comments on
October 19, 2009; and

WHEREAS, the Board did not receive any response
from the applicant, thus it issued a dismissal warning on
January 18, 2011; and

WHEREAS, the applicant subsequently provided a
partial submission and the Board held a first public hearing on
the matter on April 5, 2011; at the applicant’s request, the
Board adjourned continued hearings scheduled for May 24,
2011 and July 26, 2011; and

WHEREAS, during the course of its review, the Board
directed the applicant to provide significant additional
information to complete its application; and

WHEREAS, to address the finding required pursuant to
ZR § 72-21(a), the Board directed the applicant to provide
additional evidence to support that the claimed hardships are
unique to the subject site as compared to other surrounding
sites; specifically, the insufficiencies include a failure to
establish sub-surface soil conditions, bedrock depth, water
table depth, and shoring and underpinning requirements due to
adjacent site conditions are unique and that they create an
unnecessary hardship; and evidence that supports the need,
requirements and/or costs associated with providing a Con
Edison substation for an as-of-right development; and

WHEREAS, to address the finding required pursuant to
ZR § 72-21(b), the Board directed the applicant to provide
credible conforming scenarios which address issues related to
the ability and necessity of using development rights, and
supporting evidence related to the site value, hardship and
construction costs, and other assumptions made in the financial
analyses;

WHEREAS, to address the finding required pursuant to
ZR § 72-21(c), the Board directed the applicant to provide
evidence which supports the claim that the proposed large
residential use would not change the essential character, and
that proposed use, bulk, and building height are not out of scale
for the neighborhood; and

WHEREAS, to address the finding required pursuant to
ZR § 72-21(d), the Board directed the applicant to provide
evidence to show that certain proposed conditions, including
the demolition of an existing residential building, cantilever
and multiple cellar levels, are not self-created hardships which

make the project unnecessarily costly; and

WHEREAS, the Board requires the evidence noted
above and any other evidence to support the required findings
including all other information it requested at the April 5, 2011
hearing; and

WHEREAS, additionally, based on the extent of the soil
contamination identified in the applicant’s March 2009 Limited
Phase II Environmental Subsurface Investigation report, DEP
requires that a Remedial Action Plan and Construction Health
& Safety Plan be submitted for review and approval; and

WHEREAS, by letter dated September 29, 2011, the
applicant requested that the Board accept a withdrawal of the
application, without prejudice; the applicant seeks to re-file an
application including all missing requirements in the future
once the owner’s financial concerns are resolved; and

WHEREAS, the Board notes that the applicant filed the
application more than two years ago and that there remain
significant outstanding issues related to establishing the
required findings, which must be answered before it can
analyze the merits of the application; and

WHEREAS, accordingly, the Board accepts the
applicant’s request for withdrawal with prejudice; and

WHEREAS, the Board will not accept a re-filing that
fails to include the noted evidence to support the findings set
forth at ZR § 72-21, requested at the April 5, 2011 public
hearing, and DEP’s supplemental requirements; additionally,
the Board notes that other portions of the application may
require updating and/or re-submission depending on the extent
of time between filings; and

Therefore it is Resolved that the Board accepts the
withdrawal of the application filed under BSA Cal. No. 236-
09-BZ, with prejudice.

Adopted by the Board of Standards and Appeals,
September 27, 2011.

56-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Adam Cohen,
owner.

SUBJECT – Application April 25, 2011 – Variance (§72-
21) for the enlargement of an existing one-family semi-
detached residence, contrary to use (§ 22-11) and (§52-22);
side yard (§23-461(a)) and floor area (§23-141). R2X
zoning district.

PREMISES AFFECTED – 957 East 7th Street, East side of
East 7th Street, approximately midblock between Avenue
and Avenue I. Block 6510, Lot 68. Borough of Brooklyn.

COMMUNITY BOARD #12BK

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, Commissioner Hinkson and
Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

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WHEREAS, the decision of the Brooklyn Borough Superintendent, dated April 13, 2011, and acting on Department of Buildings Application No. 320221327 reads, in pertinent part:

The existing semi-detached one family building is non-conforming as per ZR 22-11 and therefore the proposed structural enlargement is contrary to ZR 52-22.

Proposed enlargement in required side yard is contrary to ZR 23-461(a).

Proposed enlargement exceeds the maximum floor area permitted, contrary to ZR 23-141; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R2X zoning district within the Special Ocean Parkway District, the enlargement of an existing semi-detached single-family home that does not comply with the underlying zoning district regulations for use, floor area, and side yards, contrary to ZR §§ 22-11, 23-141, 23-461 and 52-22; and

WHEREAS, a public hearing was held on this application on July 19, 2011, after due notice by publication in *The City Record*, with a continued hearing on August 23, 2011, and then to decision on September 27, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the east side of East 7th Street, approximately 350 feet north of Avenue I, in an R2X zoning district within the Special Ocean Parkway District; and

WHEREAS, the site has a width of 23'-3", a depth of 120'-6", and a total lot area of approximately 2,802 sq. ft.; and

WHEREAS, the site is currently occupied by a semi-detached two-and-one-half-story single-family home with a floor area of 2,012 sq. ft. (0.72 FAR) and an existing non-complying side yard with a width of 5'-2" along the northern lot line; and

WHEREAS, the applicant notes that the existing home was constructed when the site was located in an R3-2 zoning district, which had a minimum lot width requirement of 18 feet and permitted semi-detached homes; and

WHEREAS, however, on October 13, 1991, the site was rezoned from R3-2 to R2X, which requires a minimum lot width of 30 feet, does not permit semi-detached homes, and requires two side yards with a minimum width of 2'-0" each and a total width of 10'-0"; and

WHEREAS, accordingly, the applicant states that due to its pre-existing non-conforming semi-detached use, any enlargement of the existing home is prohibited under ZR § 52-22; and

WHEREAS, the applicant proposes to construct an enlargement at the rear of the existing home, which will result in the following parameters: a floor area of 2,743 sq. ft. (0.98 FAR) (a base FAR of 0.85 is the maximum permitted, with a 20 percent attic bonus available to increase the maximum FAR to 1.02); a front yard with a depth of 15'-0" (a front yard with a minimum depth of 15'-0" is required); a side yard with a

minimum width of 5'-2" along the northern lot line, and no side yard along the southern lot line (two side yards with a minimum width of 2'-0" each and a total width of 10'-0" are required); a rear yard with a depth of 26'-4" (a rear yard with a minimum depth of 20'-0" is required); a perimeter wall height of 21'-0" (the maximum permitted perimeter wall height is 21'-0"); and a total height of 30'-8" (the maximum permitted total height is 35'-0"); and

WHEREAS, the applicant states that the proposed enlargement increases the degree of non-conformance for the semi-detached home, and increases the degree of side yard non-compliance by extending the existing non-complying side yard along the northern lot line; and

WHEREAS, the applicant notes that although the as-of-right floor area for the site is 2,858 sq. ft. (1.02 FAR), a floor area waiver is necessary because the narrow lot size prevents the applicant from adding the full 20 percent floor area bonus available under a sloping roof within an R2X zoning district as-of-right; and

WHEREAS, the applicant states that requested 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 zoning regulations: the site's narrow width and the practical difficulties associated with enlarging the existing semi-detached home; and

WHEREAS, the applicant states that the existing semi-detached home was constructed in approximately 1925 and has a floor area of 2,012 sq. ft. (0.72 FAR), which is significantly less than what is permitted as-of-right; and

WHEREAS, as noted above, because the subject home is an existing non-conforming semi-detached home, any enlargement of the home is considered a structural alteration which is prohibited pursuant to ZR § 52-22; and

WHEREAS, the applicant represents that the subject home is one of only four semi-detached homes out of approximately 314 buildings in the subject R2X district; and

WHEREAS, the applicant submitted an analysis of 67 lots on the surrounding blocks, which reflects that homes in the surrounding area have an average floor area of 2,835 sq. ft.; and

WHEREAS, the analysis provided by the applicant further reflects that there is only one lot in the study area with a lot area less than that of the subject site, and 96 percent of the lots surveyed have lot areas of at least 3,000 sq. ft., which would allow for an as-of-right home with a floor area of at least 3,060 sq. ft.; and

WHEREAS, the applicant states that the existing home, with a lot area of only 2,802 sq. ft. and a floor area of 2,012 sq. ft. (0.72 FAR), is not habitable as compared to other homes in the surrounding area; and

WHEREAS, accordingly, the applicant represents that the waiver of ZR § 52-22 is necessary to enlarge the existing undersized home; and

WHEREAS, as to the site's narrow width, the applicant states that the lot has an existing non-complying width of 23'-

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3”; and

WHEREAS, the applicant states that due to the narrow width of the lot, any enlargement on the site would be limited to 13’-3” in width, which would result in narrow, inefficient floor plates for the enlarged portion of the home, which would be significantly narrower than the existing home with a width of 18’-6”;

WHEREAS, therefore, the applicant requires a side yard waiver to allow for the proposed rear enlargement with a width of 15’-4” at the first floor and a width of 17’-11” at the second floor; and

WHEREAS, as to the uniqueness of this condition, the lot survey submitted by the applicant reflects that, of the 67 lots included in the study, there is only one lot which is narrower than the subject lot; and

WHEREAS, the lot survey further reflects that the average lot width in the surrounding area is approximately 33 feet, which is almost ten feet wider than the width of the subject lot; and

WHEREAS, the applicant notes that the minimum required lot width in the subject zoning district is 30 feet, which would allow for a home with a width of 20 feet after providing the minimum required side yards; therefore, the requested side yard waiver would allow for an enlargement with a width similar to that of other homes in the surrounding area; and

WHEREAS, the applicant represents that the requested floor area waiver is necessary because the home cannot be built to the maximum permitted FAR due to the narrow lot condition, which prevents the addition of usable floor area under a sloping roof, which is required to obtain the 20 percent attic bonus permitted in the subject R2X district; and

WHEREAS, specifically, the applicant states that the existing zoning allows for a home with a floor area of 2,858 sq. ft. (1.02 FAR with attic bonus), and represents that the floor area waiver to accommodate the proposed home with a floor area of 2,743 sq. ft. (0.98 FAR) allows the applicant to utilize a portion of the 20 percent attic floor area bonus it would be permitted as-of-right if not for the narrow width of the lot; and

WHEREAS, the applicant concludes that the requested waivers of use, side yards, and floor area requirements are necessary to develop the site with a habitable home; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create 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 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, or impact adjacent uses; and

WHEREAS, the applicant states that the bulk of the proposed home, which has a complying height, front yard, and rear yard, is compatible with nearby residential development; and

WHEREAS, the lot survey submitted by the applicant

reflects that nine of the 22 homes on the subject block have a floor area at or above the proposed 2,743 sq. ft., and all except one of these homes can be developed with a floor area of more than 2,743 sq. ft.; and

WHEREAS, the lot survey further reflects that 16 of the 22 homes on the subject block can be developed to a width of greater than 18 feet as-of-right; and

WHEREAS, the applicant states that the proposed width of the home is consistent with the character of the surrounding neighborhood, wherein the majority of homes are able to provide complying side yards and still develop a home with a width of at least 20’-0”;

WHEREAS, accordingly, the applicant represents that the proposed enlargement, which results in a home with a floor area of 2,743 sq. ft. (0.98 FAR) and maintains the existing maximum width of 18’-6”, is consistent with the size of other homes in the area; and

WHEREAS, the applicant submitted letters of support for the proposal from more than 40 neighbors in the surrounding area, including the adjacent neighbor to the north of the site, at 953 East 7th Street; and

WHEREAS, at hearing, the Board raised concerns about the proposed 2’-7” overhang above the first floor along the northern side of the enlargement; and

WHEREAS, in response, the architect submitted a maneuverability plan reflecting that building the first and second floor flush along this portion of the enlargement would create difficulty in maneuvering a vehicle into and out of the garage located at the rear of the site, due to the limited width (4’-4”) that would be available; and

WHEREAS, therefore, 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, 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 site’s unique physical conditions; and

WHEREAS, 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, in an R2X zoning district within the Special Ocean Parkway District, the enlargement of an existing semi-detached single-family home that does not comply with the underlying zoning district regulations for use, floor area, and side yards, contrary to ZR §§ 22-11, 23-141, 23-461, and 52-22; *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 August 15, 2011”–(9) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum floor area of 2,743 sq. ft. (0.98

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FAR); and a side yard of with a minimum width of 5'-2" along the northern lot line, as per the BSA-approved plans;

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;

THAT significant construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance 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 27, 2011.

60-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Zvi Turk and Miriam Turk, owners.

SUBJECT – Application May 5, 2011 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1214 East 29th Street, west side of East 29th Street and Avenue L, Block 7646, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #14BK

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 5, 2011, acting on Department of Buildings Application No. 320285197, reads in pertinent part:

Proposed plans are contrary to Z.R. 23-141(a) in that the proposed floor area ratio (FAR) exceeds the permitted 50%.

Proposed plans are contrary to Z.R. 23-141(a) in that the proposed open space ratio (OSR) is less than the required 150%.

Plans are contrary to Z.R. 23-461(a) in that the existing minimum side yard is less than the required minimum 5'-0".

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 home, which does not comply with the zoning requirements for 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 July 26, 2011, after due notice by publication in *The City Record*, with a continued hearing on August 23, 2011, and then to decision on September 27, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 29th Street, between Avenue L and Avenue M, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 3,000 sq. ft., and is occupied by a single-family home with a floor area of 2,049 sq. ft. (0.68 FAR); 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 2,049 sq. ft. (0.68 FAR) to 3,000 sq. ft. (1.0 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 58 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 2'-9", and to maintain the existing side yard along the southern lot line with a width of 6'-11" (two side yards with a minimum width of 5'-0" and 8'-0", respectively, are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20'-0" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, based upon its review of the record, 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

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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, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, 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 August 9, 2011"-(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,000 sq. ft. (1.0 FAR); a minimum open space ratio of 58 percent; a side yard with a minimum width of 2'-9" along the northern lot line; a side yard with a minimum width of 6'-11" along the southern lot line; and a rear yard with a minimum depth of 20'-0", 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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 27, 2011.

221-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Chris Xu, owner.
SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the development of a transient hotel, contrary to district use regulations. M2-1 zoning district.

PREMISES AFFECTED – 34-08 Collins Place, north side of Collins Place, 34th Avenue, College Point Boulevard and 35th Avenue, Block 4945, Lot 34, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Laura Imperiale, Kevin McDermott and Beverly McDermott.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to November 1, 2011, at 1:30 P.M., for decision, hearing closed.

31-10-BZ

APPLICANT – Eric Palatnik, P.C., for 85-15 Queens Realty, LLC, owner.

SUBJECT – Application March 16, 2010 – Variance (§72-21) to allow for a commercial building, contrary to use (§22-00), lot coverage (§23-141), front yard (§23-45), side yard (§23-464), rear yard (§33-283), height (§23-631) and location of uses within a building (§32-431) regulations. C1-2/R6, C2-3/R6, C1-2/R7A, R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard, aka 51-35 Reeder Street, north side of Queens Boulevard, between Broadway and Reeder Street, Block 1549, Lot 28, 41, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to November 15, 2011, at 1:30 P.M., for adjourned hearing.

230-10-BZ

APPLICANT – Eric Palatnik, P.C., for Leonid Fishman, owner.

SUBJECT – Application December 17, 2010 – Special Permit (§73-622) for the enlargement of a single family home, contrary to open space, lot coverage and floor area (§23-141(b)) and perimeter wall height (§23-631(b)). R3-1 zoning district.

PREMISES AFFECTED – 177 Kensington Street, Oriental Boulevard and Kensington Street, Block 8754, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Janna Kolfman, Laura Krasner and Jerome Fox.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to October 25, 2011, at 1:30 P.M., for decision, hearing closed.

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235-10-BZ

APPLICANT – Paul J. Proulux, Esq., c/o Cozen O’Connor, for Avenue K Corporation, owner; TD Bank c/o Facilities Department, lessees.

SUBJECT – Application December 30, 2010 – Variance (§72-21) to allow a commercial use in a residential zone, contrary to use regulations (§22-00). R3-2 zoning district. PREMISES AFFECTED – 2363 Ralph Avenue, corner of Ralph Avenue and Avenue K, Block 8339, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Paul J. Proulux.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 1, 2011, at 1:30 P.M., for decision, hearing closed.

17-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. David Mizrahi, owners.

SUBJECT – Application February 23, 2011 – Special Permit (§73-622) for the enlargement of an existing two family residence, to be converted to a single family residence, contrary to floor area, lot coverage and open space (§23-141(b)) and rear yard (§23-47) regulations. R4/OP zoning district.

PREMISES AFFECTED – 2255 East 2nd Street, East side of East 2nd Street, approximately 145 feet south of Gravesend Neck Road. Block 7154, Lots 71 & 72, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 1, 2011, at 1:30 P.M., for decision, hearing closed.

21-11-BZ

APPLICANT – Eric Palatnik, P.C., for 1810-12 Voorhies Avenue, LLC, owner.

SUBJECT – Application February 28, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory or diagnostic treatment facility. C1-2/R4 zoning district.

PREMISES AFFECTED – 1810 Voorhies Avenue, south side of Voorhies Avenue, between East 19th Street and Sheepshead Bay Road, Block 8772, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to November 1, 2011, at 1:30 P.M., for adjourned hearing.

31-11-BZ

APPLICANT – Goldman Harris LLC, for Bronx Sheperds Restoration Corporation, owner.

SUBJECT – Application March 28, 2011 – Variance (§72-21) to allow a mixed use community facility and commercial building, contrary to use (§32-12), floor area (§33-123), rear yard (§33-292), and height and setback (§33-432) regulations. C8-3 zoning district.

PREMISES AFFECTED – 1665 Jerome Avenue, west side of Jerome Avenue between Featherbed Lane and Clifford Lane, Block 2861, Lot 35, Borough of Bronx.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Vivien R. Krieger.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 13, 2011, at 1:30 P.M., for decision, hearing closed.

35-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.

SUBJECT – Application March 31, 2011– Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Ohel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.

PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105’ west of Francis Lewis Boulevard, Block 12825, Lot 149, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

For Opposition: Council Member Leroy Comrie, Assembly Member Barbara M. Clark, Lawrence McClellan, Community Board 13, Kelli Singleton, Steven Taylor, Marlene Tapper, Michael Durrer, Edgar Moore, Jeanne Richardson, Doris Bodine, Euclid C. Jordan, Mivtrieg Belgrove, Ruth Hunt, Senora O’Neal, Jean Alexander, Gregory Guezlen, Elain Wallace and Ann Miller.

ACTION OF THE BOARD – Laid over to December 13, 2011, at 1:30 P.M., for continued hearing.

MINUTES

43-11-BZ

APPLICANT – Harold Weinberg, for David Waknin, owner.

SUBJECT – Application April 12, 2011 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a single family home contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1296 East 21st Street, west side 220' south of Avenue R, between Avenues R and S, Block 6826, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Frank Sellitto.

ACTION OF THE BOARD – Laid over to October 25, 2011, at 1:30 P.M., for continued hearing.

67-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Joseph Kleinman, owner.

SUBJECT – Application May 13, 2011 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to floor area and open space (§23-141) side yard and (§23-47) rear yard. R-2 zoning district.

PREMISES AFFECTED – 1430 East 29th Street, West side of 29th Street between Avenue N and Kings Highway. Block 7682, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to November 3, 2011, at 1:30 P.M., for continued hearing.

74-11-BZ

APPLICANT – James Chin & Associates, LLC, for 1058 Forest Avenue Associates, owners.

SUBJECT – Application May 25, 2011 – Variance (§72-21) to allow the conversion of a community facility building for office use, contrary to use regulations. R3-2 & R-2 zoning district.

PREMISES AFFECTED – 1058 Forest Avenue, southeast intersection of Forest Avenue and Manor Road in West Brighton, Block 315, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Mindy Chin.

ACTION OF THE BOARD – Laid over to November 1, 2011, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

This resolution adopted on March 13, 2007, under Calendar No. 237-06-BZ and printed in Volume 92, Bulletin No. 12, is hereby corrected to read as follows:

237-06-BZ

APPLICANT – Moshe M. Friedman, for Jonathan M. Schwartz, owner.

SUBJECT – Application September 12, 2006 – Special Permit (§73-622) for the enlargement of a single family semi-detached residence. This application seeks to vary open space and floor area (§23-141(a)); side yard (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 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 #14BK

APPEARANCES –

For Applicant: Yosef Gottdiener.

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 12, 2007, acting on Department of Buildings Application No. 302216395, reads in pertinent part:

“Proposed extension of existing one-family dwelling is contrary to:

- ZR Sec 23-141(a) Floor Area Ratio
- ZR Sec 23-141 (a) Open Space Ratio
- ZR Sec 23-461 Side Yard
- ZR Sec 23-47 Rear Yard.”;

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 semi-detached dwelling, which does not comply with the zoning requirements for floor area, FAR, open space ratio, and side and rear yards, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on February 6, 2007 after due notice by publication in *The City Record*, with a continued hearing on February 27, 2007, and then to decision on March 13, 2007; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, three neighbors, including the adjacent neighbor, submitted forms of consent in support of this application; and

WHEREAS, the subject lot is located on the west side of East 26th Street, between Avenue N and Avenue O; and

WHEREAS, the subject lot has a total lot area of 2,120.83 sq. ft., and is occupied by a 1,240.12 sq. ft. (.58 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 1,240.12 sq. ft. (.58 FAR) to 2,146.87 sq. ft. (1.01 FAR); the maximum floor area permitted is 1,060.42 sq. ft. (.50 FAR); and

WHEREAS, the proposed enlargement will decrease the open space ratio from 117 percent to 53 percent (a minimum open space ratio of 150 percent is required); and

WHEREAS, the proposed enlargement will maintain the existing 5'-0" and 0'-0" side yards (side yards with a minimum total width of 13'-0" and a minimum width of 5'-0" for one are required); and

WHEREAS, the Board notes that the semi-detached home, with a single 5'-0" side yard, was constructed in 1925 and is therefore an existing legal non-conforming building; semi-detached homes are not permitted in R2 zoning districts; and

WHEREAS, the proposed enlargement will reduce the rear yard from 43'-3" to 24'-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 two stories and an attic and will be located at the rear of the existing home and above the existing second floor; and

WHEREAS, initially, the applicant proposed a total height of 35'-0"; and

WHEREAS, at hearing, the Board asked the applicant to reduce the height and re-design the slope of the roof above the second floor so as to be more compatible with adjacent homes; and

WHEREAS, in response, the applicant reduced the total height to 34'-10¼"; and

WHEREAS, additionally, the applicant re-designed the slope of the roof above the second floor so that it matches the adjacent homes; and

WHEREAS, the applicant submitted a streetscape which reflects that the revised roof plan is compatible with adjacent homes; and

WHEREAS, at hearing, the Board asked the applicant if the rear of the home could have a more efficient layout; and

WHEREAS, the applicant responded that the narrow width of the lot results in layout constraints; 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

MINUTES

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 semi-detached dwelling, which does not comply with the zoning requirements for FAR, floor area, open space ratio, and side and rear 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 December 11, 2006”-(4) sheets, “February 5, 2007”-(2) sheets and “February 13, 2007”-(4) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the floor area in the attic shall be limited to 282.73 sq. ft.;

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 2,146.87 sq. ft., a total FAR of 1.01, a total height of one side yard of 5'-0", a rear yard of 24'-0", a total height of 34'-10¼", a perimeter wall height of 22'-8½", and an open space ratio of 53 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, March 13, 2007.

***The resolution has been corrected to reflect the perimeter wall and total height from the street level rather than the elevation, consistent with BSA practice regarding height measurements. Corrected in Bulletin No. 40, Vol. 96, dated October 5, 2011.**

BULLETIN

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Tuesday, October 18, 2011**

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Affecting Calendar Number:

585-91-BZ	222-44 Braddock Avenue, Queens
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DOCKET

New Case Filed Up to October 18, 2011

154-11-A

23-10 Queens Plaza South, between 23rd Street and 24th Street, Block 425, Lot(s) 5, Borough of **Queens, Community Board: 02**. This appeal seeks reversal of a Department of Buildings determination that the non-illuminated sign located on top the building of the site is not a legal non-conforming advertising sign that may be maintained and altered. M1-9 M1-9/R9 district.

155-11-A

480 Stratford Road, west side of Stratford Road, through to Coney Island Avenue between Dorchester Road and Ditmas Avenue., Block 5174, Lot(s) 16, Borough of **Brooklyn, Community Board: 14**. Appeal seeking a common law vested right to continue construction commenced under the prior R6 zoning . R3X Zoning district R6B district.

156-11-BZ

1020 Carroll Place, triangular corner lot bounded by East 165th Street, Carroll Place and Sheridan Avenue., Block 2455, Lot(s) 48, Borough of **Bronx, Community Board: 04**. This application is filed pursuant to Zoning Resolution section 72-21 of the City of New York, as amended, to request a variance to permit the construction of a new 12-story community facility (Ug4 house of worship) and residential (g2 supportive housing) building, located within an R8 zoning district, which is contrary to setback, floor area, lot coverage and density requirements. R8 district.

157-11-BZ

1968 Second Avenue, northeast corner of the intersection of Second Avenue and 101st Street., Block 1673, Lot(s) 1, Borough of **Manhattan, Community Board: 11**. Variance (§72-21) to allow for the legalization of an existing supermarket, contrary to rear yard ZR 33-261 and loading berth ZR 36-683 requirements. C1-5/R8A and R7A zoning districts. R8A/C1-5 district.

158-11-BZ

2166 Nostrand Avenue, east side of Nostrand Avenue, 180.76' south of intersection of Nostrand Avenue and Flatbush Avenue., Block 7557, Lot(s) 124, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-36) to permit physical culture establishment within portions of a proposed building located in an C4-4A zoning district. C4-4A district.

159-11-BZ

212-01 26th Avenue, 26th Avenue between Bell Boulevard and Corporal Kennedy Street., Block 5900, Lot(s) 2, Borough of **Queens, Community Board: 07**. Special Permit (§73-36) to permit the legalization of an existing Physical Culture Establishment. C4-1 zoning district. C4-1 district.

160-11-BZ

42 East 69th Street, south side of East 69th Street, between Park Avenue and Madison Avenue., Block 1383, Lot(s) 43, Borough of **Manhattan, Community Board: 08**. Variance (§72-21) to allow for the enlargement of a community facility (Jewish National Fund), contrary to rear yard ZR 24-33, rear yard setback ZR 24-552, lot coverage ZR 24-11, and height and setback ZR 23-633,24-591 regulations. R8B zoning district. R8B/LH1-A district.

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161-11-A

82-20 Britton Avenue, eastside of Britton Avenue between Broadway and Layton Street, Block 1517, Lot(s) 3, Borough of **Queens, Community Board: 4**. Appeal seeking to vacate a Stop Work Order and rescind revocation of a building permit based on lack of adjacent property owner authorization . R7B Zoning District . R7B district.

162-11-A

179 Ludlow Street, western side of Ludlow on a block bounded by Houston to the north and Stanton to the south, Block 412, Lot(s) 26, Borough of **Manhattan, Community Board: 3M**. Appeal seeking a determination that the owner has acquired a common law vested right to continue construction commenced under prior C6- 1 zoning district regulations . C4-4A Zoning district . C4-4A district.

163-11-A

469 West 57th Street, building located between 9th and 10th Avenue., Block 1067, Lot(s) 4, Borough of **Manhattan, Community Board: 4**. Application filed by the Fire Department seeking a modification of the existing Certificate of Occupancy to provide additional fire safety measures in the form of a wet sprinkler system throughout the entire building . R-8 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

NOVEMBER 1, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 1, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

88-81-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for JFAM Realty, owner.

SUBJECT – Application August 1, 2011 – Extension of Term of a previously granted variance (§72-21) which permitted the conversion of an existing two-story building from a dwelling and day care center to an office building which expired on July 21, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on June 18, 2003.

R3-1 zoning district.

PREMISES AFFECTED – 3309 Richmond Avenue, 365' south of the intersection of Richmond Avenue and Gurley Avenue, Block 5533, Lot 20, Borough of Staten Island.

COMMUNITY BOARD #3SI

250-00-BZ

APPLICANT – Bryan Cave LLP, for New York University, owner.

SUBJECT – Application August 10, 2011 – Application pursuant to (§11-411) for an extension of term and minor amendment of a previously granted variance, initially granted in 1961 under the 1916 Zoning Resolution and reestablishment in 2001 for a ten year term, allowing transient parking for up to 149 cars in an existing multiple dwelling accessory garage.

PREMISES AFFECTED – 521-541&553-563 LaGuardia Place, block bounded by LaGuardia Place, West 3rd Street, Mercer Street and Bleecker Street. Block 533, Lot 1. Borough of Manhattan.

COMMUNITY BOARD #2M

187-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation & Yeshiva Machzikei Hadas Inc., owner.

SUBJECT – Application July 18, 2011 – The application seeks Board approval of certain amendments to the Board's March 16, 2010 variance grant, to (1) permit the addition of sub-cellar level, (2) add additional floor area, (3) increase the lot coverage and building heights, and (4) make additional interior changes to the previously approved five-story religious school.

PREMISES AFFECTED – 1247 38th Street, north side of 38th Street, 240' west of 13th Avenue, lock 5295, Lots 52 & 56, Borough of Brooklyn.

COMMUNITY BOARD #12BK

112-10-BZ

APPLICANT – Sheldon Lobel, P.C., for John Grant, owner.

SUBJECT – Application July 6, 2011 – Amendment to a previously granted Special Permit (§73-44) to permit the reduction in required parking with change of use from UG16 to UG6. M1-1 zoning district.

PREMISES AFFECTED – 915 Dean Street, north side of Dean Street between Classon and Grand Avenues, Block 1133, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEALS CALENDAR

98-11-A

APPLICANT – Goldman Harris, LLC, for Bay People Inc., for Alloway Ahmed, owner.

SUBJECT – Application July 7, 2011 – Appeal of the Borough Commissioner's final determination regarding a denied zoning challenge to a zoning approval of a house of worship due to no off-street parking being provided by the developer. R4 zoning district.

PREMISES AFFECTED – 2812-2814 Voorhies Avenue, south side of Voorhies Avenue between East 28th and East 29th Streets, Block 8791, Lots 5, 6 (tent 106), Borough of Brooklyn.

COMMUNITY BOARD #15BK

NOVEMBER 1, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 1, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

73-11-BZ

APPLICANT – Rampulla Associates Architects, for Tora Development, LLC, owners.

SUBJECT – Application May 26, 2011 – Variance (§72-21) to allow a four story, 100 unit residential building contrary to bulk regulations. C3A/SRD zoning district.

PREMISES AFFECTED – 70 Tennyson Drive, north side Tennyson Drive, between Nelson Avenue and Cleveland Avenue, Block 5212, Lot 70, Borough of Staten Island.

COMMUNITY BOARD #2SI

CALENDAR

89-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Annie and Kfir Ribak, owners.

SUBJECT – Application June 23, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (23-141); side yards (23-461) and perimeter wall height (23-631). R3-2 zoning district.

PREMISES AFFECTED – 2224 Avenue S, south west corner of Avenue S and East 23rd Street, Block 7301, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #15BK

115-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Thomas Schick, owner.

SUBJECT – Application August 15, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space (23-141); side yard (23-461) and less than the required rear yard (23-47). R-2 zoning district.

PREMISES AFFECTED – 1110 East 22nd Street, between Avenue J and Avenue K, Block 7603, Lot 62, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, OCTOBER 18, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

677-53-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for James Marchetti, owner.

SUBJECT – Application April 22, 2010 – Extension of Term (§11-411) of a Variance for the operation of a UG16 Auto Body Repair Shop (*Carriage House*) with incidental painting and spraying which expired on March 24, 2007; Extension of Time to Obtain a Certificate of Occupancy which expired on January 13, 1999; Amendment (§11-412) to enlarge the building; Waiver of the Rules. R4/C2-2 zoning district.

PREMISES AFFECTED – 61-26/30 Fresh Meadow Lane, west side of Fresh Meadow Lane, 289’ northerly of the intersection with 65th Avenue, Block 6901, Lot 48. Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for a Use Group 16 automobile repair shop, an extension of time to obtain a certificate of occupancy, and an amendment to permit the enlargement of the building on the site; and

WHEREAS, a public hearing was held on this application on March 8, 2011, after due notice by publication in *The City Record*, with continued hearings on April 12, 2011, May 10, 2011, June 13, 2011, July 12, 2011, August 16, 2011 and September 20, 2011, and then to decision on October 18, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Queens, recommends disapproval of this application; and

WHEREAS, the site is located on the west side of Fresh Meadow Lane, 289 feet north of 65th Avenue, within a C2-2 (R4) zoning district; and

WHEREAS, the site has a total lot area of 5,126 sq. ft., and is currently occupied by an automotive repair station with the parking and storage of motor vehicles awaiting service; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 2, 1954 when, under the subject calendar number, the Board granted a variance to permit the site to be occupied for body and fender work, minor auto repairs, welding and incidental painting and spraying, with parking and storage of motor vehicles awaiting service, for a term of five years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, most recently, on January 13, 1998, the Board granted a ten-year extension of term, which expired on March 24, 2007; a condition of the grant was that a certificate of occupancy be obtained by January 13, 1999; and

WHEREAS, the applicant now requests an additional ten year extension of term, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant represents that the automotive-related (Use Group 16) use has been continuous from 1954 to the present; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, the applicant also requests an amendment to permit a 1,076 sq. ft. enlargement to the existing 2,180 sq. ft. building on the site; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for an enlargement of the site; and

WHEREAS, at hearing, the Board raised concerns about the use of adjacent Lot 52 for automobile intake and customer processing in conjunction with the automobile repair facility on the subject site, given that the applicant had not submitted evidence that such use was permitted on Lot 52; and

WHEREAS, in response, the applicant submitted a certificate of occupancy dated March 5, 1963 permitting automotive body repair use on Lot 52, which was not listed on the Department of Buildings’ (“DOB”) online Building Information System (“BIS”) database; and

WHEREAS, the applicant states that it will submit the 1963 certificate of occupancy to DOB, and ensure that it is reflected on the BIS database; and

WHEREAS, during the course of the hearing process, the Board also raised concerns about the congestion and lack of space on the site, and the impact that the proposed enlargement would have on the already constrained site; and

WHEREAS, in response, the applicant represents that the proposed enlargement would result in the loss of no more than four parking spaces and would enable the operator to service vehicles more efficiently; and

WHEREAS, the Board notes that it has remaining concerns about the site’s ability to accommodate the requested enlargement, given the size limitations of the site, the space constraints that result from the existing business operations, and the additional space constraints that will arise from the elimination of parking spaces and the expansion of the business operations under the proposed enlargement; and

WHEREAS, the Board further notes that the applicant

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did not provide a credible site plan showing the maneuverability of cars between the subject site and Lot 52, and did not provide sufficient information regarding the two businesses and their current operation plan; and

WHEREAS, accordingly, the Board is not persuaded that the proposed enlargement of the building on the site would result in efficient operations, and therefore finds it appropriate to limit the site to its existing floor area; and

WHEREAS, based upon its review of the record, the Board finds that the evidence in the record supports the findings required to be made under ZR § 11-411 and an extension of term and extension of time to obtain a certificate of occupancy 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 2, 1954, so that as amended this portion of the resolution shall read: “to extend the term for five years from the date of this grant, to expire on October 18, 2016, and to grant an extension of time to obtain a certificate of occupancy to expire on October 18, 2012; *on condition:*

THAT the term of the grant shall expire on October 18, 2016;

THAT all spray painting on the site shall be limited to water-based paint;

THAT the hours of operation shall be limited to 8:00 a.m. to 5:00 p.m., daily;

THAT there shall be no parking of vehicles on the sidewalk;

THAT the site shall be maintained free of debris and graffiti;

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

THAT a certificate of occupancy shall be obtained by October 18, 2012;

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.”

Adopted by the Board of Standards and Appeals, October 18, 2011.

329-59-BZ

APPLICANT – Mango & Iacoviello, LLP, for Coliseum Tenants Corporation c/o Punia & Marx, Incorporate, owner; Central Parking Systems of New York, Incorporated, lessee. SUBJECT – Application June 1, 2011 – Extension of Term for the continued operation of transient parking in a multiple dwelling which expired on November 4, 2008; an Extension of Time to obtain a Certificate of Occupancy which expired on November 4, 2008 and waiver of rules. R8/C6-6(MID) zoning district.

PREMISES AFFECTED – 910-924 Ninth Avenue aka 22-44 West 60th Street, Block 1049, Lot 1. Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Anthony Mango.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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 transient parking garage, which expired on November 4, 2008; and

WHEREAS, a public hearing was held on this application on September 13, 2011, after due notice by publication in *The City Record*, and then to decision on October 18, 2011; and

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

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is bounded by West 58th Street to the south, Ninth Avenue to the west, and West 60th Street to the north; and

WHEREAS, the site is located partially in an R8 zoning district and partially in a C6-6 zoning district within the Special Midtown District, and is occupied by a 14-story residential building; and

WHEREAS, the cellar is occupied by a 318-space accessory garage; and

WHEREAS, on September 15, 1959, under the subject calendar number, the Board granted a variance to permit a maximum of 149 surplus parking spaces to be used for transient parking for a term of 21 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, on November 17, 1998, the Board granted a ten-year extension of term, which expired on November 4, 2008; a condition of the grant was that a certificate of occupancy be obtained by November 17, 1999; and

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WHEREAS, most recently, on January 15, 2002, the Board granted an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant now requests an additional extension of term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents' right to recapture the surplus parking spaces; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain 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 having been adopted on September 15, 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 years from November 4, 2008, to expire on November 4, 2018; *on condition*:

THAT this term shall expire on November 4, 2018;

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 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. 590/1959)

Adopted by the Board of Standards and Appeals, October 18, 2011.

1045-64-BZ

APPLICANT – Hal Dorfman, R.A., for Kips Bay Tower Associates, owner.

SUBJECT – Application June 10, 2011 – Extension of Term for the continued operation of transient parking which expired on June 21, 2011. R8 zoning district.

PREMISES AFFECTED – 300-330 East 33rd Street, Northwest corner of East 33rd Street and First Avenue. Block 936, Lot 7501. Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Robert A. Jacobs and Peter Hirshman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term for a previously granted variance for a transient parking garage, which expired on June 21, 2011; and

WHEREAS, a public hearing was held on this application on September 13, 2011, after due notice by publication in *The City Record*, and then to decision on October 18, 2011; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, the subject premises is an irregularly shaped lot which occupies the majority of Block 936 and is bounded by East 30th Street to the south, First Avenue to the east, East 33rd Street to the north, and Second Avenue to the west, within an R8 zoning district; and

WHEREAS, the site is occupied by two 20-story residential towers; and

WHEREAS, the first floor and cellar of the northern portion of the site are occupied by a 300-space accessory garage, with 150 spaces at the first floor and 150 spaces at the cellar; and

WHEREAS, on June 21, 1966, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law ("MDL") to permit a maximum of 120 surplus parking spaces to be used for transient parking, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on July 23, 2002, the Board granted a ten-year extension of term, which expired on June 21, 2011; and

WHEREAS, the applicant now requests an additional extension of the term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents' right to recapture the surplus parking spaces; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution having been adopted on June 21, 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 21, 2011, to expire on June 21, 2021; *on condition* that all work shall substantially conform to drawings filed with this application and marked 'Received June 10, 2011'–(2) sheets; and *on further condition*:

THAT this term shall expire on June 21, 2021;

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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 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. No. 915/80)

Adopted by the Board of Standards and Appeals, October 18, 2011.

86-92-BZ

APPLICANT – Randy M. Gulkis, DDS, owner.

SUBJECT – Application April 29, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of a UG6B dental office which expired on June 11, 2011. R3X zoning district.

PREMISES AFFECTED – 15 First Street, a triangle formed by First Street to the east, Richmond to west and Rose Street to the south. Block 4190, Lot 1. 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....5

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term of a previously granted variance for the construction of a two-story office building (Use Group 6B), which expired on June 11, 2011; and

WHEREAS, a public hearing was held on this application on August 23, 2011, after due notice by publication in *The City Record*, with a continued hearing on September 20, 2011, and then to decision on October 18, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

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

WHEREAS, the site is located on a triangular-shaped lot

bounded by Richmond Road to the north and First Street to the south, within an R3X zoning district; and

WHEREAS, the subject site is occupied by a two-story commercial building consisting of Use Group 6B office use; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 5, 1994 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21 to permit the construction of a two-story community facility and residential building (Use Groups 2 and 4) which did not comply with front yard, floor area ratio, minimum lot area, and height and setback regulations; and

WHEREAS, on June 11, 1996, the Board amended the grant to permit a change in use from community facility and residential to offices (limited to Use Group 6B), for a term of 15 years, which expired on June 11, 2011; and

WHEREAS, most recently, on July 15, 1996, the Board issued a letter of substantial compliance to permit modifications to the interior layout of the site, and to permit the installation of a non-illuminated sign for a dentist’s office; and

WHEREAS, the applicant now seeks to extend the term of the variance for an additional 15 years; and

WHEREAS, at hearing, the Board raised concerns about signage located on the Richmond Road side of the building, contrary the Board’s prior grant; and

WHEREAS, in response, the applicant submitted photographs reflecting that the sign located on Richmond Road has been removed; and

WHEREAS, based upon its review of the record, the Board finds 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 *reopens* and *amends* the resolution, as adopted on April 5, 1994, so that as amended this portion of the resolution shall read: “to extend the term for a period of 15 years from June 11, 2011, to expire on June 11, 2026; *on condition* that the use and operation of the site shall substantially conform to drawings filed with this application and marked ‘Received July 15, 2011’-(4) sheets and ‘September 2, 2011’-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on June 11, 2026;

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;

THAT the Department of Buildings must ensure compliance 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. 500038728)

Adopted by the Board of Standards and Appeals, October 18, 2011.

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51-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 70-50 Kissena Boulevard LLC, owner.

SUBJECT – Application May 26, 2011 – Amendment to a Variance (§72-21) to legalize the change of use from a (UG6) one-story retail building to a (UG3) community facility with changes to the exterior façade and interior layout. R4 zoning district.

PREMISES AFFECTED – 70-44/52 Kissena Boulevard, southeast corner of 70th Road and Kissena Boulevard, Block 6656, Lot 52. 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, Commissioner Hinkson and Commissioner Montanez

Negative:.....5

THE RESOLUTION –

WHEREAS, this is an application for an amendment to a previously approved variance for the construction of a one-story and cellar commercial building within an R4 zoning district; and

WHEREAS, a public hearing was held on this application on July 26, 2011, after due notice by publication in *The City Record*, with a continued hearing on September 13, 2011, and then to decision on October 18, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Queens, recommends disapproval of this application; and

WHEREAS, the subject site is located on the northwest corner of Kissena Boulevard and 70th Road, within an R4 zoning district; and

WHEREAS, the site has approximately 99 feet of frontage on Kissena Boulevard, approximately 105 feet of frontage on 70th Road, and a lot area of 9,921 sq. ft.; and

WHEREAS, on November 18, 2008, under the subject calendar number, the Board granted a variance to permit the construction of a one-story and cellar building on the site which does not conform to applicable use regulations, contrary to ZR § 22-10; and

WHEREAS, the applicant now requests an amendment to legalize certain modifications to the façade and interior layout of the building which do not conform with the BSA-approved plans, and to permit the building to be temporarily occupied by a Use Group 3 day care center; and

WHEREAS, the applicant represents that, despite efforts to secure a commercial tenant for over 18 months, the proposed Use Group 3 day care center is the only viable tenant that has expressed interest in occupying the building; and

WHEREAS, in support of this statement, the applicant submitted a letter from a real estate broker describing the

marketing efforts that were undertaken to secure a commercial tenant at the site since August 2009, and stating that the proposed day care center is the only viable tenant that has expressed interest in the site; and

WHEREAS, however, the applicant submitted a feasibility analysis which reflects that the proposed day care center use will not provide a reasonable return, but that it will enable the owner to secure minimal income to help defray the carrying costs until retail occupancy is viable; therefore, the applicant seeks to retain the provisions of the original commercial use variance, while allowing the proposed day care center to occupy the space until a commercial use is viable at the site; and

WHEREAS, the applicant further states that the change of use requires minor modifications to the interior partitions on the previously approved plans to accommodate nine classrooms, offices, storage space, bathrooms, and a kitchenette; and

WHEREAS, in addition to the proposed interior layout modifications, the applicant also seeks to legalize the exterior façade of the building which was not constructed in compliance with the BSA-approved plans; and

WHEREAS, at hearing, the Board raised concerns about the proposed façade of the building, and directed the applicant to provide more fenestration along the Kissena Boulevard and 70th Road frontages, in order to bring the façade more in line with the previously-approved plans; and

WHEREAS, the Board also directed the applicant to plant street trees along the Kissena Boulevard and 70th Road frontages; and

WHEREAS, in response, the applicant submitted revised plans reflecting that portions of the existing façade along Kissena Boulevard and 70th Road will be replaced with transparent glass panels, and that street trees will be planted along these frontages; and

WHEREAS, based upon the above, the Board finds that the requested amendments to the variance 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 November 18, 2008, so that as amended this portion of the resolution shall read: “to permit the noted modifications to the approved plans and the temporary use of the building as a day care center (Use Group 3); *on condition* that the use shall substantially conform to drawings as filed with this application, marked “Received October 4, 2011”–(5) sheets; and *on further condition*:

THAT all construction related to the noted façade modifications shall be completed by October 18, 2013;

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

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plan(s)/configuration(s) not related to the relief granted.”
(DOB Application No. 402507060)

Adopted by the Board of Standards and Appeals, October 18, 2011.

529-52-BZ

APPLICANT - Alfonso Duarte, P.E., for Alacorn-Mordini Enterprises Inc., owner.

SUBJECT – Application June 7, 2011 – Extension of Term (§11-411) of a variance permitting automotive repair (UG 16B) with accessory uses which expired on May 9, 2011. C2-3/R6 zoning district.

PREMISES AFFECTED – 77-11 Roosevelt Avenue, north west corner Roosevelt Avenue & 78th Street. Block 1288, Lot 39. Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Alfonso Duarte.

ACTION OF THE BOARD – Laid over to November 22, 2011, at 10 A.M., for continued hearing.

335-59-BZ

APPLICANT – Alfonso Duarte P.E., for 3485 Atlantic Avenue Realty Corp., owner; Royal Motor Mart Inc., lessee.

SUBJECT – Application July 11, 2011 – Extension of Term (§11-411) of a variance permitting the storage and sales of used cars with accessory office (UG 16B) which expired on December 7, 2009; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 3485/95 Atlantic Avenue, North-East corner Nichols Avenue. Block 4151, Lot 1. Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Alfonso Duarte.

ACTION OF THE BOARD – Laid over to November 22, 2011, at 10 A.M., for continued hearing.

727-59-BZ

APPLICANT – Sheldon Lobel, P.C., for Square-Arch Realty Corp., owner.

SUBJECT – Application August 11, 2011 – Extension of Term (§11-411) for transient parking in a multiple dwelling building which expired on July 12, 2011. R10/R6 zoning district.

PREMISES AFFECTED – 2 Fifth Avenue, corner through lot fronting on Fifth Avenue, Washington Square North and West 8th Street. Block 551, Lot 1. Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to November 15, 2011, at 10 A.M., for decision, hearing closed.

502-60-BZ

APPLICANT – Patrick O' Connell P.E. for Raymond Edwards, owner; Angel R. Hernandez, lessee.

SUBJECT – Application February 23, 2011 – Extension of Term (§11-411) of a variance permitting the use of a parking lot (UG 8) for parking and storage of more than five (5) motor vehicles which expired on January 20, 2011. C2-4/R7-2 zoning district.

PREMISES AFFECTED – 4452 Broadway, Broadway & Fairview Avenue. Block 2170, Lot 62 & 400. Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 1, 2011, at 10 A.M., for postponed hearing.

742-70-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 830 Bay Street, LLC, owner.

SUBJECT – Application May 27, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of an automotive service station which expired on May 18, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on February 26, 2009 and waiver of the rules. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 830 Bay Street, southwest corner of Bay Street and Vanderbilt Avenue. Block 2836, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to November 22, 2011, at 10 A.M., for continued hearing.

252-71-BZ

APPLICANT – Alfonso Duarte, for Alan Pearlstein, owner.

SUBJECT – Application June 23, 2011 – Extension of Term of a variance (§72-21) for the continued sale and installation of automobile seat covers and convertible tops (UG 7), furniture sales (UG 6C), and automotive repairs (UG 16B) which expired on July 13, 2011. R3-2 zoning district.

PREMISES AFFECTED – 190-18 Northern Boulevard, Southside Northern Boulevard between 189th and 192nd Streets. Block 5513, Lot 22. Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Alfonso Duarte and Henry Euler.

ACTION OF THE BOARD – Laid over to November 22, 2011, at 10 A.M., for continued hearing.

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APPEALS CALENDAR

176-10-A

APPLICANT – Sheldon Lobel, P.C., for LIV Realty LLC, owner.

SUBJECT – Application September 8, 2010 – Proposed construction of a residential building not fronting a mapped street, contrary to General City Law Section 36. R6 zoning District.

PREMISES AFFECTED – 62 Brighton 2nd Place, east side, Block 8662, Lot 155. Borough of Brooklyn.

COMMUNITY BOARD #13BK

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner dated August 10, 2010 acting on Department of Buildings Application No. 301979296, reads in pertinent part:

“Proposed building fronting a 35 feet wide lane. It is not a street (min. 50 feet) as per General City Law 36. Obtain BSA approval;” and

WHEREAS, this is an application under General City Law § 36, to permit the construction of a six-story residential building that does not front an officially mapped street; and

WHEREAS, a public hearing was held on this application on June 7, 2011, after due notice by publication in the *City Record*, with continued hearings on July 26, 2011, August 23, 2011 and September 27, 2011, and then to decision on October 18, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the east side of Brighton 2nd Place, approximately 65 feet north of Brighton 2nd Lane, within an R6 zoning district; and

WHEREAS, the site has 45’-9” of frontage on Brighton 2nd Place and a total lot area of 3,793 sq. ft.; and

WHEREAS, by letter dated January 19, 2011, the Fire Department stated that it reviewed the subject proposal and objected to the construction of a building at 62 Brighton 2nd Place due to the following conditions: (1) the narrow 22’-10” width of the roadway makes Fire Department response more challenging and dangerous; (2) the angle of the intersection of Brighton 2nd Place and Brighton 2nd Lane makes fire apparatus access difficult; (3) “No Standing” signs have only been installed on the west side of Brighton 2nd Place, as opposed to both sides, further impeding fire apparatus access; and (4) a six-story multiple dwelling would require the use of an aerial or tower ladder to respond to a fire and the narrow width of the roadway makes the use of this equipment infeasible; and

WHEREAS, during the course of the hearing process, the Fire Department met with the applicant to discuss alternatives to the original proposal; and

WHEREAS, by letter dated June 7, 2011, the Fire Department stated that it would have no objection to the proposal provided that: (1) the building be limited to four stories and a street wall height of 38 feet; (2) the building be set back above a height of 38 feet with two penthouse apartments each with a height of ten feet; (3) each of the penthouse apartments be accessible directly from the terrace; (4) the building be equipped with a standpipe system; (5) the building be protected throughout by a sprinkler system complying with the requirements of the New York City Building Code; and (6) the building be equipped with interconnected smoke alarms throughout the entire building in compliance with the requirements of the New York City Building Code; and

WHEREAS, in response, the applicant submitted revised plans which incorporate all of the conditions requested by the Fire Department; and

WHEREAS, by letter dated May 23, 2011, the Department of Transportation stated that five “No Standing Anytime” signs have been installed on both sides of Brighton 2nd Place between Brighton 2nd Lane and Brighton 3rd Court; three existing signs are located on the west side of the street and two new signs have been installed on the east side of the street; and

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

Therefore it is Resolved that the decision of the Brooklyn Borough Commissioner, dated August 10, 2010, acting on Department of Buildings Application No. 301979296, 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 drawings filed with the application marked ‘Received August 22, 2011’ - one (1) sheet and ‘October 5, 2011’ - 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 the parameters of the proposed building shall be as follows: a maximum street wall height of 37’-4” or four stories, whichever is less; a set back above a height of 37’-4”; and a maximum penthouse height of 18’-8” from terrace level, 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;

THAT a sprinkler system, smoke alarms and a standpipe system shall be installed in the building in accordance with the BSA-approved plans;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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, October 18, 2011.

14-11-A

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Schron and Eli Shron, owners.

SUBJECT – Application February 2, 2011 – Appeal challenging a determination by the Department of Buildings that a proposed cellar to a single family home is contrary to accessory use as defined in §12-10 in the zoning resolution. R2 zoning district.

PREMISES AFFECTED – 1221 East 22th Street, between Avenues K and L, Block 7622, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Hai Blorfmen.

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

THE RESOLUTION –

WHEREAS, this is an appeal of a Department of Buildings (“DOB”) final determination dated January 7, 2011, issued by the Acting First Deputy Commissioner (the “Final Determination”); and

WHEREAS, the Final Determination reads in pertinent part:

- [A] cellar that exceeds 49% of the total floor space of the residence to which it is appurtenant (the principal use) is not considered an “accessory use” as that term is defined by Section 12-10 of the ZR. An accessory use is a use which is “clearly incidental to, and customarily found in connection with” the principal use conducted on the same zoning lot. Here, the proposed principal use is a two-story, single-family dwelling. The proposed accessory use is a storage cellar that extends well beyond the footprint of the dwelling and well below ground. More importantly, the cellar has nearly as much floor space as the dwelling has floor area. In such an arrangement there is nothing “incidental” about the cellar; it is essentially a principal use. As indicated in the August determination, the cellar cannot exceed 49% of the floor space of the residential dwelling.¹

¹ As used in this determination, “floor space” includes any space in the dwelling, whether or not the space is included in the “floor area” per ZR section 12-10. (original footnote)

Beyond 49% the cellar use ceases to be “incidental” to the principal use and therefore does not comply with the Section 12-10 definition of accessory use. Accordingly, the cellar as proposed is not permitted; and

WHEREAS, the appeal was brought on behalf of the owners of 1221 East 22nd Street (hereinafter the “Appellant”); and

WHEREAS, a public hearing was held on this application on May 17, 2011 after due notice by publication in *The City Record*, with continued hearings on June 21, 2011 and August 18, 2011, and then to decision on October 18, 2011; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

THE PROPOSED PLANS

WHEREAS, the subject site is located on East 22nd Street between Avenue K and Avenue L, within an R2 zoning district and is currently occupied by a two-story single-family home (the “Home”); and

WHEREAS, on August 13, 2009, the Appellant submitted Alteration Application No. 320062793 to DOB for the proposed enlargement of the Home pursuant to ZR § 73-622; and

WHEREAS, the proposal includes a total of 6,214.19 sq. ft. of floor area (1.04 FAR) and a cellar with a floor space of 5,100 sq. ft. (the equivalent of approximately 0.85 FAR, if cellar space were included in zoning floor area, and 82 percent of the Home’s above-grade floor space); and

WHEREAS, the proposed cellar extends beyond the footprint of the first floor; includes two levels; and is proposed to contain storage area, a home theater, and a multi-level gymnasium/viewing area, among other uses; and

WHEREAS, on September 3, 2009, DOB issued 23 objections to the plans, the majority of which were later resolved; however, on January 7, 2011, DOB determined that the proposed cellar failed to satisfy the ZR § 12-10 definition of “accessory use” in that it was not “clearly incidental to” and “customarily found in connection with” the principal use of the lot and, thus, the cellar objection remains; and

WHEREAS, DOB states that because the cellar extends beyond the Home’s footprint, its maximum permitted size is 49 percent of the proposed Home’s floor area square footage, which equals 3,043.25 sq. ft.; and

WHEREAS, the Appellant concurrently filed the subject appeal and an application for a special permit (BSA Cal. No. 3-11-BZ) pursuant to ZR § 73-622; at the Appellant’s request, the Board has adjourned the special permit application pending the outcome of the subject appeal; and

RELEVANT ZONING RESOLUTION PROVISIONS

WHEREAS, the following provisions are relevant definitions set forth at ZR § 12-10, which read in pertinent part:

Accessory Use, or accessory

An “accessory use”:

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- (a) is a #use# conducted on the same #zoning lot# as the principal #use# to which it is related (whether located within the same or an #accessory building or other structure#, or as an #accessory use# of land) . . .; and
- (b) is a #use# which is clearly incidental to, and customarily found in connection with, such principal #use#; and
- (c) is either in the same ownership as such principal #use#, or is operated and maintained on the same #zoning lot# substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal #use# . . .

* * *

Dwelling unit

A "dwelling unit" contains at least one #room# in a #residential building#, #residential# portion of a #building#, or #non-profit hospital staff dwelling#, and is arranged, designed, used or intended for use by one or more persons living together and maintaining a common household, and which #dwelling unit# includes lawful cooking space and lawful sanitary facilities reserved for the occupants thereof.

* * *

Residence, or residential

A "residence" is one or more #dwelling units# or #rooming units#, including common spaces such as hallways, lobbies, stairways, laundry facilities, recreation areas or storage areas. A #residence# may, for example, consist of one-family or two-family houses, multiple dwellings, boarding or rooming houses, or #apartment hotels# . . .

"Residential" means pertaining to a #residence#.

* * *

Residential use

A "residential use" is any #use# listed in Use Group 1 or 2; and

* * *

Rooms

"Rooms" shall consist of "living rooms," as defined in the Multiple Dwelling Law; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant makes the following primary arguments: (1) the proposed cellar meets the ZR § 12-10 definition of accessory use; (2) DOB has approved cellars which extend beyond the building footprint, like the proposed, and must approve the proposal to be consistent with its practice; (3) prior Board cases and case law support the contention that the cellar use is accessory; and (4) DOB cannot impose bulk limitations on a use definition; and

WHEREAS, as to the definition of accessory use, the Appellant asserts that the proposed cellar meets the criteria as it is: (a) located on the same zoning lot as the principal use (the single-family home), (b) the cellar uses are incidental to and customarily found in connection with a single-family home, and (c) the cellar is in the same ownership as the principal use and is proposed for the benefit of the owners of the Home who

occupy the upper floors as a single-family home; and

WHEREAS, the Appellant asserts that DOB's interpretation of "accessory use" is erroneous because it is not consistent with the ZR § 12-10 definition and because DOB may not limit a residence's principal use to "habitable rooms" or sleeping rooms as set forth in the Building Code or Housing Maintenance Code ("HMC"); and

WHEREAS, specifically, the Appellant cites to DOB's argument that "all portions of a residence that are not used for sleeping, cooking, or sanitary functions are accessory to the residence and are permitted only to the extent they are customarily found in connection with and clearly incidental to the residence;" and

WHEREAS, the Appellant asserts that the proposed cellar is "incidental" to the primary use as it is "less important than the thing something is connected with or part of;" and

WHEREAS, further, the Appellant asserts that the ZR § 12-10 definition of residence is broad and includes rooms other than those for sleeping and that as per the Multiple Dwelling Law ("MDL"), every room used for sleeping purposes shall be deemed a living room, but rooms other than those used for sleeping shall also be considered living rooms; and

WHEREAS, as to DOB's approvals, the Appellant initially submitted cellar plans for seven homes approved by DOB with cellars that extend beyond the footprint of the building to support the claim that such cellars are customary and that DOB has a history of approving them; and

WHEREAS, the Appellant contends that the examples reflect cellars that extend beyond the footprint of the home and exceed 49 percent of the home's floor area, thus, DOB is arbitrary to now deny this request; and

WHEREAS, as to Board precedent, the Appellant cites to BSA Cal. No. 60-06-A (1824 53rd Street, Brooklyn/Viznitz), a case that involved the analysis of whether a catering facility associated with a synagogue and yeshiva was accessory to the primary synagogue and yeshiva use or whether it was a primary use not permitted by zoning district regulations; and

WHEREAS, the Appellant cites the Board's decision for the point that certain accessory uses noted in ZR § 12-10's definition of accessory use could also be primary uses, but the majority of them are ancillary uses that support the site's primary use; accordingly, the Appellant likens the proposed cellar uses – exercise areas and a home theater - to those on the list of accessory uses in that they are not primary uses; and

WHEREAS, the Appellant also cites to the Board's decision at BSA Cal. No. 202-05-BZ (11-11 131st Street, Queens/InSpa) in which the Board, when evaluating whether a small percentage of a physical culture establishment's floor area dedicated to massage in comparison to the large size of the facility made it appropriate for the massage area to establish the primary use; the Appellant notes that the Board stated in its decision that there was not any mention of size limitations in the ZR § 12-10 accessory use definition; and

WHEREAS, the Appellant cites to Mamaroneck Beach & Yacht Club v. Zoning Board of Appeals, 53 A.D.3d 494 (2008), for the determination that proposed seasonal residential use at a yacht club was deemed to be accessory to the primary yacht club use even though it would occupy more than 50

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percent of the total building floor area on the site; and

WHEREAS, the Appellant also cites to New York Botanical Garden v. Board of Standards and Appeals, 91 N.Y.2d 413 (1998), in which the court rejected the Botanical Garden's assertion that a radio tower was too large to be considered clearly incidental to or customarily found in connection with the principal use and upheld the Board's determination that the radio tower was accessory to the university use; and

WHEREAS, finally, the Appellant asserts that DOB does not have the authority to impose bulk limitations on a use and to impose a quantitative measurement where the ZR is silent; and

WHEREAS, the Appellant asserts that the ZR does not limit the size of the subject accessory use as it does certain other accessory uses such as home occupation and that the absence of a size limit in the ZR is evidence that there is no such limit; and

WHEREAS, the Appellant asserts that since zoning regulations are in derogation of the common law, they should be construed against the property owner and, thus, DOB should not be permitted to add a limitation not written in the text that imposes a burden on property owners; and

WHEREAS, further, the Appellant asserts that DOB's restriction that residential cellars not exceed 49 percent of the floor area of the home is not fair, consistent, or proportional and cites as an example of inequity the fact that a 1,000 sq. ft. home with one-story could have a cellar with 1,000 sq. ft. if built within the building's footprint, but if that 1,000 sq. ft. home were two stories and had a footprint of 500 sq. ft., the cellar could only be 500 sq. ft.; and

DOB'S POSITION

WHEREAS, DOB states that its cellar size limitation is: (1) based on a rational construction of the definition of accessory use, particularly the phrase "clearly incidental," which furthers the intent of the ZR; (2) a reasonable restriction developed pursuant to the principles of fairness, consistency, and proportionality; (3) applicable only to residences, and based on an assessment of the needs presented by residences; (4) not new but rather, a consistent approach that is challenged for the first time; (5) in accordance with the Board's cases concerning accessory uses; and (6) consistent with the Board's cases regarding DOB's authority to establish measurements that are not clearly stated within the text in order to clarify terms; and

WHEREAS, as to whether or not the proposed use is accessory, DOB asserts that the size of the proposed cellar is neither customary, nor clearly incidental to the home and that its multi-level configuration is not customary; and

WHEREAS, DOB states that the proposed storage, theater, and gymnasium rooms in the cellar are not part of the principal use of the residence and must meet the definition of "accessory use;" and

WHEREAS, DOB's analysis includes that several ZR § 12-10 definitions together define (1) a "residence" as those rooms used for sleeping, cooking and sanitary purposes, (2) a "residence" is a building or part of a building containing dwelling units, (3) a "dwelling unit" consists of one or more

"rooms" plus lawful cooking space and lawful sanitary facilities, and (4) a "room" is a room used for sleeping purposes in accordance with the definition of a "living room" as defined by MDL § 4.18; and

WHEREAS, DOB states that sleeping rooms are the essential component of a dwelling unit and the principal use and the rooms in the Home's cellar, none of which are sleeping rooms, must be accessory to the residence; and

WHEREAS, DOB asserts that all portions of a residence that are not for used for sleeping, cooking, or sanitary functions are accessory to the residence and are permitted only to the extent that they are customarily found in connection with and clearly incidental to the residence and, further, cellar floor space that exceeds 49 percent of a residence's floor area is not accessory where the cellar walls extend below or beyond the footprint of the superstructure; and

WHEREAS, DOB states that its restriction on residential cellar size is appropriate since limiting the size beyond the perimeter of the cellar walls, results in cellars of a size that are customarily found, because historically, the cellar walls were directly below the above-grade walls—and may be considered clearly incidental because its size is no greater than is required for the utilitarian purpose of carrying the loads imposed by the superstructure; and

WHEREAS, DOB notes that the proposed cellar extends beyond the Home's footprint and extends so far below grade that another staircase must be installed to access the lower portion of it, thus the proposed cellar is undeniably different than cellars traditionally found in connection with detached, single-family homes and, further that the proposed cellar is not clearly incidental to the home above it; and

WHEREAS, DOB finds that the proposed cellar is simply too large and too significant in comparison to the home to be clearly incidental to it; and

WHEREAS, as to the 49 percent measure, DOB states that it is appropriate because it is its reasoned determination that something cannot be clearly incidental to something else and be fully half as large as it and that (1) the size limitation furthers the intent of the ZR to allow such spaces that normally accompany residential rooms to remain secondary in nature, (2) the percentage is an appropriate measure since it allows for proportionality based on different home sizes, (3) the limitation is only for these residential uses and not for other types of uses, and (4) its restriction on cellar size is not new and that it has required it in the past; and

WHEREAS, DOB articulates the following two-step process for measuring the permissible cellar size: (1) if the cellar matches the footprint of the superstructure, it is permitted regardless of how much floor space it has in comparison to the floor area of the building, and (2) if the cellar extends beyond the footprint of the superstructure, the cellar may not exceed 49 percent of the floor area of the building; and

WHEREAS, DOB states that the 49 percent parameter ensures that, for a typical two-story, single-family home, the cellar floor space does not eclipse an entire story of floor

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area and that in a three-story home, somewhat more than one story's worth of floor area would be permitted for the cellar; and

WHEREAS, DOB asserts that the size of the permitted accessory use directly corresponds to the size of the principal use at a constant rate and follows the plain text of the ZR, gives meaning to the undefined terms, and is consistent with the policy of allowing certain accessory uses to exist, to an appropriate degree, in connection with certain principal uses; and

WHEREAS, as to the Appellant's assertion that DOB's prior approvals require it to approve the proposal, DOB disagrees and states that the plans submitted as precedent are incomplete and cannot be verified and that most of the buildings depicted (Drawings 1, 3, 4, 5 and 7) appear to be three stories in height, which might allow for an extension beyond the footprint; and

WHEREAS, however, DOB states that to the extent that any of the plans show applications that were approved with accessory cellars extending beyond the footprint of the building and having more than 49 percent of the total floor area of the homes, such approvals were issued in error; and

WHEREAS, DOB asserts that the Board has recognized that size limitation is appropriate in two prior cases BSA Cal. No. 45-96-A (27-01 Jackson Avenue, Queens) and BSA Cal. No. 748-85-A (35-04 Bell Boulevard, Queens); and that the Board has recognized DOB's authority to impose size limits which are not stated in the ZR see BSA Cal. No. 320-06-A (4368 Furman Avenue, Bronx), 189-10-A (127-131 West 25th Street, Manhattan), and 247-07-A (246 Spring Street, Manhattan); and

WHEREAS, as to the case law, DOB asserts that neither Mamaroneck nor Botanical Garden can be read to include a limit on the cellar size in a single-family home; DOB asserts that Mamaroneck is distinguishable and Botanical Garden supports its position, rather than Appellant's; and

WHEREAS, specifically, DOB notes that the seasonality of the residences, which were specifically permitted by Mamaroneck's zoning, was the limitation imposed by the plain text of the Mamaroneck Zoning Code, and the zoning board went beyond the plain text to impose a size limitation; and

WHEREAS, by contrast, DOB asserts that cellars are only permitted if they are accessory and size is relevant to the analysis of whether or not they are accessory; and

WHEREAS, DOB finds support for its position in Botanical Garden in that it finds that the court's holding is limited to stating that a size analysis is not appropriate for a radio tower, but does not extend to whether a size analysis may be appropriate in other situations with accessory uses; specifically it cites to the court decision: "the fact that the definition of accessory radio towers (in Section 12-10) contains no [size restrictions such as a "home occupation" or "living or sleeping accommodations for caretakers"] supports the conclusion that the size and scope of these structures must be based upon an individualized assessment of the need;" and

WHEREAS, DOB asserts that Botanical Garden supports the position that where the ZR does not provide a size

limitation, the appropriate limitation is based on an "individualized assessment of the need" for the accessory use and its two-part test follows the Botanical Garden "assessment of the need" analysis, in that it was developed by balancing the historical and practical purpose of accessory cellars (the "need") with the policy considerations within the definition of accessory use; and

THE DRAFT BULLETIN

WHEREAS, during the course of the hearing and at the Board's request, DOB drafted a proposed bulletin (the "Bulletin"), which sets forth the restrictions on cellar space and a version of which DOB proposes to issue after the Board's decision in the subject appeal; and

WHEREAS, the Bulletin has the defined purpose of "clarifying size of non-habitable accessory cellar space in residences," and includes the following:

. . . Within a residence, all rooms are either habitable or non-habitable. Habitable rooms, in contrast to non-habitable rooms, are rooms in which sleeping is permitted. The ZR classifies uses on a zoning lot as either principal or accessory. Where habitable rooms are the principal use on a zoning lot, non-habitable rooms are not part of the principal use; they are accessory to the principal use, and are permitted pursuant to subsection (b) of the ZR definition of "accessory use" only to the extent that they are clearly incidental to and customarily found in connection with such habitable rooms. Thus, the definition of "accessory use" contains a limitation on the size of residential cellars containing non-habitable rooms . . . ; and

WHEREAS, the Appellant made the following supplemental arguments in response to the Bulletin; and

WHEREAS, the Appellant asserts that the Bulletin is not a logical interpretation of the relevant regulations; and

WHEREAS, specifically, the Appellant asserts DOB's comparison of habitable space to the HMC definition is flawed because the HMC definition of "dwelling" does not address "living rooms," but defines a dwelling as "any building or other structure or portion thereof which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings;" and

WHEREAS, the Appellant asserts that the HMC definition does not limit a dwelling to the specific rooms used for sleeping and thus is not comparable to DOB's definition of habitable space; and

WHEREAS, the Appellant adds that the HMC definition of "living room" is broader than DOB suggests and that DOB fails to provide support for equating a space's habitability to its status as a principal or accessory use; and

WHEREAS, the Appellant asserts that the cellar size limit of 49 percent of a home's floor area when it extends beyond the building footprint is arbitrary and that DOB cannot enact additional limitations not written in the text and cannot make a rule limiting cellar size that applies to certain (residential) and not all uses; and

CONCLUSION

WHEREAS, the Board has determined that DOB is

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reasonable to restrict the size of residential cellars and that (1) its position is supported by the Zoning Resolution, (2) it has the authority to set forth and apply parameters for limiting the size of residential cellars and its parameters are reasonable, and (3) all of the authorities the Appellant cites can be distinguished from the subject application and do not support its position; and

WHEREAS, as to the Zoning Resolution, the Board refers to the ZR § 12-10 definitions of dwelling unit, residence or residential, residential use, and rooms cited above; and

WHEREAS, the Board first notes that a residence is one or more “dwelling units” including common spaces (which also addresses multiple dwellings) such as (but not limited to) hallways, lobbies, stairways, laundry facilities, recreation areas, or storage areas; and

WHEREAS, the Board notes that residences include single-family or two-family homes, thus the proposed single-family home is a “dwelling unit;” and

WHEREAS, the Board notes that the proposed enlargement is for a single-family home which is (1) a “residence” and therefore a “dwelling unit,” and (2) as a dwelling unit, it must contain at least one “room,” and includes lawful cooking space and lawful sanitary facilities; and

WHEREAS, further, the Board notes that a dwelling unit comprises “rooms” (defined in the ZR as the same as “living rooms” in the MDL) and cooking and sanitary facilities; therefore, a residential use (such as the proposed single-family home) is a “dwelling unit” which contains “rooms” (ZR or MDL “living rooms”) and cooking and sanitary facilities; and

WHEREAS, the Board finds that the primary use of a residence is limited to living rooms (which DOB refers to as “habitable” in this context), and cooking and sanitary facilities; all other uses become accessory; and

WHEREAS, the Board notes that its proffered zoning interpretation establishes that (1) spaces above grade that are habitable including recreation spaces, libraries, studies, attic space, are all considered “rooms” and part of the primary use and also counted as floor area and (2) below grade space that is habitable and may be used as a sleeping room is also part of the primary use and would be considered as floor area and should be not included in the accessory calculation; the Board notes that below grade space that is not habitable is not included in zoning floor area calculations; and

WHEREAS, the Board notes that DOB does not need to rely on the Building Code definition of habitable space, as the Appellant suggests, but rather chooses “habitable” as a shorthand way to encompass the living rooms which constitute a dwelling unit; and

WHEREAS, the Board notes that the ZR directly references the MDL and therefore reflects an expected link between ZR “rooms” and MDL “living rooms” acknowledged by the ZR; the Board also finds that the Appellant’s concern about there potentially being above-grade space that would be deemed accessory rather than primary is unavailing because the above grade space (1) counts towards floor area, is within the anticipated volume of the building, and is covered by the relevant restrictions on floor area and (2) could potentially be converted to primary use as it can become habitable space; and

WHEREAS, the second part of the Board’s analysis

considers whether DOB may appropriately put a quantitative measure on cellar size; and

WHEREAS, the Board finds that DOB may place a quantitative measure to ensure that the accessory use remains incidental to the primary use; and

WHEREAS, the Board acknowledges that size may not always be a relevant factor when establishing accessory use but when cellars go beyond the customary boundary of the building’s footprint, it is appropriate to restrict the size in order to maintain its incidental relationship to the primary use; and

WHEREAS, the Board does not find DOB’s application of the restriction only to residential uses to be arbitrary since it stems from the ZR definition of residential uses and the distinction between habitable and non-habitable space which does not arise for nonresidential uses; and

WHEREAS, the Board distinguishes its two prior cases that the Appellant cites; and

WHEREAS, first the Board notes that in Viznitz, the Board clearly stated that “a determination of whether a particular use is accessory to another use requires a review of the specific facts of each situation” and quoted the Court of Appeals in Botanical Garden for the theory that “[w]hether a proposed accessory use is clearly incidental to and customarily found in connection with the principal use depends on an analysis of the nature and character of the principal use . . . taking into consideration the over-all character of the particular area in question” when determining whether a catering use was primary or accessory to the synagogue or yeshiva; and

WHEREAS, the Board also distinguishes InSpa in that it involved a PCE special permit application, not an interpretive appeal and, thus the decision in that case is limited to the unique circumstances of a PCE special permit; if the Board had agreed that the small amount of massage space in comparison to the large size of the overall facility would make such use accessory, it would follow that the remaining uses could have existed as-of-right (for example as a Use Group 13 commercial pool with accessory massage); and

WHEREAS, the Board notes that the InSpa case was before the Board because DOB has taken a conservative approach that any amount of space dedicated to a defined PCE, no matter how small in proportion to the whole use, triggers the requirement for a PCE special permit rather than allowing small PCE uses to be subsumed by a larger as of right use and sidestep the special permit; this furthers the intent of the ZR to have City oversight, including conditional approval and term limits, of certain specific physical improvement uses; and

WHEREAS, the Board finds that the intent and the purpose of the analysis in the InSpa case cannot be applied to the subject case; and

WHEREAS, as to the case law, the Board does not find that either Mamaroneck or Botanical Garden supports the Appellant’s position; and

WHEREAS, as to Mamaroneck, the Board distinguishes the facts since Mamaroneck is within a different jurisdiction subject to a different zoning code and seasonal residences were explicitly permitted under zoning without a restriction on size; and

WHEREAS, as to Botanical Garden, the Board finds that

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the court did not prohibit size as a consideration across the board but rather said to employ an individualized assessment of need and a consideration of the facts, as cited above; and

WHEREAS, the Board finds it inappropriate to compare the assessment of need for a radio tower, which has technical requirements, and a home's cellar, which is based on a homeowner's preferences; and

WHEREAS, the Board upheld DOB's authority to interpret and impose quantitative guidelines not found in the ZR in BSA Cal. No. 320-06-A (4368 Furman Avenue, Bronx) and also upheld DOB's authority to fill in gaps not set forth in relevant statutes in BSA Cal. No. 121-10-A (25-50 Francis Lewis Boulevard, Queens); the Board notes that the court recently upheld its decision in Francis Lewis Boulevard at 25-50 FLB v. Board of Standards and Appeals, 2011 NY Slip Op 51615(U) (S. Ct. 2011); and

WHEREAS, in 25-50 FLB, the Supreme Court recognized DOB's authority to fill in gaps in instances where specific procedures are not codified and upheld the Board's decision based on its recognition of that authority; and

WHEREAS, the Board finds that size can be a rational and consistent form of establishing the accessory nature of certain uses such as home occupations, caretaker's apartments, and convenience stores on sites with automotive use, but may not be relevant for other uses like radio towers or massage rooms; and

WHEREAS, the Board does not find that any of the prior cases the Appellant relies on include any recognition of the distinction between above grade and below grade space and the associated questions of habitability; and

WHEREAS, as to the Appellant's assertion that DOB has been inconsistent and has a history of approving cellars like the proposed, the Board notes that the drawings the applicant submitted lack sufficient detail to make such a conclusion; the Appellant submitted only one case which has a certificate of occupancy and zoning calculations, which shows that DOB has allowed cellars greater than 49 percent of the building's floor area; and

WHEREAS, the Board notes that the other six examples which show larger cellars do not provide any analysis regarding the 49 percent standard; and

WHEREAS, the Board notes that (1) even if the examples do support the Appellant's claim that DOB approved cellars with area in excess or 49 percent of the homes' floor area, seven examples do not establish a compelling established practice, (2) it is possible that DOB did not have sufficient information to perform the analysis, and (3) DOB has the authority to correct erroneous approvals; and

WHEREAS, the Board has determined that DOB has the authority to issue the Bulletin and that it is appropriate to do so immediately following the Board's decision since this zoning issue has emerged and its regulation requires memorialization; and

WHEREAS, the Board does not find DOB's discrete application of the rule to be arbitrary as the distinction between habitable and non-habitable use is not relevant or applicable to the non-targeted uses; and

WHEREAS, the Board also notes the following

considerations, which support limiting the size of residential cellars: (1) there is a distinction between above grade habitable space, which provides access to light and air, and below grade space, which does not, and yet homes function as a whole so there is a public interest in distinguishing between the primary habitable space and the accessory non-habitable space and limiting the amount of non-habitable space; (2) the ZR intends to limit, and there is a public interest in limiting, the volume of homes; and (3) the ZR sets limits on above grade floor area, which counts towards zoning floor area and so it is reasonable to limit the below grade floor space, which is not addressed within bulk regulations as it does not count towards bulk, but does contribute to the home's overall occupation of space; and

WHEREAS, as to the Appellant's concern that the cellar limitation is inequitable and disproportionate, the Board considered the effect the Bulletin (with the variation that a cellar built beyond the footprint may not exceed 50 percent of the home's floor area) would have on homes within an R3-2 zoning district; for example a 6,000 sq. ft. lot built out could choose from the following parameters: (1) a home with a maximum floor area of 3,600 sq. ft. (0.6 FAR) and a maximum footprint of 2,585 sq. ft., which would permit a cellar of either 2,585 sq. ft. or 1,800 sq. ft., if built to a smaller footprint and multiple stories, or (2) if a property owner obtains a special permit pursuant to ZR § 73-622, it may potentially build to a floor area of 6,000 sq. ft. (1.0 FAR), a maximum footprint of 3,055 sq. ft., and provide a cellar of either 3,055 sq. ft. or 3,000 sq. ft., if the built to a smaller footprint; and

WHEREAS, the Board finds that the results are not inequitable or disproportionate in that a property owner, like the subject property owner seeking a special permit, would be permitted virtually the same size cellar 3,055 sq. ft. vs. 3,000 sq. ft. whether it builds to the maximum footprint size or not; and

WHEREAS, based on the applicant's actual special permit proposal for 1.04 FAR, a 50 percent limit on the size of the cellar would result in 3,107 sq. ft., which the Board deems to be a reasonable outcome; and

WHEREAS, as to the Bulletin, the Board finds 50 percent to be a more appropriate guideline and, thus, the Board respectfully requests that DOB modify the Bulletin to replace "should not be greater than 49%" with "should be less than 50% of the total FAR," with regard to the size of the cellar, and to include a provision that exceptions must be reviewed and approved by its technical affairs division or by another DOB authority with inter borough oversight to ensure a consistent application in all five boroughs; and

WHEREAS, based on the above, the Board has determined, the Final Determination must be upheld and this appeal must be denied; and

Therefore it is Resolved that this appeal, which challenges a Department of Buildings final determination dated January 7, 2011, is denied.

Adopted by the Board of Standards and Appeals, October 18, 2011.

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69-11-A & 70-11-A

APPLICANT – Sheldon Lobel, P.C., for Fiesta Latina Sports Bar Corporation, owner.

SUBJECT – Application May 23, 2011 – Appeal seeking a determination that the owner of has acquired a common law vested right to continue development commenced under the prior R6 zoning district. R4-1 Zoning District.

PREMISES AFFECTED – 88-11 & 88-13 173rd Street, East side of 173rd Street between 89th Avenue and Warwick Circle. Block 9830, Lot 22, 23 (tentative), Borough of Queens.

COMMUNITY BOARD #12Q

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, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of two attached three-story two-family homes under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on September 13, 2011, after due notice by publication in *The City Record*, and then to decision on October 18, 2011; and

WHEREAS, the site was inspected by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the east side of 173rd Street, between 89th Avenue and Warwick Circle, in an R4-1 zoning district; and

WHEREAS, the site consists of Tax Lot 22 (Tentative Lots 22 and 23) and has 34 feet of frontage on 173rd Street, a depth of 67 feet, and a total lot area of 2,266 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with two attached three-story two-family homes with a floor area of 1,832 sq. ft. each (the “Buildings”); and

WHEREAS, the subject site is currently located within an R4-1 zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Buildings comply with the former R6 zoning district parameters, specifically with respect to floor area ratio (“FAR”), perimeter wall height, side yards, minimum lot width and area, front yards, parking, and use; and

WHEREAS, however, on September 10, 2007 (the “Enactment Date”), the City Council voted to adopt the Jamaica Plan Rezoning, which rezoned the site to R4-1, as noted above; and

WHEREAS, the Buildings do not comply with the R4-1 zoning district parameters as to FAR, perimeter wall height, side yards, minimum lot width and area, front yards, parking, and attached homes are not permitted in R4-1 districts; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to valid permits; and

WHEREAS, the Board notes that New Building Permit Nos. 402587848-01-NB and 402587857-01-NB were issued on June 13, 2007 (the “New Building Permits”), authorizing the development of two attached two-family homes pursuant to R6 zoning district regulations; and

WHEREAS, the Board notes that, as of the Enactment Date, the applicant had obtained permits for the development and had completed 100 percent of their foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows DOB to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are permitted for the completion of construction and to obtain a certificate of occupancy; and

WHEREAS, in the event that construction permitted by ZR § 11-331 has not been completed and a certificate of occupancy has not been issued within two years of a rezoning, ZR § 11-332 allows an application to be made to the Board not more than 30 days after its lapse to renew such permit; and

WHEREAS, the applicant states that construction was not completed and a certificate of occupancy was not obtained within two years of the Enactment Date; and

WHEREAS, accordingly, the applicant is seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the Board notes that the applicant failed to file an application to renew the New Building Permits pursuant to ZR § 11-332 within 30 days of their lapse on September 10, 2009, and is therefore requesting additional time to complete construction and obtain a certificate of occupancy under the common law; and

WHEREAS, by letter dated June 3, 2011, DOB stated that the New Building Permits were lawfully issued, authorizing construction of the Buildings prior to the Enactment Date; 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

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (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

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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 substantial construction, the applicant states that prior to the Enactment Date, the owner had completed the following: 100 percent of site preparation work; 100 percent of excavation; and 100 percent of the foundation; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: a construction schedule, a foundation plan; DOB inspection printouts; an affidavit from the general contractor; and photographs of the site; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the Enactment Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; 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 and accordingly, these costs are appropriately included in the applicant’s analysis; and

WHEREAS, the applicant states that prior to the Enactment Date, the owner expended \$113,617.65, including hard and soft costs and irrevocable commitments, out of \$305,617.65 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, copies of cancelled checks, and invoices; and

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the owner had paid or contractually incurred \$95,000 for the work performed at the site as of the Enactment Date, representing 33 percent of the total projected hard costs for the development; and

WHEREAS, the applicant further states that the owner paid an additional \$18,617.65 in soft costs related to the work performed at the site as of the Enactment Date; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately 37 percent of the projected total cost; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with 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 serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that if vesting were not permitted, the site’s FAR would have to be reduced from the proposed 1.62 to a maximum of 0.75, the perimeter wall height would have to be reduced from the proposed 35 feet to a maximum of 25 feet, side yards of at least four feet rather than the proposed no side yards would be required for each lot, a front yard of at least ten feet rather than the proposed four feet would be required, the lots would not comply with the minimum lot width requirement of 18 feet or the minimum lot area requirement of 1,700 sq. ft., and the required one parking space per dwelling unit could not be provided for the proposed building; and

WHEREAS, the applicant further states that attached homes are not permitted in R4-1 zoning districts; and

WHEREAS, accordingly, if required to construct pursuant to R4-1 district regulations, the applicant would be required to abandon the entire project as originally approved and substantially built, resulting in a loss of at least \$113,617.65; and

WHEREAS, the Board agrees that the need to redesign, the limitations of any conforming construction, and the loss of actual expenditures and outstanding fees that could not be recouped constitute, in the aggregate, 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 Homes had accrued to the owner of the premises as of the Enactment Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of the New Building Permits associated with DOB Application Nos. 402587848-01-NB and 402587857-01-NB, 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 two years from the date of this grant.

Adopted by the Board of Standards and Appeals, October 18, 2011.

219-10-A

APPLICANT – Sheldon Lobel, P.C., for 74-76 Adelphi Realty LLC, owner.

SUBJECT – Application November 24, 2010 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development

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commenced under the prior R6 zoning district. R5B zoning district.

PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, between Park and Myrtle Avenues, Block 2044, Lots 52, 53, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 15, 2011, at 10 A.M., for decision, hearing closed.

232-10-A

APPLICANT – OTR Media Group, Incorporated, for 4th Avenue Loft Corporation, owner;

SUBJECT – Application December 23, 2010 – An appeal challenging Department of Buildings’ denial of a sign permit on the basis that the advertising sign had not been legally established and not discontinued as per ZR §52-83. C1-6 Zoning District.

PREMISES AFFECTED – 59 Fourth Avenue, 9th Street & Fourth Avenue. Block 555, Lot 11. Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Eugene Travers.

ACTION OF THE BOARD – Laid over to December 6, 2011, at 10 A.M., for adjourned hearing.

15-11-A

APPLICANT – Slater & Beckerman, LLP., for 1239 Operating Corporation, owner.

SUBJECT – Application February 10, 2011 – Appeal challenging the Department of Building’s determination that a non-illuminated advertising sign and structure is not a legal non-conforming advertising sign pursuant to ZR §52-00. C6 zoning district.

PREMISES AFFECTED – 860 Sixth Avenue, through lot on the north side of West 30th Street, between Broadway and Avenue of the Americas, Block 832, Lot 1. Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Stuart Beckerman.

ACTION OF THE BOARD – Laid over to December 15, 2011, at 10 A.M., for adjourned hearing.

29-11-A & 30-11-A

APPLICANT – Randy M. Mastro-Gibson, Dunn & Crutcher LLP, for Win Restaurant Equipment & Supply Corporation, owner; Fuel Outdoor, lessee.

SUBJECT – Application March 24, 2011 – An appeal challenging the Department of Building’s revocation of sign permits. M1-5B Zoning District.

PREMISES AFFECTED – 318 Lafayette Street, Northwest corner of Houston and Lafayette Streets. Block 522, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 22, 2011, at 10 A.M., for adjourned hearing.

40-11-A

APPLICANT – Bryan Cave LLP, Margery Perlmutter, Esq., for CPW Retail, LLC c/o American Continental Properties, LLC, owner.

SUBJECT – Application April 8, 2011 – Appeal challenging the Department of Building’s determination that non-conforming commercial use was discontinued pursuant to ZR §52-61. R10A & C4-7 LSD Zoning district.

PREMISES AFFECTED – 25 Central Park West, West 62nd and West 63rd Streets, Block 1115, Lot 7501(2) Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Margery Perlmutter.

For Opposition: Paul A. Selver.

ACTION OF THE BOARD – Laid over to November 22, 2011, at 10 A.M., for continued hearing.

114-11-A

APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for Salanter Akiba Riverdale Academy, owner.

SUBJECT – Application August 10, 2011 – Proposed construction of stone wall, pier, curbs and related footings for an accessory parking area to SAR Academy to be located within the bed of the mapped street (West 245th), contrary to General City Law Section 35. R1-1/Riverdale SNAD zoning district.

PREMISES AFFECTED – 655 West 254th Street, north side of West 254th Street, between Palisade and Independence Avenues. Block 5947, Lot 1, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Jay Segal.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 1, 2011, at 10 A.M., for decision, hearing closed.

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Jeff Mulligan, Executive Director

Adjourned: P.M.

**REGULAR MEETING
TUESDAY AFTERNOON, OCTOBER 18, 2011
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

230-09-BZ

APPLICANT – Peter Hirshman, for Mr. Filipp T Tortora, owner.

SUBJECT – Application July 20, 2009 – Variance (§72-21) for the construction of a three story, three family residence, contrary to front yard regulations (§23-45). R-5 zoning district.

PREMISES AFFECTED – 1700 White Plains Road, northeast corner of White Plains and Van Nest Avenue, Block 4033, Lot 31, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Peter Hirshman and Filippo Tortora.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated June 30, 2011, acting on Department of Buildings Application No. 200870334, reads in pertinent part:

“23-45(a) ZR. The required minimum front yard(s) is contrary to the Zoning Resolution and therefore requires a variance from the Board of Standards and Appeals.

23-462 ZR. The required minimum side yard(s) is contrary to the Zoning Resolution and therefore requires a variance from the Board of Standards and Appeals.

25-23 ZR. The required number of parking spaces is contrary to the Zoning Resolution and therefore requires a variance from the Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R5 zoning district, the proposed construction of a three-story three-family home that does not provide the

required front yard, side yard, or parking, contrary to ZR §§ 23-45(a), 23-462 and 25-23; and

WHEREAS, a public hearing was held on this application on June 7, 2011 after due notice by publication in *The City Record*, with continued hearings on July 19, 2011 and September 13, 2011, and then to decision on October 18, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Bronx, states that it has no objection to this application; and

WHEREAS, the site is located on the northeast corner of Van Nest Avenue and White Plains Road, within an R5 zoning district; and

WHEREAS, the site has a width of 25 feet, a depth of 95 feet, and a total lot area of approximately 1,901 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a three-story three-family home on the site; and

WHEREAS, the proposed home will have the following complying parameters: 2,352 sq. ft. of floor area (1.23 FAR); lot coverage of 41 percent; a front yard with a depth of 18’-0” along the southern lot line; a side yard with a width of 25’-6” along the northern lot line; a wall height of 26’-½””; and a total height of approximately 31’-4””; and

WHEREAS, however, the applicant proposes to provide no front yard along the western lot line (two front yards with minimum depths of 10’-0” and 18’-0” are required), a side yard with a width of 4’-0” along the eastern lot line (two side yards with minimum widths of 8’-0” each are required), and no parking spaces (a minimum of three parking spaces are required); and

WHEREAS, the applicant originally proposed to construct a three-story three-family home with a front yard with a depth of 4’-0” along the western lot line, no side yard along the eastern lot line, and which provided three parking spaces at the rear of the site; and

WHEREAS, although the original proposal would have eliminated the need for the requested side yard and parking waivers and would have reduced the degree of front yard non-compliance, the Board directed the applicant to revise its plans to reflect the current proposal in order to provide a 4’-0” side yard as a buffer between the proposed home and the adjacent home, and because the curb cut for the proposed parking spaces would have interfered with an existing bus shelter located on White Plains Road; and

WHEREAS, the applicant states that requested relief is necessary for the reasons stated below; thus, the instant application was filed; 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 narrowness of the subject site; and

WHEREAS, the applicant represents that the requested yard waivers are necessary to develop the site with a habitable home; and

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WHEREAS, specifically, the applicant represents that the pre-existing lot width of 20'-0" cannot feasibly accommodate a complying development; and

WHEREAS, the applicant states that the subject site is a corner lot, which requires two front yards with minimum depths of 10'-0" and 18'-0"; and

WHEREAS, the applicant states that the building would have an exterior width of only 10'-0" if front yard regulations were complied with fully; and

WHEREAS, the applicant further states that the subject site requires two side yards with minimum depths of 8'-0" each (unless the home abutted the side lot line wall pursuant to ZR § 23-49); and

WHEREAS, the applicant represents that the home would have an exterior width of only 2'-0" if both front yard and side yard regulations were complied with fully (and the home did not abut the side lot line wall); and

WHEREAS, accordingly, the applicant represents that the front and side yard waivers are necessary to create a home of a reasonable width; and

WHEREAS, the applicant submitted a 200-ft. radius diagram which reflects that there are only seven lots in the surrounding area with a lot width of 20 feet or less, and that the footprints of the buildings on all seven of these lots are constructed lot line to lot line, such that they occupy the entire width of the lot; and

WHEREAS, the radius diagram submitted by the applicant further reflects that there are only three lots in the surrounding area which are occupied by buildings with widths of less than 16 feet, and that all three of the buildings on these lots occupy the entire width of the lot; and

WHEREAS, the radius diagram further reflects that the subject site is the only vacant lot on the subject block, and one of only two vacant lots located wholly within a 200-ft. radius of the site; 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 regulations; and

WHEREAS, the Board has determined that because of the subject site'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, or impact adjacent uses; and

WHEREAS, the applicant submitted a radius diagram reflecting that the surrounding neighborhood is predominantly residential in character; and

WHEREAS, the applicant notes that the proposed bulk is compatible with nearby residential development, which includes a four-story, 21-unit multiple dwelling located on the subject block fronting Van Nest Street; and

WHEREAS, the applicant notes that the proposed home complies with the R5 zoning district regulations for use, FAR, open space, lot coverage, and height; and

WHEREAS, the applicant represents that the proposed side yard with a width of 4'-0" along the eastern lot line will

not impair the adjacent home to the east of the site, as the adjacent home is constructed to the lot line and the proposed home could be built abutting the adjacent home as-of-right, pursuant to ZR § 23-49; and

WHEREAS, as to the requested parking waiver, the applicant submitted a parking survey which reflects that a minimum of 35 on-street parking spaces are available within a 400-ft. radius of the site during the evening peak hour periods; and

WHEREAS, accordingly, the applicant concludes that the parking demand generated by the proposed three-family home would be adequately accommodated by the availability of on-street parking in the surrounding area; and

WHEREAS, therefore, 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, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's narrow width; 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 historic lot dimensions; and

WHEREAS, 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 three-story three-family home that does not provide the required front yard, side yard, or parking, contrary to ZR §§ 23-45(a), 23-462 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 August 30, 2011"- (6) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum of 2,352 sq. ft. of floor area (1.23 FAR); lot coverage of 41 percent; open space of 59 percent; a front yard with a depth of 18'-0" along the southern lot line; no front yard along the western lot line; a side yard with a width of 25'-6" along the northern lot line; a side yard with a width of 4'-0" along the eastern lot line; a wall height of 26'-½"; a total height of 31'-4", and no parking spaces, as per 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;

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THAT substantial construction shall proceed in accordance with ZR § 72-23;

THAT the Department of Buildings must ensure compliance 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 18, 2011.

54-10-BZ

APPLICANT – Eric Palatnik, P.C., for Richard Valenti as Trustee, owner; Babis Krasanakis, lessee.

SUBJECT – Application April 19, 2010 – Special Permit (§73-44) to permit reduction in required parking for an ambulatory diagnostic or treatment center. C4-2 zoning district.

PREMISES AFFECTED – 150(c) Sheepshead Bay Road, aka 1508 Avenue Z, south side of Avenue Z, between East 15th and East 16th Street, Block 7460, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, October 18, 2011.

194-10-BZ

APPLICANT – Eric Palatnik, P.C., for Revekka Kreposterman, owner.

SUBJECT – Application October 26, 2010 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141). R3-1 zoning district.

PREMISES AFFECTED – 175 Exeter Street, north of Oriental Avenue, Block 8737, Lot 17, 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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 11, 2011, acting on Department of Buildings Application No. 320183207, reads:

“Proposed enlargement to existing home is

contrary to ZR section 23-141 with respect to floor area and lot coverage and open space and therefore must be referred to the NYC BSA;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-1 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, and open space, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on June 7, 2011, after due notice by publication in *The City Record*, with continued hearings on July 26, 2011, August 16, 2011 and September 13, 2011, and then to decision on October 18, 2011 and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Montanez, and Commissioner Ottley-Brown; and

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

WHEREAS, representatives of the Manhattan Beach Community Group provided written and oral testimony in opposition to this application (hereinafter, the “Opposition”); and

WHEREAS, the subject site is located on the east side of Exeter Street, between Hampton Avenue and Oriental Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 6,000 sq. ft., and is occupied by a single-family home with a floor area of 2,121 sq. ft. (0.35 FAR); 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 2,121 sq. ft. (0.35 FAR) to 5,875 sq. ft. (0.98 FAR); the maximum permitted floor area is 3,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of 38 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide an open space of 62 percent (65 percent is the minimum required); and

WHEREAS, the Opposition contends that the proposed home is out of context with the surrounding neighborhood because the FAR is excessive; and

WHEREAS, in response, the applicant submitted a survey of homes within a 400-ft. radius of the site, which indicates that there are 14 homes within the surrounding area with an FAR of 0.75 or greater, and six homes within the surrounding area with a floor area greater than 5,000 sq. ft.; and

WHEREAS, the Opposition contends that the methodology of the applicant’s FAR study is flawed because it relies on the Primary Land Use Tax Lot Output (“PLUTO”) for its FAR data, and there are inaccuracies in the PLUTO database; and

WHEREAS, the Board recognizes that the PLUTO data may have errors, however, it finds that the database can

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still be relied on to provide a general sense of the FARs in the surrounding neighborhood; and

WHEREAS, the Board notes that the PLUTO database is maintained by the Department of City Planning, and is relied upon for various land use studies; and

WHEREAS, the Board further notes that it has granted special permits for at least two homes in the immediate vicinity of the site with FARs greater than the proposed 0.98 FAR; at 135 Exeter Street, where the Board granted an FAR of 1.04 under BSA Cal. No. 174-98-BZ, and at 229 Exeter Street, where the Board granted an FAR of 0.99 under BSA Cal. No. 182-07-BZ; and

WHEREAS, the applicant originally proposed to construct a home with a floor area of 5,969 sq. ft. (0.99 FAR), a perimeter wall height of 21'-0" and a total height of 35'-0", and subsequently increased the proposed size of the home to 6,046 sq. ft. (1.01 FAR); and

WHEREAS, at the Board's direction, the applicant submitted revised plans which reduced the size of the home to 5,875 sq. ft. (0.98 FAR), with a perimeter wall height of 20'-4" and a total height of 34'-4"; and

WHEREAS, the Board notes that the proposed home provides complying side yards with widths of 5'-0" and 12'-0", respectively, a complying front yard with a depth of 15'-0", and a complying rear yard with a depth of 31'-0"; and

WHEREAS, the Board further notes that proposed home's non-compliances are limited to FAR, lot coverage and open space; and

WHEREAS, based upon its review of the record, 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 therefore is not persuaded that there is any basis to deny the subject application, as the required findings have been met; 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, within an R3-1 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, and open space, 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 and marked "Received August 9, 2011"-(16) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 5,875 sq. ft. (0.98 FAR); a lot coverage of 38 percent; and an open space of 62 percent, as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 18, 2011.

196-10-BZ CEQR No. 11-BSA-036M

APPLICANT – James Chin & Associates, LLC, for Turtle Bay Inn, LLC., owner.

SUBJECT – Application October 25, 2010 – Variance (§72-21) to allow ground floor commercial use in an existing residential building, contrary to use regulations (§22-00). R8B zoning district.

PREMISES AFFECTED – 234 East 53rd Street, mid-block parcel located on the south side of 53rd Street, between 2nd and 3rd Avenue, Block 1326, Lot 34, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Chris Wright and James Chin.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Negative: Vice Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated October 14, 2010, acting on Department of Buildings Application No. 120430382, reads:

The proposed use of the basement, as a commercial eating and drinking establishment (Use Group 6), is not permitted as-of-right in an R8B zoning district within the Transit Authority District (TA). This is contrary to Section 22-00 (use) of the Zoning Resolution and requires variance from the Board of Standards and Appeals; and

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WHEREAS, this is an application under ZR § 72-21, to permit, in an R8B zoning district within the Special Transit Land Use District, the commercial use and expansion of the basement of a four-story residential building, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on March 15, 2011 after due notice by publication in the *City Record*, with continued hearings on July 26, 2011, August 23, 2011 and September 13, 2011, and then to decision on October 18, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Manhattan, recommends disapproval of this application; and

WHEREAS, the subject site is located on the south side of East 53rd Street between Second Avenue and Third Avenue, in an R8B zoning district within the Special Transit Land Use District; and

WHEREAS, the site has a width of 20'-0", a depth of 100'-5", and a lot area of 2,008 sq. ft.; and

WHEREAS, the site is occupied by a four-story (including basement) residential building with a floor area of 3,938 sq. ft. (1.96 FAR) (the maximum permitted FAR is 4.0); and

WHEREAS, the applicant proposes to renovate the upper three floors of the building to provide five apartment units, convert the basement of the building to commercial use, and to construct a 767 sq. ft. horizontal enlargement of the basement at the rear of the site; and

WHEREAS, commercial use is not permitted in the subject R8B zoning district, thus, the applicant seeks a use variance to permit the proposed commercial use; 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 history of use of the subject building as a single room occupancy ("SRO"); and (2) the obsolescence of the basement for conforming use due to the site's narrow frontage, small size, history of use, and the commercial context of the surrounding street; and

WHEREAS, the applicant states that the subject building was formerly used as an SRO, and that the costs associated with renovating the SRO building creates practical difficulties with providing a conforming use in the basement; and

WHEREAS, as evidence of the building's former use as an SRO, the applicant submitted an HPD I Card, which indicates that the building was converted to a rooming house in 1940; and

WHEREAS, the applicant also submitted a Certification of No Harassment from the Department of Housing Preservation and Development dated August 10, 2007 as evidence that the subject building is no longer legally required to remain an SRO; and

WHEREAS, the applicant states that the upper three

floors of the subject building will be converted from SROs to five modern apartment units, but that the physical limitations of the basement render it obsolete for a conforming use; and

WHEREAS, the applicant states that the basement of the subject building was used as a common area for the SRO tenants; and

WHEREAS, specifically, the applicant states that there is a kitchen at the rear of the basement which represents the only kitchen in the building, and the remainder of the basement includes a dining room, lobby, and communal bathroom for the upper floors; and

WHEREAS, the applicant further states that any conforming use of the basement would require its gut renovation, as the existing kitchen and demising walls would have to be removed and new wiring and plumbing would be required to accommodate the needs of a modern tenant; and

WHEREAS, the applicant represents that a conforming use of the basement would require compliance with ADA standards, which would necessitate the installation of a ramp from the sidewalk into the building, and extensive façade work to reconfigure the entrance; and

WHEREAS, the applicant further represents that, even if the basement underwent extensive renovations to accommodate a community facility use, the existing floor plate and street frontage are too small to attract a conforming community facility use; and

WHEREAS, specifically, the applicant states that the subject building provides street frontage of only 20 feet and a floor plate with a depth ranging from approximately 45'-7" to 62'-0", while many sites on the subject street offer street frontage ranging from 30 to 40 feet and floor plates with a depth ranging from 80 to 90 feet; and

WHEREAS, the applicant represents that, despite the larger floor plates and street frontage available at other sites, there are only three community facility uses located on the subject street and they are all occupied by longstanding religious institutions; and

WHEREAS, the applicant further represents that the subject basement is not suitable for conforming residential use because the basement unit lacks legal light and air in its current configuration; and

WHEREAS, the applicant states that even after being renovated into a one bedroom unit, the only potential location for windows is at the front and rear of the basement, and the front window is nearly flush with the sidewalk, offering no privacy from the street; and

WHEREAS, the applicant states that the subject building is the only property on the street for which the ground floor is not being used for commercial use, other than three religious institutions; and

WHEREAS, the applicant further states that there are no ground floor residential uses on the subject street, and the buildings abutting the site on both sides are developed to the sidewalk with commercial uses, while the subject basement is set back from the commercial street wall and is partially below grade with steps leading to the basement entrance;

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and

WHEREAS, accordingly, the applicant represents that any prospective basement tenant would be surrounded by commercial uses, as the subject street is dominated by commercial street activities, including constant pedestrian and commercial traffic such as trucks, vans, and delivery vehicles servicing the local restaurants and stores, which result in a significant amount of street noise and congestion, thereby making the subject basement an unsuitable residential unit; and

WHEREAS, in support of its request to expand the basement to the rear lot line, the applicant states that the additional basement floor area is necessary to provide a viable amount of commercial floor area; and

WHEREAS, the applicant states that the properties abutting the site on both sides have ground floor commercial uses that extend to the rear lot line; and

WHEREAS, the applicant submitted a table of ground floor uses which reflects that 16 of the 23 sites in the study area have a non-complying rear yard, and that of the seven sites that do provide a rear yard, six of them have at least two floors of commercial use; and

WHEREAS, the table submitted by the applicant further reflects that the total floor area dedicated to commercial use for each site ranges from 1,500 sq. ft. to 3,600 sq. ft., with an average commercial floor area of 2,200 sq. ft.; therefore, the applicant notes that the existing basement with a floor area of 1,057 sq. ft. would provide significantly less commercial floor area than any other site in the study area, and the proposed basement expansion, which increases the proposed commercial floor area to 1,824 sq. ft., merely enables the subject site to provide a comparable amount of commercial floor area as the surrounding sites; and

WHEREAS, the Board does not find the subject building's history of use as an SRO to be a unique physical condition, however, the Board agrees that the building is undersized, that the ground floor space is constrained because it was intended as non-unit space, and that the conversion of the basement to complying community facility or residential space is severely restricted by the existing obsolescence of the basement area and the surrounding conditions, and that these unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulties in developing the site in compliance with the current zoning; and

WHEREAS, initially, the applicant submitted a feasibility study which analyzed: (1) a conforming mixed-use building with community facility use in the basement and residential use on the upper floors; and (2) the proposed mixed-use building with retail use in the basement and residential use on the upper floors, and with a 767 sq. ft. enlargement of the basement at the rear of the building; and

WHEREAS, at hearing, the Board directed the applicant to revise the feasibility study to include a conforming scenario with an enlarged basement and a lesser variance scenario without an enlarged basement; and

WHEREAS, in response, the applicant submitted a

revised feasibility study which analyzed: (1) a conforming scenario with residential use on all floors and without a basement enlargement; (2) a conforming scenario with a community facility use in the basement, residential use on the upper floors, and a 767 sq. ft. enlargement of the basement; (3) a lesser variance scenario with retail use in the basement, residential use on the upper floors, and without a basement enlargement; and (4) the proposed scenario; and

WHEREAS, at hearing, the Board raised concerns that the costs associated with converting the upper floors of the building to residential units would be offset by the revenue such units would generate, and that the feasibility study did not sufficiently separate the basement space from the upper floors; and

WHEREAS, accordingly, the Board directed the applicant to revise the feasibility study to focus only on the economic impact of the ground floor space, in order to ensure that the economic hardship was not based on the SRO status of the upper floors; and

WHEREAS, in response, the applicant submitted a revised study which focused only on the economic impact of the ground floor space; and

WHEREAS, the revised study concluded that the conforming and lesser variance scenarios would not realize a reasonable return but that the proposed scenario would realize 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 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 the subject block is characterized by mixed-use buildings with ground floor commercial use and residential use on the upper floors; and

WHEREAS, as noted above, the applicant submitted a table of ground floor uses which reflects that the subject street is dominated by ground floor commercial use, that 16 of the 23 properties in the study have expanded into the rear yard at the ground floor level, and that the average commercial floor area for the commercial uses in the study is 2,200 sq. ft., while the proposed conversion and expansion of the basement will only result in 1,824 sq. ft. of commercial floor area; and

WHEREAS, the applicant notes that the immediately adjacent buildings on both sides of the site have ground floor commercial uses which extend to the rear lot line, and therefore the proposed expansion of the subject basement will merely infill the rear of the site between the two adjacent buildings; and

WHEREAS, the applicant further notes that the proposed rear yard enlargement has a height of only 9'-10", while a rear yard encroachment with full lot coverage would be permitted as-of-right up to a height of 23'-0" if the building was occupied by a conforming community facility

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use; and

WHEREAS, the applicant represents that the proposed rear yard enlargement will allow all of the commercial use at the site to be enclosed within the building, which is preferable to the noise and privacy concerns that would arise from having an open commercial use at the rear of the site; and

WHEREAS, the applicant states that the proposed building will have a total floor area of 4,705 sq. ft. (2.34 FAR), which is well below the maximum permitted FAR of 4.0; 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 site's unique physical conditions; and

WHEREAS, 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 6 NYCRR Part 617.2; 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. 11BSA036M, dated February 1, 2011; 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 each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, in an R8B zoning district within the Special Transit Land Use District, the enlargement of the basement of a four-story (including basement) residential building and its conversion to commercial 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 October 11, 2011" – one (1) sheet and "Received October 6, 2011" – eight (8) sheets ; and on further condition:

THAT the following shall be the bulk parameters of the proposed building: a commercial floor area of 1,824 sq. ft. (0.91 FAR), a residential floor area of 2,881 sq. ft. (1.43 FAR), and a total floor area of 4,705 sq. ft. (2.34FAR), as indicated on the BSA-approved plans;

THAT the commercial use shall have a closing time of no later than 11:00 p.m., Sunday through Thursday, and 12:00 a.m. Friday through Saturday;

THAT garbage pickup shall take place between 7:00 a.m. and 7:00 p.m.;

THAT the operation of the site shall be in compliance with Noise Code regulations;

THAT commercial signage shall be as indicated on the BSA-approved plans;

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

THAT the internal floor layouts on each floor 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 18, 2011.

6-11-BZ

APPLICANT – Paul Bonfilio, for Denis Forde, Rockchapel Reality, LLC, owner.

SUBJECT – Application January 19, 2011 – Variance (§72-21) to permit the construction of a one family detached residence on a vacant corner tax lot contrary to ZR §23-711 for minimum distance between buildings on the same zoning lot; ZR §23-461 for less than the required width of a side yard on a corner lot and ZR §23-89(b) less than the required open area between two buildings. R2A zoning district.

PREMISES AFFECTED – 50-20 216th Street, corner of 51st Avenue, Block 7395, Lot 13, 16, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Paul Bonfilio.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

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Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Queens Borough Commissioner, dated January 11, 2011 acting on Department of Buildings Application No. 420234400, read in pertinent part:

- Proposed construction of a single family dwelling in an R2A Zoning District on tax lot #16 does not have the required 20 foot side yard for a corner lot and is contrary to Section 23-461 of the Zoning Resolution;
- Proposed construction of a single family dwelling in an R2A Zoning District on tax lot #16 does not have the required minimum 40 foot distance from existing residential dwelling on lot #13 of the same zoning lot for legally required window to window condition and is contrary to Section 23-711 of the Zoning Resolution; and
- Proposed construction of a single family dwelling in an R2A Zoning District on tax lot #16 does not have the required 20 foot depth of open area for the designated rear wall of the proposed building together with the existing building on lot #13 on a zoning lot facing two streets and is contrary to Section 23-89(b) of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R2A zoning district, the proposed construction of a two-story single-family home that does not provide the required minimum distance between buildings, minimum side yard on a corner lot, or minimum open area, contrary to ZR §§ 23-461, 23-711, and 23-89; and

WHEREAS, a public hearing was held on this application on June 14, 2011 after due notice by publication in *The City Record*, with a continued hearing on July 26, 2011 and September 13, 2011, and then to decision on October 18, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 11, Queens, recommends disapproval of this application; and

WHEREAS, Queens Borough President Helen Marshall recommends disapproval of this application; and

WHEREAS, City Council Speaker Christine C. Quinn, City Council Member Daniel J. Halloran III, New York State Senator Tony Avella, and New York State Assembly Member David I. Weprin provided testimony in opposition to this application; and

WHEREAS, the Bayside Hills Civic Association, the Auburndale Improvement Association, and certain members of the community testified in opposition to this application; and

WHEREAS, the above-mentioned elected officials, community groups, and neighbors (hereinafter, collectively referred to as the “Opposition”) cited the following primary

concerns: (1) the proposed home is out of context with the surrounding neighborhood; (2) the site is too small to accommodate a second home; and (3) the subdividing of the lot constitutes a self-created hardship; and

WHEREAS, the site is located on the northwest corner of 51st Street and 216th Street, within an R2A zoning district; and

WHEREAS, the subject site is an irregularly shaped zoning lot with 18.26 feet of frontage along 51st Street, 109.96 feet of frontage along 216th Street, and a total lot area of 7,536.8 sq. ft.; and

WHEREAS, the subject zoning lot consists of two tax lots (Lots 13 and 16); and

WHEREAS, Lot 13 consists of a 4,218.6 sq. ft. parcel located on the northern portion of the site, which is occupied by an existing two-story single-family home with a floor area of 1,484.6 sq. ft. (0.35 FAR for Lot 13 and 0.19 FAR for the zoning lot); and

WHEREAS, Lot 16 consists of a 3,318.6 sq. ft. triangular-shaped parcel located on the southern portion of the site, which is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story single-family home on the Lot 16 portion of the site; and

WHEREAS, the proposed home will have the following complying parameters: 1,491 sq. ft. of floor area (0.45 FAR for Lot 16), for a total of 2,975.6 sq. ft. of floor area on the zoning lot (0.39 FAR for the zoning lot) (the maximum permitted FAR is 0.50); lot coverage of 11 percent, for a total lot coverage of 26 percent on the zoning lot (the maximum permitted lot coverage is 30 percent); front yards with a depth of 20’-0” along the eastern and southern lot lines (front yards with minimum depths of 15’-0’ are required); a street wall height of 20’-0” (the maximum permitted street wall height is 21’-0”); a total height of 27’-4” (the maximum permitted total height is 35’-0”); and two parking spaces; and

WHEREAS, however, the applicant proposes to provide a side yard with a width of 5’-0” along the western lot line (a side yard with a minimum width of 20’-0” is required); a distance of 13’-0” between the proposed home on Lot 16 and the existing home on Lot 13 (a minimum distance of 40’-0” is required between a residential building and any other building on the same zoning lot, with a window to window condition); and non-compliance with the open area requirements; and

WHEREAS, the applicant originally proposed to construct a two-story home with a street wall height of 21’-0” and a total height of 28’-0”;

WHEREAS, at the Board’s direction, the applicant revised the plans to reflect a street wall height of 20’-0” and a total height of 27’-4”;

WHEREAS, the applicant states that the requested relief is necessary for the 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: the irregular shape of the subject corner lot, and the location of the existing home on the site; and

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WHEREAS, the applicant represents that the requested waivers are necessary to develop the site with a habitable home; and

WHEREAS, the applicant states that the subject zoning lot is a large, significantly under-developed corner lot that is triangular in shape; and

WHEREAS, specifically, the applicant states that the zoning lot has a lot area of 7,536.8 sq. ft. and is currently occupied by a single-family home with a floor area of 1,484.6 sq. ft. (0.19 FAR), which is significantly underdeveloped based on the maximum allowable floor area of 3,768.4 sq. ft. (0.50 FAR) for the site; and

WHEREAS, the applicant represents that as a result of the triangular shape of the site and the location of the existing home on Lot 13, the site cannot be developed with a second viable single-family home that complies with the underlying zoning regulations with regard to the minimum distance between the two homes, the required side yards for corner lots, and the minimum open area requirements; and

WHEREAS, the applicant notes that pursuant to the density regulations of ZR § 23-22, two homes are permitted to be constructed on the subject zoning lot as-of-right; and

WHEREAS, however, the applicant states that the triangular configuration of the lot and the location of the existing home create practical difficulties in constructing the second home, such that constructing a complying home would result in an irregularly-shaped building footprint of 268 sq. ft., which would not be viable for habitable use; and

WHEREAS, the applicant states that, if not for the triangular shape of the site and the location of the existing home, two viable single-family homes could be constructed that would comply with all zoning regulations in the underlying R2A district; and

WHEREAS, in support of this statement, the applicant submitted an analysis of a development consisting of a regularly-shaped lot with the same lot area as the subject site, which reflected that two homes that meet all the requirements of the Zoning Resolution could be located on either an interior or corner lot of the same size as the subject site provided that the lot was regularly-shaped; and

WHEREAS, in support of its claim that the subject site is uniquely underdeveloped, the applicant submitted a survey of the lots within a 400-ft. radius of the site, which reflects that, of the 104 properties included in the survey, the subject zoning lot is the largest site in the surrounding area and one of only two sites with an FAR of 0.19, which is the lowest FAR in the surrounding area; and

WHEREAS, the survey submitted by the applicant further reflects that most lots in the surrounding area are 4,000 sq. ft. and are developed with FARs ranging between 0.35 and 0.42, and that there are only two other sites on the subject block larger than 5,000 sq. ft. (Lot 1 at 6,200 sq. ft. and Lot 18 at 6,100 sq. ft.), and the other two sites are built to an FAR of 0.32 and 0.26, respectively; and

WHEREAS, the applicant represents that the enlargement of the existing home is not a viable option because it would require the redesign of the entire home, which would be prohibitively expensive, and because the floor area of homes

in the surrounding neighborhood generally range between 1,000 sq. ft. and 2,000 sq. ft., and enlarging the existing home to the average FAR in the surrounding neighborhood (between 0.35 and 0.42 FAR) would result in an oversized home with a floor area of 2,700 sq. ft. to 3,200 sq. ft., which would be out of context with the surrounding homes; and

WHEREAS, accordingly, the applicant concludes that the proposed construction of a two-story single-family home with a floor area of 1,491 sq. ft. (0.45 FAR on Lot 16) and a total floor area on the zoning lot of 2,975.6 (0.39 FAR on the entire zoning lot) is the only way to make the site viable and comparable to other sites in the surrounding area; and

WHEREAS, during the course of the hearing process, the Opposition identified a number of lots as being similar to the subject site and contends that the site is therefore not unique because there are many corner lots in the surrounding neighborhood which are underdeveloped and which have significant amounts of open space; and

WHEREAS, in response, the applicant states that the lots identified by the Opposition are located beyond the 400-ft. radius of the site, are significantly smaller than the subject site, and with the exception of Lot 34 in Block 7424, none of the other sites is entitled to a second home pursuant to ZR § 23-22; and

WHEREAS, based upon the above, the Board finds that the cited unique physical conditions create practical difficulties in developing the site in strict compliance with the applicable regulations; and

WHEREAS, initially, the applicant did not provide a financial analysis in support of the finding pursuant to ZR § 72-21(b); however, in response to questions raised by the Opposition regarding the financial feasibility of the site, the applicant subsequently provided a financial analysis; and

WHEREAS, specifically, the applicant submitted a feasibility study which analyzed: (1) the existing condition; (2) an as-of-right enlargement of the existing home; and (3) the proposed construction of a second home on Lot 16; and

WHEREAS, the study concluded that the existing and complying scenarios would not result in a reasonable return, but that the proposed scenario would realize a reasonable return; and

WHEREAS, the Board has determined that because of the subject site's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a reasonable return; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant states that the surrounding community is characterized by detached single-family homes; and

WHEREAS, the applicant further states that the proposed home on Lot 16, with a floor area of 1,491 sq. ft., would be similarly sized to the homes in the surrounding area, which range between 1,000 sq. ft. and 2,000 sq. ft.; and

WHEREAS, the applicant notes that the proposed street wall height of 20'-0" and total height of 27'-4" are consistent with the existing homes in the surrounding area; and

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WHEREAS, the applicant states that the proposed home is compliant with floor area, height, front yards, open space, lot coverage, parking, and all other requirements of the underlying R2A zoning district, with the exception of the minimum distance between buildings, the side yard requirements for a corner lot, and the open area requirements; and

WHEREAS, the applicant represents that if the site had a lot area of 7,600 sq. ft. rather than 7,536.8 sq. ft. (a difference of only 63.2 sq. ft.), it could create two zoning lots which satisfied the minimum lot size requirements, and the required minimum distance between the two buildings would be reduced from 40 feet to 13 feet, and therefore the proposed home would be compliant with this requirement; and

WHEREAS, the applicant states that the proposed minimum distance between the two homes of 13'-0" is consistent with the existing homes located along the east and west side of 216th Street; and

WHEREAS, the applicant further states that the requested waiver for a side yard with a width of 5'-0" along the western lot line will not have a negative impact on the adjacent home to the west because that home is setback more than 20'-0" from the lot line and is further buffered by an existing garage; and

WHEREAS, therefore, 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, nor will it be detrimental to the public welfare; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's irregular shape and the location of the existing home; and

WHEREAS, the Opposition contends that the subdivision of the lot is a self-created hardship and that the applicant is not entitled to construct two homes on the site; and

WHEREAS, in response, the applicant states that the zoning lot is not being subdivided, and that the tax lot subdivision is not relevant to the zoning analysis as no waiver is being requested related to the subdivision of the tax lot; and

WHEREAS, the applicant further states that the development of a second home on the subject site is expressly permitted pursuant to the density regulations of ZR § 23-22; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is a result of the historic lot dimensions; and

WHEREAS, as noted above, the applicant originally proposed to construct a two-story home with a street wall height of 21'-0" and a total height of 28'-0", but reduced the proposed height of the building to a street wall height of 20'-0" and a total height of 27'-4" at the Board's direction; and

WHEREAS, 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, in an R2A zoning district, the construction of a two-story single-family home that does not provide the required minimum distance between buildings, minimum side yard on a corner lot, or minimum open area, contrary to ZR §§ 23-711, 23-461, and 23-89; *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 27, 2011"- (5) sheets; and *on further condition*:

THAT the parameters of the proposed home shall be as follows: 1,491 sq. ft. of floor area (0.45 FAR for Lot 16), for a total of 2,975.6 sq. ft. of floor area on the zoning lot (0.39 FAR for the zoning lot); a side yard with a minimum width of 5'-0" along the western lot line; and a minimum distance of 13'-0" between the proposed home on Lot 16 and the existing home on Lot 13, as illustrated in the BSA-approved plans;

THAT the internal floor layouts on each floor of the proposed home 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;

THAT significant construction shall proceed in accordance with ZR § 72-23; and

THAT the Department of Buildings must ensure compliance 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 18, 2011.

46-10-BZ

APPLICANT – Eric Palatnik, P.C., for 1401 Bay LLC, owner.

SUBJECT – Application April 8, 2010 – Special Permit (§73-44) to permit a reduction in required parking for ambulatory and diagnostic treatment center. C4-2 zoning district.

PREMISES AFFECTED – 1401 Sheepshead Bay Road, Avenue Z and Sheepshead Bay Road, Block 7459, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 15, 2011, at 1:30 P.M., for decision, hearing closed.

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2-11-BZ

APPLICANT – Cozen O’Connor, for 117 Seventh Avenue South Property Company, LP, owner.

SUBJECT – Application January 4, 2011 – Variance (§72-21) to allow for a residential and community facility enlargement to an existing commercial building, contrary to setback (§33-432) and open space regulations (§23-14). C4-5 zoning district.

PREMISES AFFECTED – 117 Seventh Avenue South, southeast corner of Seventh Avenue South and West 10th Street, Block 610, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Paul J. Proulx.

ACTION OF THE BOARD – Laid over to November 1, 2011, at 1:30 P.M., for adjourned hearing.

3-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Schron and Eli Shron, owners.

SUBJECT – Application January 10, 2011 – Special Permit (§73-622) for the enlargement of a single family home, contrary to floor area and open space (§23-141) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1221 East 22nd Street, between Avenue K and Avenue L, Block 7622, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to November 22, 2011, at 1:30 P.M., for adjourned hearing.

39-11-BZ

APPLICANT – Bryan Cave LLP, for Kimball Group, LLC, owner.

SUBJECT – Application April 8, 2011 – Variance (§72-21) to legalize a mixed use building, contrary to floor area (§24-162), parking (§25-31), permitted obstructions (§24-33/23-44), open space access (§12-10), side yard setback (§24-55), and distance required from windows to lot line (§23-861). R4 zoning district.

PREMISES AFFECTED – 2230-2234 Kimball Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Margery Perlmutter, Patrick Jones.

For Opposition: NYS Assemblyman Alan Maisel, Senator Golden Office Joan Byrnes, Johanna Mitchell, Ed Jaworski, Anna Spryha, Bela Rogan, Margaret McCarthy, C. Alessandro.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 6, 2011, at 1:30 P.M., for decision, hearing closed.

54-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Bay Parkway Group LLC, owner.

SUBJECT – Application April 21, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory diagnostic or treatment facility building. R6/C1-3 zoning district.

PREMISES AFFECTED – 6010 Bay Parkway, west side of Bay Parkway between 60th Street and 61st Street, Block 5522, Lot 36 & 32, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: NYS Assemblyman William Colton, Council Member David G. Greenfield, Anna Cali, Natalie DeNicola, Rebecca Gray, Vito A. Pietanza and other.

ACTION OF THE BOARD – Laid over to November 22, 2011, at 1:30 P.M., for continued hearing.

76-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Eli Braha, owner.

SUBJECT – Application May 26, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); rear yard (§23-47) and side yard (§23-461). R4/Ocean Parkway zoning district.

PREMISES AFFECTED – 2263 East 2nd Street, approximately 235’ south of Gravesend Neck Road, Block 7154, Lot 68, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Nora Martins.

ACTION OF THE BOARD – Laid over to November 22, 2011, at 1:30 P.M., for continued hearing.

106-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Tag Court Square, LLC, owner; Long Island City Fitness Group, LLC, owner.

SUBJECT – Application August 2, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). M1-5/R7-3/Long Island City zoning district.

PREMISES AFFECTED – 27-28 Thomson Avenue, triangular zoning lot with frontages on Thomson Street and Court Square, adjacent to Sunnyside Yards. Block 82, Lots 7501 (1001), Borough of Queens.

COMMUNITY BOARD #2Q

MINUTES

APPEARANCES –

For Applicant: Nora Martins.

ACTION OF THE BOARD – Laid over to November 15, 2011, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

***CORRECTION**

This resolution adopted on October 5, 2004, under Calendar No. 585-91-BZ and printed in Volume 89, Bulletin No. 41, is hereby corrected to read as follows:

585-91-BZ

APPLICANT - Tarek M. Zeid, for Luis Mejia, owner.

SUBJECT - Application December 10, 2003 – request for a waiver of the Rules of Practice and Procedure, reopening for an extension of term of variance which expired March 30, 2003 and for an amendment to the resolution.

PREMISES AFFECTED – 222-44 Braddock Avenue, Braddock Avenue between Winchester Boulevard and 222nd Street, Block 10740, Lot 12, 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, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application under Z.R. §§11-411 and 11-412 to request a waiver of the rules of practice and procedure, a re-opening to amend the resolution, a renewal of term for a previously granted variance that expired March 30, 2003, and approval of an enlargement; and

WHEREAS, a public hearing was held on this application on May 18, 2004 after due notice by publication in The City Record, with continued hearings on June 22, 2004 and September 14, 2004 and then to October 5, 2004 for decision; and

WHEREAS, the premises and surrounding area had a site visit and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board No. 13 Queens has recommended approval upon the following conditions: (1) that the applicant removes curb-cut on Winchester Boulevard; (2) that the applicant will not park cars on the sidewalks or work on car engines outside of the shop bays; and (3) that the applicant will not offer motor vehicles for sale on the subject premises; and

WHEREAS, the premises is located on the southeast corner formed by the intersection of Braddock Avenue and Winchester Boulevard, Queens, and has a total lot area of 9,350 square feet; and

WHEREAS, the Board has exercised jurisdiction over the subject premises since January 14, 1958, when under Calendar No. 658-52-BZ, the Board granted a variance for a change of use in a retail use district, to allow the erection and maintenance of a gasoline service station with accessory uses; and

WHEREAS, on April 11, 1989, the Board granted an amendment of the resolution, pursuant to Z.R. §11-412, to

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enlarge the existing accessory building through the addition of a 300 sq. ft. service bay; and

WHEREAS, on March 30, 1993, under Calendar No. 585-91-BZ, the Board: (1) extended the term of the variance for ten (10) years (expiring March 30, 2003); and (2) legalized both an enlargement to the existing accessory building and a change of use to automobile repair service with accessory automotive sales (Use Group 16) and accessory parking; and

WHEREAS, pursuant to Z.R. §11-411, the Board may, in appropriate cases, renew the term of a previously granted variance for a term of not more than ten years; and

WHEREAS, pursuant to Z.R. §11-412, the Board may, in appropriate cases, allow the enlargement of a building on a premises subject to a pre-1961 variance, provided that the building may not be enlarged in excess of 50 percent of the floor area of such building as existed as of December 15, 1961; and

WHEREAS, the applicant represents that prior to December 15, 1961, the subject original building had a floor area of 1,305 sq. ft and therefore Z.R. §11-412 permits a maximum enlargement of 50% or approximately 652 sq. ft.; and

WHEREAS, the applicant seeks to enlarge the existing building under ZR §11-412, through the installation of an additional service bay of 12 feet 6 inches by 28 feet 2 inches (350 sq. ft.), to be added to the west elevation of the existing building; and

WHEREAS, the applicant asserts that because the 1989 expansion entailed a 300 sq. ft. expansion, there remains an additional 352 sq. ft. of expansion available under Z.R. §11-412 that will be utilized to accommodate the proposed enlargement; and

WHEREAS, the applicant represents that since the prior BSA approval, the premises has been continuously utilized as an automobile service station with lubritorium, non-automatic auto wash, minor repairs with hand tools only, office, storage, sales of auto accessories and accessory parking for twelve (12) cars awaiting sales and six (6) cars awaiting service; and

WHEREAS, the applicant represents that there is no sale of autos currently at the premises and that this particular accessory use will not take place in the future; therefore, the applicant has no objection to a condition prohibiting sale of autos; and

WHEREAS, in response to the concerns of the Board, the applicant has agreed to reduce the total number of curb cuts, as shown on the BSA-approved plans.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, pursuant to Z.R. §§11-411 and 11-412, so that as amended this portion of the resolution shall read: "To extend the term of the variance for ten (10) years from March 30, 2003, to expire on March 30, 2013, and to permit the installation of an additional service bay of 12 feet 6 inches by 28 feet 2 inches (350 sq. ft.) to be added to the West elevation of the 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 September 20, 2004"-(4) 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 parking of vehicles on the sidewalk;

THAT there shall be no work on the engines of automobiles outside the repair bays;

THAT there shall be no body repair, burning or welding performed on the premises;

THAT all curb cuts shall be as shown on BSA-approved plans;

THAT there shall be no sale of automobiles on the subject premises;

THAT fencing and landscaping shall be installed and/or maintained in accordance with the BSA-approved plans;

THAT all signage shall comply with the C1 zoning district regulations;

THAT the terms of this grant shall be for ten (10) years from March 30, 2003, to expire on March 30, 2013;

THAT these conditions appear on the Certificate of Occupancy;

THAT all other relevant conditions from prior Board grants remain in effect;

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 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. ALT 70/87 & 401749658)

Adopted by the Board of Standards and Appeals, October 5, 2004.

***The resolution has been revised to correct the Plans Dates which read: "September 20, 2004"-(8) sheets" now reads: "September 20, 2004"-(4) sheets. Corrected in Bulletin Nos. 41-43, Vol. 96, dated October 27, 2011.**

BULLETIN

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AND APPEALS

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November 2, 2011

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DOCKET

New Case Filed Up to October 25, 2011

164-11-BZ

2030 Ocean Parkway, western side of Ocean Parkway through to East 5th Street between Avenue T and Avenue U., Block 7108, Lot(s) 16 and 18, Borough of **Brooklyn, Community Board: 15**. The application is filed pursuant to Section 72-21 of the Zoning Resolution of the City of New York, as amended, to request a bulk variance to allow the enlargement of a synagogue previously approved by the BSA at the subject location. R5(OP) and R3-1 district.

165-11-BZ

1561 50th Street, 50th Street, near the corner of 16th Avenue., Block 5453, Lot(s) 51, Borough of **Brooklyn, Community Board: 12**. This application is filed pursuant to Section 72-21 of the Zoning Resolution of the City of New York, as amended, to request a variance of Section 24-36 (rear Yard) and Section 24-11 (lot coverage) in order to permit the enlargement of the existing Use Group 4A house of worship to build an educational center on the proposed third and fourth floors and legalize two interior balconies at the second floor level of the existing building, located within the required rear yard. R6 district.

166-11-BZ

1109 Second Avenue, west side of Second Avenue between East 58th and East 59th Streets., Block 1332, Lot(s) 29, Borough of **Manhattan, Community Board: 6**. Special Permit (§73-36) to continue the operation of the Physical Culture Establishment. C2-8 (TA) zoning district C2-8(TA) district.

167-11-BZ

1677 Bruckner Boulevard, Fiely Avenue through to Metcalf Avenue., Block 3721, Lot(s) 1, Borough of **Bronx, Community Board: 9**. Special Permit (§73-243) to allow for an eating and drinking establishment (use group 6) with an accessory drive-through facility. C1-2/R5 zoning district. C1-2(R5) 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

NOVEMBER 15, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 15, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

789-45-BZ

APPLICANT – Walter T. Gorman, P.E., for Woodside 56 LLC, owner; Getty Properties Corp., lessee.
SUBJECT – Application July 6, 2011 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a (UG16) gasoline service station (*Getty*) which expired on July 13, 2006; Extension of Time to Obtain a Certificate of Occupancy which expired February 4, 2005; Waiver of the Rules. M1-1/R5 zoning district.
PREMISES AFFECTED – 56-02/56-20 Broadway, south east corner of 56th Street, Block 1195, Lot 44, Borough of Queens.

COMMUNITY BOARD #2Q

285-52-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Astoria 42, LLC, owner; Neil Tannor, lessee.
SUBJECT – Application July 8, 2011 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a gasoline service station (*Getty*) which expired on October 21, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on March 9, 2000 and waiver of the rules. R-5 zoning district.
PREMISES AFFECTED – 30-14 34th Avenue, southwest corner of the intersection of 34th Avenue and 31st Street, Block 607, Lot 29, Borough of Queens.

COMMUNITY BOARD #1Q

APPEALS CALENDAR

116-11-A

APPLICANT – Deidre Duffy, for Breezy Point Cooperative, Inc., owner; Mary Collins, lessee.
SUBJECT – Application August 15, 2011 – Proposed reconstruction and enlargement of an existing single family home street not fronting a legally mapped street contrary to General City Law Sections 36 . R4 Zoning District.
PREMISES AFFECTED – 835 Liberty Lane, west side of Liberty Lane, 139’ north of Marshall Avenue, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

139-11-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; William Diffendale, lessee.
SUBJECT – Application September 8, 2011– Proposed reconstruction and enlargement to the existing single dwelling partially in the bed of the mapped street 12th Avenue is contrary to Article 3, Section 35 of the General City Law. R4 zoning district.
PREMISES AFFECTED – 63 Hillside Avenue, south side Hillside Avenue, east of mapped Beach 178th Street, Block 16340, Lot 50, Borough of Queens.

COMMUNITY BOARD #14Q

148-11-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Mary and Andrew McNermev, lessee.
SUBJECT – Application September 16, 2011 – The proposed reconstruction and enlargement of an existing single family dwelling not fronting a mapped street is contrary to Article 3, Section 36 of the General City Law. The proposed upgrade of an existing non-conforming private disposal system partially in the bed of the service road is contrary to Building Department policy. R4 zoning district.
PREMISES AFFECTED – 32 Kildare Walk, 183’ north of Breezy Point, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

NOVEMBER 15, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 15, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

90-11-BZ & 91-11-BZ

APPLICANT – Malcom Kaye, AIA, for Jian Guo, owner.
SUBJECT – Application June 23, 2011 – Variance (§72-21) to allow for the legalization of a semi-detached home located on a zoning lot which is contrary to lot area and lot width (ZR §23-32). R3-1 zoning district.
PREMISES AFFECTED – 23 & 25 Windom Avenue, east side of Windom Avenue, 210’ south of Cedar Avenue, Block 3120, Lot 19, Borough of Staten Island.

COMMUNITY BOARD #2SI

CALENDAR

123-11-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr LLP, for Harrison Retail Associates LLC, owner, SoulCycle 350 Amsterdam, LLC, lessee.

SUBJECT – Application August 24, 2011 – Special Permit (ZR §73-36) to allow the operation of a physical culture establishment (SoulCycle). C2-7A & C4-6A zoning districts.

PREMISES AFFECTED – 350 Amsterdam Avenue, west side Amsterdam Avenue between West 76th Street and West 77th Street. Block 1168, Lots 1001/7501, Borough of Manhattan.

COMMUNITY BOARD #7M

124-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Wagner Associates LLC, owner, 2480 Grand Concourse Fitness Group, LLC, lessee.

SUBJECT – Application August 24, 2011 – Special Permit (ZR §73-36) to allow the operation of a physical culture establishment (Planet Fitness). C4-4 zoning district.

PREMISES AFFECTED – 2488 Grand Concourse, located on the east side of Grand Concourse between East 188th Street and Fordham Road. Block 3153, Lot 9, Borough of Bronx.

COMMUNITY BOARD #5BX

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, OCTOBER 25, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

742-59-BZ

APPLICANT – Harold L. Robertson, for David B. Levy/136
E. 55th Street, Inc.

SUBJECT – Application July 14, 2011– Extension of Term
for the continued use of 50 transient parking spaces within
an accessory garage in a multiple dwelling building which
expired on June 13, 2011. C6-6 zoning district.

PREMISES AFFECTED – 136 East 55th Street, Lexington
Avenue and East 55th Street. Block 1309, Lot 50, Borough
of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Harold L. Robertson.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and
an extension of the term for a previously granted variance
for a transient parking garage, which expired on June 14,
2011; and

WHEREAS, a public hearing was held on this
application on September 20, 2011, after due notice by
publication in *The City Record*, and then to decision on
October 25, 2011; and

WHEREAS, Community Board 6, Manhattan,
recommends approval of this application; and

WHEREAS, the premises and surrounding area had a
site and neighborhood examination by Commissioner
Hinkson; and

WHEREAS, the subject site is located on the south side
of East 55th Street, between Lexington Avenue and Third
Avenue, within a C6-6 zoning district; and

WHEREAS, the site is occupied by a 15-story (including
penthouse) mixed-use commercial/residential building; and

WHEREAS, the cellar and first floor are occupied by a
93-space accessory garage; and

WHEREAS, on June 14, 1960, under the subject calendar
number, the Board granted a variance to permit a maximum of
50 surplus parking spaces to be used for transient parking for a
term of 21 years; and

WHEREAS, subsequently, the grant was amended and

the term extended at various times; and

WHEREAS, most recently, on October 30, 2001, the
Board granted a ten-year extension of term, which expired on
June 14, 2011; and

WHEREAS, the applicant now requests an additional
extension of term; and

WHEREAS, the applicant submitted a photograph of the
sign posted onsite, which states building residents' right to
recapture the surplus parking spaces; and

WHEREAS, at hearing, the Board noted that the
recapture sign was not permanently affixed in the garage, and
directed the applicant to provide evidence that the sign will be
a permanent installation; and

WHEREAS, in response, the applicant submitted
photographs of a new recapture sign which is permanently
affixed to the wall of the garage; and

WHEREAS, based upon its review of the record, the
Board finds that the requested extension of term is appropriate
with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and
Appeals *reopens* and *amends* the resolution having been
adopted on June 14, 1960, 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, 2011, to
expire on June 14, 2021; *on condition:*

THAT this term shall expire on June 14, 2021;

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 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. 102136877)

Adopted by the Board of Standards and Appeals, October
25, 2011.

93-95-BZ

APPLICANT – Akerman Senterfeit, for 149-58 Realty
Company, owner.

SUBJECT – Application April 18, 2011 – Extension of
Term of a Variance (§72-21) for the continued operation of
a (UG 6a) eating and drinking establishment and (UG 9)
catering establishment which expired on June 10, 2007 and
waiver of the rules. R3A zoning district.

MINUTES

PREMISES AFFECTED – 149-56/58 Cross Island Parkway, between 149th and 150th Streets. Block 4662, Lot 36 & 38. Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Jessica Loeser.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
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 term of a previously granted variance for an eating and drinking (UG 6A) and catering establishment (UG 9), which expired on June 10, 2007; and

WHEREAS, a public hearing was held on this application on July 26, 2011, after due notice by publication in *The City Record*, with continued hearings on August 23, 2011 and September 20, 2011, and then to decision on October 25, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Queens, recommends approval of this application; and

WHEREAS, the site is located on the south side of the Cross Island Parkway, between 149th Street and 150th Street, within an R3A zoning district; and

WHEREAS, the subject site is occupied by a two-story commercial building occupied by an eating and drinking (UG 6A) and catering (UG 9) establishment; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 10, 1997 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21 to permit the enlargement of an existing building in what was then an R3-1 zoning district and the conversion of a non-conforming bar, restaurant, and cabaret (Use Group 12) to an eating and drinking and catering establishment for a ten-year term to expire on June 10, 2007; and

WHEREAS, in 2002, the Board approved modifications to the plans by letter; and

WHEREAS, the applicant now seeks to extend the term of the variance for an additional 20 years; and

WHEREAS, the applicant also seeks to eliminate the condition of the prior grant which prohibits valet parking as it has employed valet parking as an effective means of managing traffic overflow and would like to continue the practice; and

WHEREAS, because the applicant sought a 20-year term, the Board directed it to notify affected property owners of the proposed term; and

WHEREAS, the Board did not receive any opposition to the proposed term; and

WHEREAS, at hearing, a neighbor raised concerns about

garbage storage at the rear of the building; and

WHEREAS, in response the applicant agreed to provide an enclosure with wooden slats and a maximum height of six feet at the front of the building; and

WHEREAS, the applicant stated that it needs to obtain a permit from DOB to construct the enclosure and that it could be completed within three months; and

WHEREAS, the neighbor confirmed that valet parking is effective at the site; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and amendment is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* its Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on June 10, 1997, so that as amended this portion of the resolution shall read: “to extend the term for a period of 20 years from June 10, 2007, to expire on June 10, 2027; *on condition* that the use and operation of the site shall substantially conform to drawings filed with this application and marked ‘August 9, 2011’-(3) sheets, ‘August 30, 2011’-(1) sheet and ‘September 12, 2011’-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on June 10, 2027;

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

THAT a garbage enclosure with wooden slats and a maximum height of six feet be constructed and installed at the front of the building as reflected on the Board-approved plans, by January 25, 2012;

THAT valet parking be permitted at the site;

THAT 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. 400525632)

Adopted by the Board of Standards and Appeals, October 25, 2011.

92-99-BZ, 94-99-BZ, 96-99-BZ, 98-99-BZ, 100-99-BZ, 102-99-BZ

APPLICANT – Sheldon Lobel, P.C., for Walden Terrace Inc., owner.

SUBJECT – Application June 24, 2011 – Extension of Term for the continued use of transient parking spaces in a multi-unit residential building which expired on May 30, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on May 30, 2011, and Waiver of the Rules. R7-1 zoning district.

PREMISES AFFECTED – 98-09, 98-25, 98-41, 98-51, 98-33, 98-19, 64th Avenue, western portion of the block bounded by the 64th Avenue to the north, 64th Road to the south, 98th Street to the west and 99th Street to the east.

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Block 2101 & 2100, Lot 1, 16, 24, 29, 21, 15, Borough of Queens.

COMMUNITY BOARD #6Q

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, Commissioner Hinkson and Commissioner Montanez5

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 for a previously granted variance for six transient parking garages, which expired on May 30, 2010, and an extension of time to obtain a certificate of occupancy, which expired on May 30, 2001; and

WHEREAS, a public hearing was held on this application on September 20, 2011, after due notice by publication in *The City Record*, and then to decision on October 18, 2011; and

WHEREAS, Community Board 6, Queens, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Montanez; and

WHEREAS, the subject premises consists of six tax lots located on two separate tax blocks within an R7-1 zoning district; Tax Lots 15, 21 and 29 are located on Tax Block 2100, and Tax Lots 1, 16, and 24 are located on Tax Block 2101; and

WHEREAS, Tax Block 2100 is bounded by 98th Street to the west, 63rd Drive to the north, 99th Street to the east, and 64th Avenue to the south; Tax Block 2101 is bounded by 98th Street to the west, 64th Avenue to the north, 99th Street to the east, and 64th Road to the south; and

WHEREAS, the applicant states that each of the six tax lots on the site is improved with two eight-story residential buildings that are connected by an accessory parking garage at the cellar level; the three garages located on each tax block are connected at the cellar level and effectively operate as a single parking garage; and

WHEREAS, Tax Block 2100 has a total of 180 accessory spaces located in the three accessory parking garages at the cellar level; Lot 15 has a 52-space accessory garage, Lot 21 has a 65-space accessory garage, and Lot 29 has a 63-space accessory garage; and

WHEREAS, Tax Block 2101 has a total of 193 accessory spaces located in the three accessory parking garages at the cellar level; Lot 1 has a 65-space accessory garage, Lot 16 has a 65-space accessory garage, and Lot 24 has a 63-space accessory garage; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 14, 1968 when, BSA Cal. Nos. 723-67-BZ through 734-67-BZ, the Board granted variances

pursuant to Section 60(3) of the Multiple Dwelling Law (“MDL”), to permit a maximum of 21 surplus parking spaces on Tax Lots 15, 21 and 29 (a total of 63 surplus spaces on Tax Block 2100) and a maximum of 14 surplus parking spaces on Tax Lots 1, 16 and 24 (a total of 42 surplus spaces on Tax Block 2101) to be used for transient parking, for a term of ten years; and

WHEREAS, subsequently, the term of the variance expired on February 14, 1978; and

WHEREAS, on May 30, 2000, the Board granted a new variance pursuant to Section 60(3) of the MDL to permit the continued use of portions of the cellar of the subject site for transient parking for a term of ten years, which expired on May 30, 2010; a condition of the grant was that a certificate of occupancy be obtained by May 30, 2001; and

WHEREAS, the applicant now requests an extension of term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant submitted a photograph of the signs posted in each garage, which state building residents’ right to recapture the surplus parking spaces; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and extension of time are appropriate with certain 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 having been adopted on May 30, 2000, 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 May 30, 2010, to expire on May 30, 2020, and to grant an extension of time to obtain a certificate of occupancy to October 25, 2012; *on condition* that all work shall substantially conform to drawings filed with this application and marked ‘Received October 7, 2011’ –(3) sheets; and *on further condition*:

THAT this term shall expire on May 30, 2020;

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 by October 25, 2012;

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

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configuration(s) not related to the relief granted.”
(DOB Application Nos. 908/907/906/903/904/905)

Adopted by the Board of Standards and Appeals, October 25, 2011.

200-00-BZ

APPLICANT – Eric Palatnik, P.C., for Blans Development Corporation, owners.

SUBJECT – Application August 25, 2011 – Extension of Time to obtain a Certificate of Occupancy of a variance (§72-21) to operate a Physical Culture Establishment (*Squash Fitness Center*) which expired on June 8, 2011; Waiver of the Rules. C1-4(R6B) zoning district.

PREMISES AFFECTED – 107-24 37th Avenue, southwest corner of 37th Avenue and 108th Street, aka 37-16 108th Street. Block 1773, Lot 10, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
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 obtain a certificate of occupancy, which expired on June 8, 2011; and

WHEREAS, a public hearing was held on this application on September 20, 2011, after due notice by publication in *The City Record*, and then to decision on October 25, 2011; and; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, the site is located at the southwest corner of 37th Avenue and 108th Street, within a C1-4 (R6B) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 17, 2001 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, to permit the legalization of an existing PCE on the first floor and a portion of the second floor of an existing two-story mixed-use manufacturing/office building within a C1-4 (R6B) zoning district for a term of five years; and

WHEREAS, on May 11, 2004, the grant was amended to permit the expansion of the PCE onto the entire second floor; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board on various occasions; and

WHEREAS, most recently, on June 8, 2010, the Board granted a ten-year extension of term, to expire on June 8, 2020, and an extension of time to obtain a certificate of occupancy, to expire on June 8, 2011; and

WHEREAS, the applicant now seeks an additional extension of time to obtain a certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of time to obtain a certificate of occupancy 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 July 17, 2001, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy, to expire on April 25, 2013; *on condition*:

THAT a certificate of occupancy shall be obtained by April 25, 2013;

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. 402567254)

Adopted by the Board of Standards and Appeals, October 25, 2011.

390-61-BZ

APPLICANT – Peter Hirshman, for Rapid Park Industries, owner.

SUBJECT – Application February 22, 2011 – Amendment (§11-413) of a variance for a UG8 parking garage (*Rapid Park Industries*) to permit the addition of an auto rental establishment (UG8) in the cellar level; extension of time to obtain a certificate of occupancy which expired on June 29, 2008. R8B zoning district.

PREMISES AFFECTED – 148-150 East 33rd Street, south side of East 33rd Street, 151.9' east of East 33rd Street and Lexington Avenue. Block 888, Lot 51. Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Peter Hirshman.

ACTION OF THE BOARD – Laid over to November 22, 2011, at 10 A.M., for continued hearing.

624-68-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for MMT Realty Associates LLC, owner.

SUBJECT – Application June 7, 2011 – Extension of Term of a Variance (§72-21) to permit wholesale plumbing supply (UG16), stores and office (UG6) which expired on January 13, 2011; Extension of Time to obtain a Certificate of Occupancy and waiver of the rules. R3-2 zoning district.

PREMISES AFFECTED – 188-07 Northern Boulevard,

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north side of Northern Boulevard between Utopia Parkway and 189th Street, Block 5364, Lots 1, 5, 7, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Todd Dale.

For Opposition: Terr Pouymcri.

ACTION OF THE BOARD – Laid over to December 6, 2011, at 10 A.M., for continued hearing.

593-69-BZ

APPLICANT – Eric Palatnik, P.C., for Metro New York Dealer Stations, LLC, owner.

SUBJECT – Application May 27, 2011 – Amendment (§11-413) to convert automotiverepair bays to an accessory convenience store at an existing gasoline service station (*Shell*). C2-2/R5 zoning district.

PREMISES AFFECTED – 108-01 Atlantic Avenue, Between 108th and 109th Street. Block 9315, Lot 23, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Laid over to December 6, 2011, at 10 A.M., for continued hearing.

926-86-BZ

APPLICANT – Sheldon Lobel, P.C., for Manes Bayside Realty LLC, owner.

SUBJECT – Application November 1, 2010 – Extension of Term of a variance for the operation of an automotive dealership with accessory repairs (UG 16B) which expired on November 4, 2010; Extension of time to obtain a Certificate of Occupancy which expired on January 6, 2006; Waiver of the Rules. C2-2/R6-B/R3X zoning district.

PREMISES AFFECTED – 217-07 Northern Boulevard, block front on the northerly side of Northern Boulevard between 217th Street and 218th Street, Block 6320, Lot 18, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 6, 2011, at 10 A.M., for decision, hearing closed.

118-95-BZ

APPLICANT – Carl A Sulfaro, for White Castle System, Incorporated, owner.

SUBJECT – Application April 11, 2011 – Extension of Term of a previously granted Special Permit (§73-243) for

the continued operation of a drive-thru facility at an eating and drinking establishment (*White Castle*) which expires on July 25, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on May 22, 2008; Waiver of the rules. C1-2/R6 zoning district.

PREMISES AFFECTED – 89-03 57th Avenue, southeast corner of Queens Boulevard and 57th Avenue, Block 1845, Lot 45, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Application: Steven Sulfaro.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to November 15, 2011, at 10 A.M., for decision, hearing closed.

75-06-BZ

APPLICANT – Eric Palatnik, P.C., for Cord Meyer Development Company, owner.

SUBJECT – Application April 27, 2011 – Extension of Time to complete construction of a variance (§72-21) for a mixed use building contrary to FAR, open space and sky exposure plane regulations, and an amendment to eliminate a sub-cellar and modify the building envelope. C1-2/R7-1 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 –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to November 15, 2011, at 10 A.M., for decision, hearing closed.

608-85-BZ

APPLICANT – Sheldon Lobel, P.C., for J.C. Organization, LLC, owner.

SUBJECT – Application July 18, 2011 – Extension of Term of a variance (§72-21) which permitted a custom Woodworking Shop (UG 16) which expired on June 17, 2011; Amendment to permit a change of use to a (UG16) General Contractors Establishment and to allow the expansion of two existing mezzanines to create a full second floor. R5 zoning district.

PREMISES AFFECTED – 33-56 11th Street, located on the west side of 11th Street, 235' south of 33rd Street, Block 319,

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Lot 36, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Nora Martins.

ACTION OF THE BOARD – Laid over to November 22, 2011, at 10 A.M., for continued hearing.

17-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Cropsey and Mitchell, owners; TSI Brooklyn Belt LLC dba New York Sports Club, lessee.

SUBJECT – Application July 21, 2011 – Extension of Term of a Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*New York Sports Club*), on portions of the first floor and second floor of the subject premises, which expired on December 29, 2008; Waiver of the Rules. M3-1 zoning district.

PREMISES AFFECTED – 1736 Leif Ericson Drive, west side of Leif Ericson Drive, south of Bay Parkway, block 6419, Lot 198, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 15, 2011, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

182-06-A thru 211-06-A

APPLICANT – Akerman Senterfitt, LLP, for Boymelgreen Beachfront Community, LLC, owners.

SUBJECT – Application April 18, 2011 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously-granted Common Law Vesting which expired March 19, 2011. R4A zoning district.

PREMISES AFFECTED – 126, 128, 130, 134, 136, 140, 146, 148, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 161, and 163 Beach 5th Street. 150, 152, 154, 156, 158, 160, and 162 Beach 6th Street and 511 SeaGirt Avenue Block 15609, Lots 1, 3, 6, 8, 10, 12, 14, 16, 18, 58, 63, 64, 65, 66, 67, and 68 and Block 15608, Lots 1, 40, 42, 45, 51, 52, 53, 57, 58, 61, 63, 65, 67, and 69. Borough the Queens

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Jessica Loeser.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 15, 2011, at 10 A.M., for decision, hearing closed.

138-11-A

APPLICANT – Sheldon Lobel, P.C., for 64-01 Woodside Realty, Inc., owner.

SUBJECT – Application September 7, 2011 – Appeal seeking a common law vested right to complete construction under the prior R6 zoning district regulations. R5D zoning district.

PREMISES AFFECTED – 64-01 Woodside Avenue, between 64th and 65th Street, Block 1295, Lot 75, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to November 22, 2011, at 10 A.M., for continued hearing.

140-11-A & 141-11-A

APPLICANT – Sheldon Lobel, P.C., for BQM Management, LLC, owner.

SUBJECT – Application September 8, 2011 – Appeal seeking a common law vested right to complete construction under the prior R6 zoning district regulations. R5D zoning district.

PREMISES AFFECTED – 69-17 & 69-19 38th Avenue, between the BQE and 69th Street, Block 1282, Lot 64 & 65, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to November 22, 2011, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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REGULAR MEETING TUESDAY AFTERNOON, OCTOBER 25, 2011 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

ZONING CALENDAR

230-10-BZ

APPLICANT – Eric Palatnik, P.C., for Leonid Fishman,
owner.

SUBJECT – Application December 17, 2010 – Special
Permit (§73-622) for the enlargement of a single family
home, contrary to open space, lot coverage and floor area
(§23-141(b)) and perimeter wall height (§23-631(b)). R3-1
zoning district.

PREMISES AFFECTED – 177 Kensington Street, Oriental
Boulevard and Kensington Street, Block 8754, Lot 78,
Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough
Commissioner, dated November 19, 2010, acting on
Department of Buildings Application No. 320202721, reads:

“The proposed horizontal and vertical
enlargement of the existing one family residence
in an R3-1 zoning district:

1. Creates a new non-compliance with respect to
lot coverage and is contrary to Section 23-
141(b) of the Zoning Resolution (ZR).
2. Creates a new non-compliance with respect to
floor area and is contrary to Section 23-141(b)
ZR.
3. Creates a new non-compliance with respect to
open space and is contrary to Section 23-141(b)
ZR.
4. Creates a new non-compliance with respect to
perimeter wall height and is contrary to Section
23-631(b) ZR;” and

WHEREAS, this is an application under ZR §§ 73-622
and 73-03, to permit, within an R3-1 zoning district, the
proposed enlargement of a single-family home, which does
not comply with the zoning requirements for floor area, lot
coverage, open space, and perimeter wall height, contrary to
ZR §§ 23-141 and 23-631; and

WHEREAS, a public hearing was held on this
application on May 24, 2011, after due notice by publication
in *The City Record*, with continued hearings on July 12,
2011, August 16, 2011 and September 27, 2011, and then to
decision on October 25, 2011 and

WHEREAS, the premises and surrounding area had
site and neighborhood examinations by Chair Srinivasan,
Commissioner Hinkson, Commissioner Montanez, and
Commissioner Ottley-Brown; and

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

WHEREAS, representatives of the Manhattan Beach
Community Group provided written and oral testimony in
opposition to this application; and

WHEREAS, certain members of the community
provided written and oral testimony in opposition to this
application; and

WHEREAS, collectively, the parties who submitted
testimony in opposition to this application are the
“Opposition;” and

WHEREAS, the Opposition raised the following
primary concerns: (1) the proposed FAR, perimeter wall
height, and front yard depth are out of context with the
surrounding area; and (2) the proposed side yard balcony
along the northern side of the home is not permitted; and

WHEREAS, the subject site is located on the east side
of Kensington Street, between Shore Boulevard and Oriental
Boulevard, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of
6,000 sq. ft., and is occupied by a single-family home with a
floor area of 2,547 sq. ft. (0.42 FAR); 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 2,547 sq. ft. (0.42 FAR) to 5,760 sq. ft. (0.96
FAR); the maximum permitted floor area is 3,000 sq. ft.
(0.50 FAR); and

WHEREAS, the applicant initially proposed to
increase the floor area to 6,114 sq. ft. (1.02 FAR); and

WHEREAS, in response to concerns raised by the
Board and the Opposition, the applicant provided an interim
proposal which reduced the proposed floor area to 5,974 sq.
ft. (1.0 FAR); at the Board’s direction the applicant further
reduced the floor area to the current proposal of 5,760 sq. ft.
(0.96 FAR); and

WHEREAS, the applicant proposes to provide a lot
coverage of 46 percent (35 percent is the maximum
permitted); and

WHEREAS, the applicant proposes to provide 3,234
sq. ft. of open space (4,466 sq. ft. of open space is the
minimum required); and

WHEREAS, the applicant proposes to provide a
perimeter wall height of 22’-1” (a maximum perimeter wall
height of 21’-0” is permitted); and

WHEREAS, the Board notes that the special permit
under ZR § 73-622 allows a perimeter wall height to exceed
the permitted height in an R3-1 zoning district, provided that

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the perimeter wall height is equal to or less than the perimeter wall height of an adjacent single- or two-family detached or semi-detached residence with an existing non-complying perimeter wall facing the street; and

WHEREAS, in support of the requested waiver for perimeter wall height, the applicant provided a streetscape and a survey establishing that the adjacent home to the north, 173 Kensington Street, has a perimeter wall height of 23'-8"; and

WHEREAS, therefore, the applicant represents that the perimeter wall of the proposed home matches the existing non-complying perimeter wall height of the adjacent home and falls within the scope of the special permit; and

WHEREAS, the Board has determined that the applicant has submitted sufficient information to establish that the proposed home may match the pre-existing perimeter wall height of the adjacent home, which exceeds 21'-0"; and

WHEREAS, the Opposition contends that the proposed home is out of context with the surrounding neighborhood because the FAR is excessive; and

WHEREAS, as noted above, the applicant originally proposed a home with a floor area of 6,114 sq. ft. (1.02 FAR), but revised its plans to reflect the current floor area of 5,760 sq. ft. (0.96 FAR) in response to concerns raised by the Board and the Opposition; and

WHEREAS, the applicant submitted a survey of homes within a 400-ft. radius of the site, which indicates that there are at least ten homes within the surrounding area with FARs that exceed the proposed 0.96 FAR; and

WHEREAS, the applicant also submitted a survey of homes within an expanded study area bounded by Oriental Boulevard to the south, Falmouth Street to the west, Hampton Avenue/Shore Boulevard to the north and Pembroke Street to the east, which reflected that 57 homes within the study area have FARs which exceed 0.95 FAR, and 21 homes within the study area have floor areas which exceed 5,000 sq. ft.; and

WHEREAS, the Opposition contends that the methodology of the applicant's FAR study is flawed because it relies on the Primary Land Use Tax Lot Output ("PLUTO") for its FAR data, and there are inaccuracies in the PLUTO database; and

WHEREAS, the Board recognizes that the PLUTO data may have errors, however, it finds that the database can still be relied on to provide a general sense of the FARs in the surrounding neighborhood; and

WHEREAS, the Board notes that the PLUTO database is maintained by the Department of City Planning, and is relied upon for various land use studies; and

WHEREAS, the Opposition contends that the proposed front yard with a depth of 15'-0" is out of context with the surrounding area, which predominantly provides front yards with depths of at least 18'-0", and that the shallower front yard will block light and air to adjacent homes; and

WHEREAS, the Board notes that the proposed front yard depth of 15'-0" is in compliance with the underlying

R3-1 zoning district regulations, and is therefore permitted as-of-right; and

WHEREAS, the Opposition also raised concerns about the proposed balcony along the northern side of the home; and

WHEREAS, in response, the applicant revised its plans to reflect the removal of the subject balcony; and

WHEREAS, at hearing, the Board questioned how much of the existing home is being retained; and

WHEREAS, in response, the applicant submitted revised plans which indicate that portions of the existing cellar, first floor, and second floor walls, and portions of the floor joists at the first floor and second floor will remain; and

WHEREAS, based upon its review of the record, 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, within an R3-1 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, open space, and perimeter wall height, contrary to ZR §§ 23-141 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 12, 2011"-(13) sheets and "October 19, 2011"-(1) sheet; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area of 5,760 sq. ft. (0.96 FAR); a maximum lot coverage of 42 percent; a minimum of 3,234 sq. ft. of open space; and a maximum perimeter wall height of 22'-8", as illustrated on the BSA-approved plans;

THAT no balconies shall be permitted along the north side of the home;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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;

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

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 25, 2011.

18-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for ZTI Corporation, owner.

SUBJECT – Application February 24, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1025 East 22nd Street, between Avenue I and Avenue J. Block 7586, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 11, 2011, acting on Department of Buildings Application No. 320246505, reads in pertinent part:

Proposed plans are contrary to ZR 23-141 in that the proposed floor area exceeds the maximum permitted.

Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio is less than required.

Plans are contrary to ZR 23-47 in that the proposed rear yard is less than the minimum required.

Proposed plans are contrary to ZR 23-461 in that the proposed side yards are less than the minimum required; 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 home, which does not comply with the zoning requirements for floor area, 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 August 23, 2011, after due notice by

publication in *The City Record*, with a continued hearing on September 20, 2011, and then to decision on October 25, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommended disapproval of the original application; and

WHEREAS, the subject site is located on the east side of East 22nd Street, between Avenue I and Avenue J, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a single-family home with a floor area of 2,127 sq. ft. (0.53 FAR); 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 2,127 sq. ft. (0.53 FAR) to 4,143 sq. ft. (1.04 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 51.5 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of zero feet (a side yard with a minimum width of 5'-0" is required); and

WHEREAS, the applicant proposes to maintain the existing rear yard with a depth of 16'-10½" for a portion of the home, and to provide a rear yard with a depth of 20'-0" for the remainder of the home (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

WHEREAS, the applicant provided an analysis of the FAR of three homes in the surrounding area which have an FAR of 1.0 or greater, including 990 East 23rd Street, which is built to an FAR of 1.63; and

WHEREAS, the applicant represents that the Community Board's disapproval of the original application was primarily based on its objection to a ramp that was proposed to be constructed in the rear yard in an earlier iteration of the proposal; the ramp has since been removed from the plans; and

WHEREAS, based upon its review of the record, 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

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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, within an R2 zoning district, the enlargement of a single-family home, which does not comply with the zoning requirements for floor area, 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 11, 2011"-(12) sheets; and on further condition:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,143 sq. ft. (1.04 FAR); a minimum open space ratio of 51.5 percent; no side yard along the northern lot line; and a rear yard with a minimum depth of 16'-10½" for a portion of the home along the northern lot line and a minimum depth of 20'-0" for the remainder of the home, 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;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 25, 2011.

48-11-BZ

CEQR #11-BSA-083M

APPLICANT – Richard C. Bonsignore, for Joseph Moinian, owner; Mendez Boxing New York, lessee.

SUBJECT – Application April 13, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Mendez Boxing*). C5-2 zoning district.

PREMISES AFFECTED – 60 Madison Avenue, aka 54-60 Madison Avenue, aka 23-25 East 26th Street, aka 18-20 East 27th Street, North side of Madison Avenue at East 26th Street

and the north east corner to East 27th Street. Block 856, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Richard C. Bonsignore.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 31, 2011, acting on Department of Buildings Application No. 120622914, reads in pertinent part:

“ZR 32-10. Proposed physical culture or health establishment, including boxing gymnasiums (not permitted under Use Group 9) requires special permit pursuant to ZR 73-36 by the Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C5-2 zoning district within the Madison Square North Historic District, the operation of a physical culture establishment (PCE) in the cellar of a 12-story mixed-use commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 16, 2011, after due notice by publication in *The City Record*, with a continued hearing on September 20, 2011, and then to decision on October 25, 2011; and

WHEREAS, Community Board 5, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is a through lot bounded by East 27th Street to the north, Madison Avenue to the east, and East 26th Street to the south, in a C5-2 zoning district within the Madison Square North Historic District; and

WHEREAS, the subject site has a total lot area of 14,825 sq. ft. and is occupied by a 12-story commercial building; and

WHEREAS, the proposed PCE will occupy 7,154 sq. ft. of floor space in a portion of the cellar of the 12-story commercial building located on the site; and

WHEREAS, the PCE will be operated as Mendez Boxing; and

WHEREAS, the proposed hours of operation for the PCE are: Monday through Friday, from 6:00 a.m. to 10:00 p.m.; Saturday, from 8:00 a.m. to 6:00 p.m.; and Sunday, from 10:00 a.m. to 5:00 p.m.; and

WHEREAS, the applicant states that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission

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("LPC") approving interior alterations at the cellar level of the subject building, dated April 18, 2011; and

WHEREAS, the applicant also submitted a letter from LPC dated July 11, 2011, approving the use of the cellar for the proposed PCE, and stating that the changes are incorporated in the Certificate of No Effect; and

WHEREAS, at hearing, the Board directed the applicant to obtain LPC approval for the proposed signage, which was not reflected on the plans approved by LPC; and

WHEREAS, in response, the applicant submitted an updated letter from LPC dated September 26, 2011, approving new plans reflecting the proposed signage for the site, and stating that these approved changes are incorporated in the Certificate of No Effect and the July 11, 2011 letter from LPC; 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 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 617.2; 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. 11BSA083M, dated July 19, 2011; and

WHEREAS, the EAS documents 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, 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 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, on a site located in a C5-2 zoning district within the Madison Square North Historic District, the operation of a physical culture establishment in a portion of the cellar of a 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 October 11, 2011" - (3) sheets, and *on further condition*:

THAT the term of this grant shall expire on October 25, 2021;

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 all massages shall be performed by New York State licensed massage therapists;

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

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT substantial construction shall be completed in accordance with ZR §73-70;

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

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, October 25, 2011.

58-11-BZ

CEQR #11-BSA-091M

APPLICANT – Friedman & Gotbaum, LLP, for The Trustees of The Spence School, Incorporated, owner.

SUBJECT – Application May 4, 2011 – Variance (§72-21) to permit the expansion of a (UG 3) community facility (*The Spence School*) contrary to lot coverage (§24-11) and rear yard equivalent (§24-382). R8B zoning district.

PREMISES AFFECTED – 20-22 East 91st Street, South side of East 91st Street, 62.17 ft. westerly from the corner formed by the intersection of the southerly side of 91st Street & the westerly side of Madison Avenue. Block 1502, Lot 59 & 12, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Shelly Friedman.

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ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decisions of the Manhattan Borough Commissioner, dated April 28, 2011, acting on Department of Buildings Application Nos. 103426892 and 120504418, read in pertinent part:

1. Proposed extension of building portion exceeding 23 feet above curb level in R8B district increases the degree of non-compliance with respect to lot coverage, contrary to ZR 24-11 and ZR 54-31.
2. Proposed extension of building portion exceeding 23 feet above curb level in R8B district increases degree of rear yard equivalent non-compliance for through lot portion, contrary to ZR 24-382 and ZR 54-31.
3. Proposed construction is contrary to plans approved by BSA Cal. No. 390-86-BZ; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R8B zoning district and partially within an R10 zoning district, within the Carnegie Hill Historic District, the proposed construction of a connection (the “Connector”) between the rear sides of two buildings on a through lot, that does not comply with zoning parameters for lot coverage and rear yard equivalent, contrary to ZR §§ 24-11, 24-382, and 54-31; and

WHEREAS, the application is brought on behalf of the Spence School (“Spence”), a non-profit educational institution; and

WHEREAS, a public hearing was held on this application on September 13, 2011, after due notice by publication in the *City Record*, and then to decision October 25, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, Carnegie Hill Neighbors provided testimony in opposition to the proposal based on concerns about the height of the Connector and its potential impact on the residents of 21 East 90th Street and 15 East 90th Street; and

WHEREAS, certain neighbors testified in opposition to the application; the primary opponents were the owners of the townhouse to the west of the site at 15 East 90th Street (the “Westerly Neighbors”), the cooperative apartment building at 21 East 90th Street (the “Easterly Neighbors”), and an individual shareholder of the cooperative apartment building (“Ms. Dietrich”); and

WHEREAS, the adjacent neighbors were all

represented by counsel and will be referred to collectively, the “Neighbors” or the “Opposition”; and

WHEREAS, the Westerly Neighbors’ primary concerns are that: (1) Spence has not established a programmatic need for a the proposed height and the included program space is thus not warranted; (2) the request does not constitute the minimum variance; and (3) the proposal will negatively impact 15 East 90th Street’s right to privacy and access to light and air; the Westerly Neighbors also requested that the Board re-open the hearing when they discovered that Spence had recently purchased a building at 412 East 90th Street, which they deemed to be material new evidence; and

WHEREAS, the Easterly Neighbors’ primary concerns are that: (1) Spence cannot rely on its programmatic needs as a hardship but must rather establish the uniqueness finding set forth at ZR § 72-21(a); (2) Spence can accomplish its goals of a two-story connection without the requested zoning variance by an alternative connection or by constructing elsewhere on its site; (3) the height of the portion of the Connector that does not include the second-story passageway is not required to reach the same height as the passageway; (4) the second-story passageway is not required if Spence uses its East 90th Street entrance; (5) the proposal will substantially impair use of adjacent properties; (6) the proposal does not represent the minimum variance; and (7) the historic preservation purpose is unaffected by the Neighbors’ alternatives; and

WHEREAS, Ms. Dietrich’s primary concerns are that: (1) Spence has not substantiated that there is a hardship related to unique physical conditions of the site; (2) Spence has not established a programmatic need for the portion of the Connector that does not contain the second-story passageway; (3) Spence has not addressed the impact the proposal will pose to its neighbors; and (4) Spence has not established that the proposal reflects the minimum variance; and

WHEREAS, the subject site consists of two zoning lots - Lot 12 and Lot 59 - which Spence proposes to merge into a single zoning lot (the “Zoning Lot”); thus, the zoning analysis assumed the merger of the two zoning lots; and

WHEREAS, Lot 59 is located at 22 East 91st Street, on the south side of East 91st Street and Lot 12 is located at 17 East 90th Street, on the north side of East 90th Street, between Madison Avenue and Fifth Avenue; the two lots share a rear lot line for the width of Lot 12; and

WHEREAS, the East 91st Street building (the “Main Building”) has been occupied by Spence since 1929 and is ten stories; Spence acquired the five-story East 90th Street building (the “New Building”) in 2008 to support its programmatic needs; and

WHEREAS, the Main Building is partially within an R8B zoning district (western 70.3 percent) and partially within an R10 zoning district (eastern 29.7 percent) the New Building and the proposed Connector are located entirely within the R8B zoning district; and

WHEREAS, the site has a total lot area of 15,642 sq. ft. and is occupied by 79,742 sq. ft. of floor area with FAR

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of 4.38 and 7.29, in the R8B and R10 zoning districts, respectively; floor area of 98,408 sq. ft. and FAR of 5.1 and 10 are permitted across the site, by zoning district; and

WHEREAS, the Main Building was the subject of an April 7, 1987 variance which permitted waivers to lot coverage and rear yard regulations to permit the construction of a three-story and cellar wing on the eastern portion of the site (the "Osborne Wing"); the variance also permitted an increase in the extent of a pre-existing rear yard noncompliance by constructing the Osborne Wing with a 17-ft. rear yard, consistent with the Main Building's rear yard, pursuant to BSA Cal. No. 390-86-BZ; and

WHEREAS, the buildings have pre-existing non-complying bulk conditions including lot coverage, rear yard, height and setback, and building height, which are permitted due to the construction of the buildings prior to December 15, 1961 or by prior variance; and

WHEREAS, Spence proposes to construct the two-story Connector within the existing non-complying rear yard equivalent at the rear of the two buildings; and

WHEREAS, the Connector will have a footprint of 751 sq. ft. and a height of 29.75 feet; and

WHEREAS, the Connector will have two levels below grade and two levels above grade and provide space for academic use, physical education, mechanicals, and connections between the two buildings; and

WHEREAS, the Connector will include a ground floor connection between the two buildings for the full 28 ft. width of the New Building; a 5.5 ft.-wide passageway connecting the buildings' second floors; and 1,031 sq. ft. of new zoning floor area (751 sq. ft. on the ground floor and 280 sq. ft. on the second floor passageway); and

WHEREAS, the proposal will result in lot coverage of 100 percent in the R8B zoning district and 90 percent in the R10 zoning district; and

WHEREAS, the proposal will increase the lot coverage in the R8B zoning district from 87.5 percent to 100 percent (70 percent is the maximum permitted) and maintain 90 percent in the R10 (where 70 percent is the maximum permitted); a lot coverage of 90 percent was permitted by the prior Board grant for the Main Building's Osborne Wing; and

WHEREAS, for a through lot, a rear yard equivalent with a minimum depth of 60 feet is required, the existing rear yard equivalent has a depth of 20 feet, and the proposal does not include any rear yard equivalent; and

WHEREAS, the Connector does not qualify as a complying permitted rear yard obstruction within the rear yard equivalent because its overall height is 6.75 feet more than the 23 ft. limit for such community facility permitted obstructions and because a portion of the proposed enlargement is two stories; and

WHEREAS, because of the aforementioned noncompliance, Spence seeks a variance; and

WHEREAS, the applicant represents that the waivers are sought to enable Spence to construct a facility that meets its programmatic needs; and

WHEREAS, Spence identifies the following primary

programmatic needs: (1) a multi-level connector between the two buildings to allow the school to function as a whole; (2) a connection at the second floor to provide connection between the two buildings' academic centers; (3) a common platform for egress into and out of the Main Building; (4) an important commons space, befitting an educational institution and separate from the academic centers above; (5) a means to accommodate high volumes of trips between the two buildings; (6) a means to reduce travel time between the academic floors of the two buildings, which requires having no fewer than two floors directly connected between the two buildings and that at least one of those passageways occur between the academic floors of the Main Building (floors two through ten) and the closest academic floors of the New Building (floors two through five); and (7) a means to limit the travel/break time between classes to five minutes to support an efficient academic schedule; and

WHEREAS, in addition to the programmatic needs, the applicant also states that there are unique physical conditions inherent in the site, which contribute to a hardship in developing it in full compliance with zoning regulations; those conditions include: the narrow width of the New Building in relation to the Main Building; the historic nature of the buildings and the requirements of the Landmarks Preservation Commission ("LPC"); both buildings' pre-existing zoning non-compliance; the varying floor elevations of the two buildings, which make it difficult to provide connectivity anywhere other than in the connecting rear yards (and by means less obtrusive than a sky bridge at upper floors); the zoning non-compliance that exists even if the second-floor passageway could be included within a height of 23 feet; and the height of the historically important windows on the New Building's rear wall at 28.25 feet; and

WHEREAS, the applicant states that if a second-story connection were not required, the Connector could be limited to a maximum height of 23 feet and one story and thereby qualify as a permitted rear yard obstruction, thus eliminating the rear yard equivalent and lot coverage objections; and

WHEREAS, the applicant notes that both lots exceed the maximum permitted lot coverage and, even without any new construction, the Zoning Lot will not comply with lot coverage regulations; and

WHEREAS, the applicant states that, in essence, the application is to allow for an additional 6.75 feet of height for the Connector and to allow for the internal second-floor passageway; and

WHEREAS, the applicant states that the alternative, which would not trigger any new non-compliance would be a one-story connection in the rear yard that would not exceed 23 feet in height (and also the currently open area on the side yard of the East 90th Street site that is not within its rear yard could also be built up to the same limitations), but that such an alternative would lack a critical second floor connection and would fail to address Spence's needs to provide an effective means for students and faculty to move between the upper academic floors of the two buildings; and

WHEREAS, the applicant asserts that a single ground floor connection cannot sufficiently ease the required travel

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times between classes and that an underground passageway would lengthen the route between buildings; and

WHEREAS, the applicant states that as a non-profit educational institution, the Board must grant deference to Spence and allow it to rely on its programmatic needs to form the basis for its waiver requests; the applicant cites to the decisions of New York State courts in support of its claim that the school warrants deference; and

WHEREAS, specifically, the applicant cites to Pine Knolls Alliance Church v. Zoning Board of Appeals of the Town of Moreau, 6 N.Y.3rd 407 (2005); the Pine Knolls court stated as follows:

In assessing a special permit application, zoning officials are to review the effect of the proposed expansion on the public's health, safety, welfare or morals, concerns grounded in the exercise of police power, "with primary consideration given to the over-all impact on the public welfare" (Trustees of Union College, 91 N.Y.2d at 166). Applications may not be denied based on considerations irrelevant to these concerns.

We made clear in Cornell University that it is not the role of zoning officials to second-guess expansion needs of religious and educational institutions; and

WHEREAS, in analyzing the applicant's waiver requests, the Board notes at the outset that Spence, as a nonprofit New York State chartered educational institution, may rely on its programmatic needs, which further its mission, as a 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 to 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 observes that such deference has been afforded to comparable institutions in numerous other Board decisions, certain of which were cited by the applicant in its submissions; and

WHEREAS, the applicant states that Spence has adopted a strategic plan to renovate and reuse the two buildings in more effective ways and that the Connector is the necessary component to join the two buildings; and

WHEREAS, the applicant states that based on an extensive review of its facilities and operations, Spence determined that the most efficient and effective use of its educational programmatic space requires the Connector; and

WHEREAS, the applicant concludes that the lot coverage and rear yard relief is required to meet Spence's programmatic needs and the design imperatives of the historic buildings; and

WHEREAS, the Board finds that the proposed Connector has been designed to be consistent and compatible with adjacent uses and with the scale and character of the surrounding neighborhood and is, therefore, consistent with the standard established by the decision in

Cornell; and

WHEREAS, the Board concurs that the waivers will facilitate construction of a Connector that will meet Spence's articulated needs; and

WHEREAS, in sum, the Board concludes that the applicant has fully explained and documented the need for the waivers to accommodate Spence's programmatic needs; and

WHEREAS, the Board also acknowledges the hardship associated with the physical constraints of the buildings, which are both nearly a century old, and developing the site with historic pre-existing bulk non-compliance; and the interest in preserving and respecting the buildings' historic fabric; and

WHEREAS, the Opposition argues that the applicant has failed to make the finding set forth at ZR § 72-21(a) because: (1) the site does not suffer a unique hardship and programmatic needs cannot be substituted as a basis for the requested waivers; and (2) there are negative impacts to the public welfare which are not outweighed by the proposal's benefits; and

WHEREAS, as to the absence of uniqueness, the Opposition contends that the applicant cannot satisfy the finding set forth at ZR § 72-21(a) because the Zoning Lot is not subject to a unique physical condition which creates a hardship; and

WHEREAS, the Opposition also argues that Spence is not entitled to the deference accorded educational institutions seeking variances to zoning requirements under Cornell because the negative impacts of the proposal outweigh the public benefits and that the deference is only extended to proposals for new buildings and not proposals to enlarge existing buildings; and

WHEREAS, the Board finds that the applicant's submissions, which include statements, plans, and other evidence, provide the required specificity concerning its programmatic space requirements, establish that the requested variances are necessary to satisfy its programmatic needs consistent with Cornell, and that the Opposition has failed to establish that any potential negative impacts either meet the threshold set forth by the courts or outweigh the benefits; and

WHEREAS, in Cornell, the New York Court of Appeals adopted the presumptive benefit standard that had formerly been applied to proposals for religious institutions, finding that municipalities have an affirmative duty to accommodate the expansion needs of educational institutions; and

WHEREAS, the Board finds that the Opposition misapplies the guiding case law and that it cites to other case law that the Board easily distinguishes; and

WHEREAS, as to the guiding case law on educational deference, the Board disagrees with the Opposition and finds that the courts place the burden on opponents of a project to rebut the presumption that an educational institution's proposal is beneficial unless it is established to have an adverse effect upon the health, safety, or welfare of the community; the Board notes that courts specifically state

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that general concerns about traffic and disruption of the residential character of a neighborhood are insufficient basis for denying a request (see Westchester Reform Temple v. Brown, 22 N.Y.2d 488 (1968), Cornell, and Pine Knolls); and

WHEREAS, the Board also does not find any basis for the Opposition's assertion that Spence must adopt an alternative in light of the fact that the Board finds Spence's programmatic need for the requested waivers to be credible; and

WHEREAS, the Board notes that where a nonprofit organization has established the need to place its program in a particular location, it is not appropriate for a zoning board to second-guess that decision (see Guggenheim Neighbors v. Bd. of Estimate, June 10, 1988, N.Y. Sup. Ct., Index No. 29290/87), see also Jewish Recons. Syn. of No. Shore v. Roslyn Harbor, 38 N.Y.2d 283 (1975)); and

WHEREAS, furthermore, a zoning board may not wholly reject a request by an educational institution, but must instead seek to accommodate the planned use; (see Albany Prep. Charter Sch. v. City of Albany, 31 A.D.3rd 870 (3rd Dep't 2006); Trustees of Union Col. v. Schenectady City Cnl., 91 N.Y.2d 161 (1997)); and

WHEREAS, the Board disagrees with the Opposition and does not find that the case law limits deference for non-profit educational institutions' programmatic needs to only new institutions and not existing ones seeking to enlarge existing buildings to accommodate their programmatic needs; and

WHEREAS, the Board finds that the Opposition's position is contrary to the decisions of New York State courts and contrary to the Board's many variances for educational institutions which have either been upheld by New York State courts or remain unchallenged; and

WHEREAS, the Board distinguishes other cases that the Opposition cites including Nassau Children's House v. Bd. of Zoning Appeals of Mineola, 77 A.D.2d 898 (1980), which involved a proposal for a children's home that did not meet the findings of a special permit, rather than a zoning variance and East Hampton Lib. v. Zoning Bd. of Appeals of East Hampton, 2011 N.Y. Slip Op 50921(U), May 17, 2011 (Sup. Ct. Suffolk Cty.), which involved the determination that Cornell and the presumption of public benefit required for deference does extend to libraries; the Board agrees with the court in both cases that special permits and variances require different levels of analysis since special permits are specifically contemplated within the zoning framework and variances are not; and

WHEREAS, in sum, the Board has reviewed the Opposition's submissions, as well as the applicant's responses, and finds that the Opposition has failed to rebut the applicant's substantiated programmatic need for the proposed Connector or to offer evidence, much less establish, that the proposed Connector will negatively impact the health, safety, or welfare of the surrounding community in the sense the courts envision; and

WHEREAS, accordingly, the Board finds that the applicant has sufficiently established that Spence's

programmatic needs create an unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since Spence is a nonprofit institution and each of the required waivers are associated with its educational use and are sought to further its non-profit educational 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 waivers of lot coverage and rear yard equivalent will not alter the essential neighborhood character, impair the use or development of adjacent property, nor be detrimental to the public welfare; and

WHEREAS, the applicant represents that the proposed Connector is compatible with nearby uses in that the area is characterized by a close urban context in which there are no standard-sized open spaces; specifically, the applicant notes that none of the midblock tax lots provide complying rear yards and that all are paved below grade, serving as terraces for basement floors or as lightwells; and

WHEREAS, the applicant notes that the entire shared property line to the east is occupied by a non-complying portion of the New Building which is windowless and has a height of 18.25 feet, which will be demolished and replaced with the east elevation of the Connector, which will have an initial height of 25 feet (6.75 feet in excess of the existing brick wall) and will provide some degree of transparency; and

WHEREAS, the applicant notes that the zoning contemplates and allows an encroachment at the rear yard to a height of 23 feet for schools and, thus the Opposition should anticipate such a permitted obstruction to a height of 6.75 feet less than the 29.75 ft. height of the proposed Connector; and

WHEREAS, the applicant represents that the proposed Connector is compatible with the scale and bulk of the surrounding area; and

WHEREAS, because the site is within the Carnegie Hill Historic District and the New Building is an individual landmark, the applicant obtained approval for the Connector from the Landmarks Preservation Commission ("LPC") by Certificates of Appropriateness issued January 5, 2011; and

WHEREAS, in its approval, LPC noted that it found that there is no central green space within the interior of the block and, therefore the Connector will not result in the loss of any green space, will enable the elimination of the visible stair and elevator bulkhead at the roof, will not result in the destruction of any significant architectural features, nor will it overwhelm any significant architectural features of the building or detract from the streetscape of the historic district; and

WHEREAS, as to the use, the applicant notes that the school has occupied the Main Building for 82 years and that the Main Building will continue to provide the only entrance to the school; in response to neighbors' concerns, Spence has agreed to restrict use of the New Building's entrance to emergency egress, therefore the traffic flow will not be affected; and

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WHEREAS, the applicant states that the proposed facility will result in no significant impacts to traffic or parking in the area because the current well-established number of students and faculty using the buildings will be maintained; and

WHEREAS, the applicant notes that the surrounding area includes many institutions including the Jewish Museum, the Cooper-Hewitt Museum of Design, the Covent of the Sacred Heart, the Day School, St. David's School, Trevor Day School, Dalton School, Nightingale-Bamford School, and the Church of the Heavenly Rest and its Parish House; and

WHEREAS, further, the applicant notes that the Cooper-Hewitt Museum, including its grounds and accessory buildings on East 90th Street, which shares Spence's western and a portion of its southern lot lines, occupies 54.87 percent of the block; and

WHEREAS, the Opposition contends that the Connector is incompatible with the adjacent uses and that there are alternatives which do not reach a height above 23 feet; and

WHEREAS, in response to the Board's and the Opposition's questions about the viability of alternatives, the applicant explained that the alternative, which reduced the height of the portion of the Connector not occupied by the second-story passageway would require the bifurcation of the two historic windows and that it would not be possible to construct a ceiling between the two historic windows on the New Building as there would not be sufficient space to construct the ceiling in the space between the two windows; and

WHEREAS, the Board notes that the Opposition proposed a series of conditions to be included if the Board chose to grant the variance and that Spence agrees to the vast majority of the conditions; and

WHEREAS, the Board notes that subsequent to discussions with the Opposition, Spence and the Opposition have both acknowledged agreements regarding the Connector's conditions including those related to the limited use of the East 90th Street entrance, interior and exterior sound and lighting limitations, the preferred glass material, the translucency of the glass, the height of a masonry wall along the western property line, access to 15 East 90th Street during the construction of a portion of the Connector, and other site improvements not related to the Connector; and

WHEREAS, the conditions include that the lower portion of the western wall will be masonry to a height of 20'-8" unless the Westerly Neighbors provide permission to access their property while the requested glass is installed in which case the masonry would only be to a height of 13'-9", with glass above; the approved plans note that the wall will be masonry unless the Westerly Neighbors grant permission to access their site as required to install the greater extent of glass; and

WHEREAS, the Board has noted certain conditions in its decision, other conditions are reflected on the plans, and the remainder of the conditions not reflected on the plans or in this decision are the subject of private agreements, are not enforceable by the Board, and may be resolved in another

forum; and

WHEREAS, based upon the above, the Board finds that the subject variances 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, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is created by its programmatic needs in connection with the physical constraints of the two buildings built in the 1920s, which have pre-existing non-complying bulk conditions which constrain any development; and

WHEREAS, the Board notes that neither the purchase of property nor the need by an educational institution to expand its facilities is recognized as a self-created hardship under New York law; 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 Spence or a predecessor in title; and

WHEREAS, the applicant asserts that the second-floor passageway with a width of 5.5 feet is the minimum size passageway that can accommodate the programmatic needs and that the height of 29.75 is the minimum necessary to provide headroom, enclose the second-floor passageway, and respect the Main Building's historic windows; and

WHEREAS, the applicant states that the requested waivers of lot coverage and rear yard equivalent represent the minimum variance necessary to allow Spence to meet its programmatic needs; and

WHEREAS, the Board therefore finds that the requested waivers of lot coverage and rear yard equivalent represent the minimum variance necessary to allow Spence to meet its programmatic needs; and

WHEREAS, accordingly, based upon its review of the record and its site visits, the Board finds that the applicant has provided sufficient evidence to support each of the findings required for the requested variances; and

WHEREAS, as to the Opposition's request that the Board re-open the hearing to address the information that Spence has recently purchased 412 East 90th Street, the Board notes that any proposed use of the new site does not extinguish the programmatic needs of Spence in the Main Building or the New Building specifically because the new site will be used for larger gatherings as opposed to the more routine physical education space proposed within the renovated Main Building and New Building; and

WHEREAS, the Board reviewed the applicant's response regarding the proposed use of the new site as a field house and agrees that its existence does not implicate any of the findings related to the Main Building and the New Building's program and, thus, the Board found there was no basis to re-open the hearing to consider the new site; and

WHEREAS, the project is classified as a Type I action pursuant to Section 617.12 and 617.4 of 6 NYCRR; and

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

MINUTES

identified and considered relevant areas of environmental concern about the project documented in the Final Environmental Assessment Statement (EAS) CEQR No.11BSA091M, dated July 26, 2011; 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 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 each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site partially within an R8B zoning district and partially within an R10 zoning district, within the Carnegie Hill Historic District the proposed construction of a connection between the rear sides of two buildings on a through lot, that does not comply with zoning parameters for lot coverage and rear yard equivalent, contrary to ZR §§ 24-11, 24-382, 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 July 26, 2011” – fourteen (14) sheets; “Received September 20, 2011” – one (1) sheet and “Received October 21, 2011” – four (4) sheets and *on further condition*:

THAT the proposed building shall have the following parameters: (1) floor area of 53,019.63 sq. ft. (R8B zoning district) and 27,783.84 sq. ft. (R10 zoning district); (2) an FAR of 4.47 (R8B zoning district) and 7.29 (R10 zoning district), (3) a lot coverage of 100 percent (R8B zoning district) and 90 percent (R10 zoning district); and (4) the Connector with a maximum height of 29.75 feet, as depicted on the Board-approved plans;

THAT the use of the New Building’s East 90th Street entrance (at 17 East 90th Street) shall be limited to emergency purposes;

THAT there shall be no exterior lighting or sound amplification in the rear yards of 17 East 90th Street or 22 East 91st Street;

THAT no interior lights shall be directed towards 21 East 90th Street or 15 East 90th Street and any lighting (other than emergency lighting) shall be turned off after 9:30 p.m., daily, when not required, and shall be triggered thereafter

only by motion sensors;

THAT the site shall be maintained in good condition, free of debris;

THAT 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 construction will be substantially completed in accordance with the requirements of ZR § 72-23; and

THAT the Department of Buildings must ensure compliance 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 25, 2011.

72-11-BZ

APPLICANT – Walter t. Gorman, P.E., for Tannor and Rothafel Partnership, owner; Lukoil (Getty Service Station), lessee.

SUBJECT – Application May 24, 2011 – Re-Instatement (§11-411) of a previously approved variance permitting the operation of an automotive service station (UG 16B) which expired on October 8, 1994. R3-2 zoning district.

PREMISES AFFECTED - 101-06 Astoria Boulevard, south east corner of 101st Street. Block 1688, Lot 30. Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Kieron Bachan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated May 16, 2011, acting on Department of Buildings Application No. 420354850, reads in pertinent part:

“Proposal to extend the term of the zoning variance for a gasoline service station which is located in an R3-2 zoning district is contrary to the last resolution adopted by the Board of Standards and Appeals under Cal. No. 711-56-BZ and contrary to C.O. No. 202651 and must, therefore, be referred to the Board of Standards and Appeals for reinstatement of the variance since the variance has lapsed;” and

WHEREAS, this is an application for a reinstatement, an extension of term, an extension of time to obtain a certificate of occupancy, and an amendment to permit minor modifications to the approved plans for a prior Board approval of a gasoline service station with accessory uses (Use Group 16) within an

MINUTES

R3-2 zoning district, pursuant to ZR § 11-411; and

WHEREAS, a public hearing was held on this application on August 23, 2011, after due notice by publication in the *City Record*, with a continued hearing on September 20, 2011, and then to decision on October 25, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Queens, recommends approval of this application, with the following conditions: (1) the term be limited to five years; (2) the building remain graffiti free; (3) all landscaping be maintained in accordance with the approved plans; (4) all existing walls and fencing be repaired and maintained; (5) all perimeter sidewalks and tree planting pits be maintained free of debris; and (6) all banners be removed, lighting upgraded, and surveillance cameras installed; and

WHEREAS, the premises is located on a through lot bounded by Astoria Boulevard to the north, 101st Street to the west, and 31st Avenue to the south, within an R3-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 31, 1959 when, under BSA Cal. No. 711-56-BZ, the Board granted a variance to permit the site to be occupied as a gasoline service station with accessory uses, for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended at various times; and

WHEREAS, most recently, on May 21, 1985, the Board granted a ten-year extension of term, which expired on October 8, 1994; and

WHEREAS, the term of the variance has not been extended since its expiration on October 8, 1994, and

WHEREAS, the applicant represents, however, that the use of the site as a gasoline service station with accessory uses has been continuous since the initial grant; and

WHEREAS, the applicant now proposes to reinstate the prior grant; and

WHEREAS, the applicant has requested a ten-year extension of term and extension of time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance for a term of not more than ten years; and

WHEREAS, the applicant also requests an amendment to reflect minor modifications to the site plan, including the installation of an air tower, yard light and car vacuum along the easterly side of the site, a modification to the dispenser arrangement previously-approved by the Board, and the conversion of the office and sales area to a snack shop; and

WHEREAS, at hearing, the applicant acknowledged that the site has the following non-compliances with the previously-approved plans: (1) the operation of a U-Haul rental business at the site; (2) the presence of debris within the area behind the service building designated as a landscaping area; (3) promotional signage which was not reflected on the approved plans; (4) failure to landscape the easterly side of the property

in accordance with the approved plans; and (5) the presence of graffiti on the service building; and

WHEREAS, as evidence that these conditions have been brought into compliance, the applicant submitted a U-Haul Dealership Close-Out Notice and an affidavit from the operator of the site stating that the U-Haul rental business has been discontinued, and submitted photographs and revised plans reflecting the removal of debris from the site, the installation of landscaping along the easterly side of the property and behind the service building, the removal of excess signage, and the painting over of graffiti on the service building; and

WHEREAS, at the Board's direction, the applicant also submitted revised drawings reflecting that two new street trees will be planted along the 31st Avenue frontage; and

WHEREAS, the applicant also agreed to the conditions requested by the Community Board, with the exception of the requirement to install surveillance cameras at the site; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR § 11-411.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, 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 to permit the reinstatement, extension of term, extension of time to obtain a certificate of occupancy, and amendment to the previously-approved plans for a prior Board approval of a gasoline service station with accessory uses (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 September 1, 2011"-(6) sheets; and *on further condition*:

THAT the term of this grant shall be for five years, to expire on October 25, 2016;

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

THAT all signage on the shall comply with C1 district regulations;

THAT landscaping and fencing shall be maintained in accordance with the BSA-approved plans;

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

THAT a new certificate of occupancy shall be obtained by October 25, 2012;

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;

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 25, 2011.

43-11-BZ

APPLICANT – Harold Weinberg, for David Waknin, owner.

SUBJECT – Application April 12, 2011 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a single family home contrary to floor area, lot coverage and open space (§23-141), side yard (§23-461) and less than the required rear yard (§23-47). R3-2 zoning district.

PREMISES AFFECTED – 1296 East 21st Street, west side 220’ south of Avenue R, between Avenues R and S, Block 6826, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

ACTION OF THE BOARD – Off Calendar.

47-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for USA Outreach Corp., by Shaya Cohen, owner.

SUBJECT – Application April 13, 2011 – Variance (§72-21) to allow a three-story yeshiva (*Yeshiva Zichron Aryeh*) with dormitories, contrary to use (§22-13), floor area (§§23-141 and 24-111), side setback (§24-551) and parking regulations (§25-31). R2 zoning district.

PREMISES AFFECTED – 1213 Bay 25th Street, west side of Bay 25th Street, between Bayswater Avenue and Healy Avenue. Block 15720, Lot 67, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Lyra J. Altman, David Shteierman, Sara Stern, Elliot Weiss, Moshe Goodman, Aurohom Zlotnich, Raphael Dachs, Joe Hersh, Laurence Brodsky, Menechem Feifer, Shlomo Cohen, Nosson Sepowitz, Andrew Pietyszka, Jonathan Steinberg, Ezra Pacht, Shraga Bernson and others.

For Opposition: Enid Glabman, Eugene Falik, Phyllis Rudrick, Steve Cromity, Lettie DeWitt, S. Kennedy and others.

ACTION OF THE BOARD – Laid over to November 22, 2011, at 1:30 P.M., for continued hearing.

82-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Livaho Choueka, owner.

SUBJECT – Application June 8, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141); side yard (§23-461); rear yard (§23-47) regulations. R5 zoning district.

PREMISES AFFECTED – 2020 Homecrest Avenue, west side of Homecrest Avenue, 165’ south of Avenue T, Block 7316, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to November 22, 2011, at 1:30 P.M., for continued hearing.

81-11-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Parkchester Preservation Co., LP, owner; Blink Metropolitan Avenue, Inc., lessee.

SUBJECT – Application June 7, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Blink Fitness*). C4-2 zoning district.

PREMISES AFFECTED – 1380 Metropolitan Avenue aka 44/64 Metropolitan Oval, south side of Parkchester Road, 200’ east of intersection of Parkchester Road and Metropolitan Avenue, Block 3938, Lot 7501, Borough of the Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to November 22, 2011, at 1:30 P.M., for decision, hearing closed.

101-11-BZ

APPLICANT – Dennis D. Dell’Angelo, for Edward Stern, owner.

SUBJECT – Application July 12, 2011 – Special Permit (§73-622) for the enlargement of an existing two-family home, to be converted to a single-family home, contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1152 East 24th Street, west side of East 234th Street, 400’ south of Avenue K, Block 623, Lot 67, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Dennis D. Dell’Angelo.

For Opposition: Jerome Katz and Steven Krystal.

ACTION OF THE BOARD – Laid over to November 15, 2011, at 1:30 P.M., for continued hearing.

126-11-BZ

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for 87 Chambers LLC and IBC Chambers LLC, owners.

SUBJECT – Application August 19, 2011 – Variance (§72-21) to allow for the construction of a new mixed use building, contrary to lot coverage and rear yard equivalent

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(§§23-145 and 23-532) and accessory off-street parking regulations (§13-00). C6-3A/Tribeca Special District.

PREMISES AFFECTED – 87-89 Chambers Street, midblock bounded by Chambers Street, Church Street, Reade Street and Broadway, Block 149, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Jay Segal and David Weh.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 22, 2011, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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November 10, 2011

DIRECTORY

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CHRISTOPHER COLLINS, *Vice-Chair*

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269-98-BZ 70 East 184th Street, Bronx
13-09-BZ 5611 21st Street, Brooklyn
281-39-BZ 1605 Lexington Avenue, Manhattan
502-60-BZ 4452 Broadway, Manhattan
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Affecting Calendar Numbers:

191-03-A 87-48 215th Place, Queens

DOCKET

New Case Filed Up to November 1, 2011

168-11-BZ

2085 Ocean Parkway, L-shaped lot on the corner of Ocean Parkway and Avenue U., Block 7109, Lot(s) 50 (tentative), Borough of **Brooklyn, Community Board: 15**. This application is filed pursuant to Section 72-21 of the Zoning Resolution, as amended, to request a variance of floor area, open space ratio, lot coverage, side yards, rear yard, height, setback, planting, landscaping and parking regulations in order to permit the construction of a Use Group 4A house of worship. R5,R6A(OP) district.

169-11-BZ

2257 East 14th Street, between Avenue V and Gravesend Neck Road., Block 7375, Lot(s) 48, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing single family home contrary to floor area, lot coverage and open space (23-141(b)); side yards (23-461(a)) and less than the required rear yard (23-47). R-4 zoning district. R4 district.

170-11-A

318 Lafayette Street, northwest corner of Houston and Lafayette Streets., Block 522, Lot(s) 24, Borough of **Manhattan, Community Board: 2**. Appellant seeks confirmation that its rights vested on February 27, 2001 and its permit did not "lapse". M1-5B district.

171-11-A

318 Lafayette Street, north west corner of Houston and Lafayette Streets., Block 522, Lot(s) 24, Borough of **Manhattan, Community Board: 2**. Appellant seeks confirmation that its rights vested on February 27, 2001 and its permit did not "lapse". M1-5B 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

NOVEMBER 22, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 22, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

332-98-BZ

APPLICANT – Sheldon Lobel, P.C., for Workmen’s Circle MultiCare Center, owner.

SUBJECT – Application September 20, 2011 – Amendment to a previously granted Variance (§72-21) for an increase of 1,825 square feet enlargement to an existing nursing home (*Workmen's Circle MultiCare Center "WCMC"*). R-5 zoning district.

PREMISES AFFECTED – 3155 Grace Avenue, entire block bounded by Burke, Grace, Hammersley and Ely Avenues, Block 4777, Lot 2, 57, Borough of Bronx.

COMMUNITY BOARD #12BX

290-03-BZ

APPLICANT – Patrick W. Jones, P.C., for Joseph Rosenblatt, owner; Graceful Services, Inc., lessee.

SUBJECT – Application September 15, 2011 – Extension of Term for a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Graceful Services*) which expired on September 26, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on April 20, 2005; Waiver of the Rules. C2-8 (TA) zoning district.

PREMISES AFFECTED – 1097 Second Avenue, west side of Second Avenue, 40’ south of East 58th Street, Block 1331, Lot 126, Borough of Manhattan.

COMMUNITY BOARD #6M

40-05-BZ

APPLICANT – Patrick W. Jones, P.C., for 2nd Avenue, Property LLC, owner; Graceful Services, Inc., lessees.

SUBJECT – Application September 15, 2011 – Extension of Term for a previously granted Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*Graceful Services*) which expired on September 26, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on April 20, 2005; an Amendment to legalize an increase of 285 square feet of floor area on the second floor to be used in conjunction with the existing PCE; Waiver of the Rules. C2-8 (TA) zoning district.

PREMISES AFFECTED – 1095 Second Avenue, west side of Second Avenue 60.5’ south of East 58th Street, Block 1331, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #6M

170-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Cornell University, owner.

SUBJECT – Application September 28, 2011 – Amendment to previous Board approval.

PREMISES AFFECTED – 411-431 East 69th Street, midblock bounded by East 69th and 70th Streets, York and First Avenues, Block 1464, Lot 8, 14, 15, 16 p/21, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEALS CALENDAR

61-11-A

APPLICANT – Fire Department of New York, for Mark Scharfman, owner; Multiple Dwelling, lessee.

SUBJECT – Application May 6, 2011 – Application seeking to modify Certificate of Occupancy, to permit the issuance of an order by the Fire Department to require additional fire protection for residents on upper floors of building in the form of an automatic sprinkler system.

PREMISES AFFECTED – 134 9th Avenue, West 18th and West 19th Street, Block 742, Lot 4, Borough of Manhattan.

COMMUNITY BOARD #4M

NOVEMBER 22, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 22, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

92-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Eugene and Margaret Loevinger, owners.

SUBJECT – Application June 24, 2011– Special Permit (§73-622) for the enlargement of an existing single-family home contrary to floor area and open space (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1349 East 26th Street, east side of East 26th Street, 390’ south of Avenue M, block 7662, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #14BK

CALENDAR

134-11-BZ

APPLICANT – Eric Palatnik, P.C., for 335 Madison Avenue LLC, owner, Madison Spa Castle, Inc., lessee.

SUBJECT – Application September 7, 2011 – Special Permit (ZR §73-36) to allow the operation of a physical culture establishment (Spa Castle). C5-3 zoning district.

PREMISES AFFECTED – 335 Madison Avenue, corner of Madison Avenue and East 43rd Street. Block 1278, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #5M

137-11-BZ

APPLICANT – Slater & Beckerman, LLP, for 455 Carroll Street LLC, owner.

SUBJECT – Application September 7, 2011 – Variance (§72-21) to allow for the conversion of the second floor and second floor mezzanine of the building from manufacturing and commercial uses to residential use, contrary to ZR §42-10. M1-2 zoning district.

PREMISES AFFECTED – 455 Carroll Street, mid-block on the north side of Carroll Street between Nevins Street and Third Avenue, Block 447, Lot 47, Borough of Brooklyn.

COMMUNITY BOARD #6BK

152-11-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 240 East 38th Street Condominium on behalf of New York University, owner.

SUBJECT – Application September 19, 2011 – Variance (§72-21) to allow certain modifications to the existing plazas and arcades associated with the use of existing building for NYU Langone Medical Center, contrary to ZR §37-625. C1-9 zoning district.

PREMISES AFFECTED – 240 East 38th Street, East 37th Street, Second Avenue, East 38th Street and Tunnel Exit Street, Block 918, Lot 1001-1026, Borough of Manhattan.

COMMUNITY BOARD #6M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, NOVEMBER 1, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

502-60-BZ

APPLICANT – Patrick O' Connell P.E. for Raymond Edwards, owner; Angel R. Hernandez, lessee.

SUBJECT – Application February 23, 2011 – Extension of Term (§11-411) of a variance permitting the use of a parking lot (UG 8) for parking and storage of more than five (5) motor vehicles which expired on January 20, 2011. C2-4/R7-2 zoning district.

PREMISES AFFECTED – 4452 Broadway, Broadway & Fairview Avenue. Block 2170, Lot 62 & 400. Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, November 1, 2011.

672-65-BZ

APPLICANT – Joseph Pell Lombardi, for Earth Pledge Fund, owner.

SUBJECT – Application July 20, 2011 – Extension of Term for the continued use of UG6 offices on three floors of a five-story residential building which expired on November 13, 2004; Waiver of the Rules. R8B zoning district.

PREMISES AFFECTED – 122 East 38th Street, south side of East 38th Street, 139'5" west of the corner, Block 893, Lot 78, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Joseph Pell Lombardi.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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 previously granted variance permitting a change in use of the first three stories of a five-story building from residential to office use; and

WHEREAS, a public hearing was held on this application on September 27, 2011, after due notice by publication in *The City Record*, and then to decision on November 1, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 6, Manhattan, states that it has no objection to this application; and

WHEREAS, the site is located on the south side of East 38th Street, between Lexington Avenue and Park Avenue, within an R8B zoning district; and

WHEREAS, the subject site is occupied by a five-story building with office use on the first three floors and residential use above; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 22, 1966 when, under the subject calendar number, the Board granted a variance to permit the conversion of an existing five-story building from one-family dwelling and offices to offices throughout, for a term of five years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, on September 16, 1986, the Board granted a ten-year extension of the term and an amendment to revert to residential use on the fourth and fifth floors of the building; and

WHEREAS, most recently, on November 21, 1995, the Board extended the term of the variance for an additional ten years, to expire on November 13, 2004; and

WHEREAS, the applicant now seeks to extend the term of the variance for an additional ten years; and

WHEREAS, based upon its review of the record, the Board finds 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, as adopted on March 22, 1966, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from the date of this grant, to expire on November 1, 2021; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT the term of this grant shall expire on November 1, 2021;

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;

THAT the Department of Buildings must ensure compliance with all other 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.”
(DOB Application No. 100948245)

Adopted by the Board of Standards and Appeals,
November 1, 2011.

224-66-BZ

APPLICANT – Peter Hirshman, for Building Management Co., Inc., owner; Champion Parkind Corp., lessee.

SUBJECT – Application July 8, 2011 – Extension of Term for the continued use of transient parking in a multiple dwelling building which expired on June 14, 2011. R8B zoning district.

PREMISES AFFECTED – 325-335 East 49th Street, aka 328-334 East 50th Street, northside of East 49th Street, 262.33’ west of First Avenue, Block 1342, Lot 12, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for a previously granted variance for a transient parking garage, which expired on June 14, 2011; and

WHEREAS, a public hearing was held on this application on September 27, 2011, after due notice by publication in *The City Record*, and then to decision on November 1, 2011; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, the subject premises is an irregularly shaped through lot with 80.6 feet of frontage on East 50th Street and 118.4 feet of frontage on East 49th Street, within an R8B zoning district; and

WHEREAS, the site is occupied by a 12-story (including penthouse) mixed-use community facility/residential building; and

WHEREAS, the cellar is occupied by a 51-space accessory garage; and

WHEREAS, on June 14, 1966, under the subject calendar number, the Board granted a variance pursuant to Section 60(3) of the Multiple Dwelling Law (“MDL”) to permit a maximum of 25 surplus parking spaces to be used for transient parking, for a term of 15 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on July 11, 2006, the Board

granted an extension of term, which expired on June 14, 2011; and

WHEREAS, the applicant now requests an additional extension of the term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents’ right to recapture the surplus parking spaces; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *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, 2011, to expire on June 14, 2021; *on condition* that all work shall substantially conform to drawings filed with this application and marked ‘Received July 8, 2011’-(1) sheet and ‘September 12, 2011’-(1) sheet; and *on further condition*:

THAT this term shall expire on June 14, 2021;

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 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,
November 1, 2011.

172-96-BZ

APPLICANT – Law Office of Mitchell Ross, for Don Mitchell, owner; D/B/A Mitchell Iron Works, lessee.

SUBJECT – Application June 29, 2011 – Extension of Time to obtain a Certificate of Occupancy for an existing (UG 16) welding shop which expired on May 17, 2010; Waiver of the Rules. C1-3/R6 zoning district.

PREMISES AFFECTED – 597/599 Marcy Avenue, southeast corner of March and Vernon Avenue, Block 1759, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES – None.

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, Commissioner Hinkson and Commissioner Montanez5
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 obtain a certificate of occupancy for a welding shop (Use Group 16A), which expired on May 17, 2010; and

WHEREAS, a public hearing was held on this application on July 19, 2011, after due notice by publication in *The City Record*, with continued hearings on July 25, 2011 and August 16, 2011, and then to decision on November 1, 2011; and

WHEREAS, the building and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the subject site is located on the southeast corner of the intersection of Marcy Avenue and Vernon Avenue, within a C1-3 (R6) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 11, 1999 when, under the subject calendar number, the Board permitted the legalization of the rear portion of the site for use as a welding shop for the fabrication and assembly of decorative window and door gates, including drilling, bolting, cutting, bending, and spot welding of iron bars and plates, to expire on May 11, 2009; and

WHEREAS, most recently, on November 17, 2009, the Board granted an extension of the term for an additional ten years; a condition of the grant was that a certificate of occupancy be obtained by May 17, 2010; and

WHEREAS, the applicant now requests an extension of time to obtain a certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time 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, as adopted on May 11, 1999, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy for one year, to expire on November 1, 2012, *on condition* that the use and operation of the site shall comply with the BSA-approved plans associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by November 1, 2012;

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.” (N.B. 100664372)

Adopted by the Board of Standards and Appeals, November 1, 2011.

269-98-BZ

APPLICANT – Mothiur Rahman, for Fordham Zone Realty LLC, owner.

SUBJECT – Application August 24, 2011 – Extension of Time to obtain a Certificate of Occupancy for a Variance (§72-21) for the construction of a two-story building with UG6 commercial use which expired on August 25, 2011. R8 zoning district.

PREMISES AFFECTED – 70 East 184th Street, Southwest corner of East 184th Street and Morris Avenue, Block 3183, Lot 42, Borough of 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
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 two-story commercial building; and

WHEREAS, a public hearing was held on this application on September 27, 2011, after due notice by publication in the *City Record*, and then to decision on November 1, 2011; and

WHEREAS, the site is located on the southwest corner of the intersection at East 184th Street and Morris Avenue, within an R8 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 11, 2000 when, under the subject calendar number, the Board granted a variance application to permit the construction of a two-story commercial building (Use Group 6) in an R8 zoning district; and

WHEREAS, subsequently, the Board has granted several extensions of time to complete construction; and

WHEREAS, most recently, on August 25, 2009, the Board granted an extension of time to complete construction, which expired on February 25, 2011; a condition of the grant was that a certificate of occupancy be obtained by August 25, 2011; and

WHEREAS, the applicant states that the construction was completed on the subject building in February 2010; and

WHEREAS, the applicant now requests a two year extension of time to obtain a certificate of occupancy; 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, dated January 11, 2000, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of

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occupancy for two years from the date of this resolution, to expire on November 1, 2013, *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; and *on further condition*:

THAT a Certificate of Occupancy shall be obtained by November 1, 2013;

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, November 1, 2011.

13-09-BZ

APPLICANT – Moshe M. Friedman, P.E. for Congregations Tehilos Yotzchok, owner.

SUBJECT – Application May 27, 2011 – Amendment to a previously approved variance (§72-21) to allow a synagogue contrary to Floor & Lot Coverage (§24-11), Front Yard (§24-34) and Side Yard (§24-35). R5 zoning district.

PREMISES AFFECTED – 5611 21st Street, East side 95’-8” North of intersection of 21st Avenue and 57th Street. Block 5495, Lot 430, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an amendment to a previously approved variance for the construction of a synagogue within an R5 zoning district; and

WHEREAS, a public hearing was held on this application on September 27, 2011, after due notice by publication in *The City Record*, and then to decision on November 1, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of 21st Avenue, 95’-8” east of 57th Street, within an R5 zoning district and has a lot area of 2,325 sq. ft.; and

WHEREAS, on August 18, 2009, under the subject calendar number, the Board granted a variance to permit the

construction of a synagogue contrary to front yard, side yard, and lot coverage regulations set forth at ZR §§ 24-34, 24-35, and 24-11; and

WHEREAS, the application is filed on behalf of Congregation Tehilos Yitzhok, a nonprofit religious institution; and

WHEREAS, the applicant now requests an amendment, which would allow (1) non-compliance for floor area with a proposed 5,140sq. ft. (the original proposal reflected 4,224 sq. ft. and 4,651 is the maximum permitted) and FAR of 2.21 (the original proposal reflected 1.82 and 2.0 is the maximum permitted); (2) encroachment into the sky exposure plane; (3) a lot coverage of 82 percent (the original proposal reflected 66 percent and 55 percent is the maximum permitted); (4) one side yard with a width of 3’-0” (the original proposal reflected two side yards with widths of 4’-0” and three side yards with depths of 8’-0” are required); and

WHEREAS, the applicant represents that the perimeter wall height of 35’-0” is reduced to 33’-0”, the front yard of 5’-0” remains, and that there is no parking requirement associated with the current proposal; and

WHEREAS, the applicant states that the requested amendment is driven by an increased size of the congregation which resides at and now worships within the adjacent residential development; and

WHEREAS, the applicant states that the anticipated congregation size is 125 members, which includes the projected increase in family size as well as anticipated new members; and

WHEREAS, the applicant states that the congregation’s members live within the neighborhood and must have a synagogue within walking distance of their homes; and

WHEREAS, based upon the above, the Board finds that the requested amendments to the variance 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 August 18, 2009, so that as amended this portion of the resolution shall read: “to permit the noted modifications to the approved plans; *on condition* that the use shall substantially conform to drawings as filed with this application, marked “Received October 27, 2011”– fourteen (14) 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. 302065011)

Adopted by the Board of Standards and Appeals, November 1, 2011.

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281-39-BZ

APPLICANT – Eric Palatnik, P.C., for 1599 Lexington Avenue Corporation, owner.

SUBJECT – Application May 3, 2011 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) with accessory uses which expired on May 18, 2009; Waiver of the Rules. C1/R7-2 zoning district.

PREMISES AFFECTED – 1605 Lexington Avenue, southeast corner of 102nd Street, Block 1629, Lot 150, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Trevis Savage

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 22, 2011, at 10 A.M., for decision, hearing closed.

88-81-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for JFAM Realty, owner.

SUBJECT – Application August 1, 2011 – Extension of Term of a variance (§72-21) which permitted the conversion of an existing two-story building from a dwelling and day care center to an office building which expired on July 21, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on June 18, 2003. R3-1 zoning district.

PREMISES AFFECTED – 3309 Richmond Avenue, 365' south of the intersection of Richmond Avenue and Gurley Avenue, Block 5533, Lot 20, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Todd Dale.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 22, 2011, at 10 A.M., for decision, hearing closed.

250-00-BZ

APPLICANT – Bryan Cave LLP, for New York University, owner.

SUBJECT – Application August 10, 2011 – Extension of term a variance (§11-411) to allow transient parking for 149 cars in an existing multiple dwelling accessory garage, and a minor amendment to permit parking on the access ramp. R7-2/C1-5 zoning district.

PREMISES AFFECTED – 521-541&553-563 LaGuardia

Place, block bounded by LaGuardia Place, West 3rd Street, Mercer Street and Bleecker Street. Block 533, Lot 1. Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Judith Gallant.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 22, 2011, at 10 A.M., for decision, hearing closed.

187-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation & Yeshiva Machzikei Hadas Inc., owner.

SUBJECT – Application July 18, 2011 – Amendment to a variance (§72-21) to allow a five-story school (*Congregation & Yeshiva Maschzikei Hadas*) to add a sub-cellar level, add additional floor area, increase in lot coverage and building heights, and additional interior changes. M1-2/R6B zoning district.

PREMISES AFFECTED – 1247 38th Street, north side of 38th Street, 240' west of 13th Avenue, lock 5295, Lots 52 & 56, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel, Council Member Brad Lander and Efrain Goldstein.

ACTION OF THE BOARD – Laid over to November 22, 2011, at 10 A.M., for continued hearing.

112-10-BZ

APPLICANT – Sheldon Lobel, P.C., for John Grant, owner.

SUBJECT – Application July 6, 2011 – Amendment to a Special Permit (§73-44) to permit the reduction in required parking with change of use from UG16 to UG6. M1-1 zoning district.

PREMISES AFFECTED – 915 Dean Street, north side of Dean Street between Classon and Grand Avenues, Block 1133, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Richard Lobel and Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to November 22, 2011, at 10 A.M., for decision, hearing closed.

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APPEALS CALENDAR

50-11-A

APPLICANT – Steven Bennett, Esq., for Premchand Parag and Vadewattie Parag, owners.

SUBJECT – Application April 15, 2011 – Appeal seeking a common law vested right to continue development under prior zoning (§23-541). R4-1 zoning district.

PREMISES AFFECTED – 134-07 87th Avenue, north side of 87th Avenue, 50' east of the corner formed by the intersection of 87th Avenue and 134th Street, Block 9630, Lot 11, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES – None.

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, this is an application for a Board determination that the owner of the premises has obtained the right to complete construction of a two-family home under the common law doctrine of vested rights; and

WHEREAS a public hearing was held on this application on September 27, 2011 after due notice by publication in *The City Record*, and then to decision on November 1, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, the site is located on the north side of 87th Avenue, 50 feet east of the corner formed by 87th Avenue and 134th Street, with a lot area of 5,000 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a two-story two-family home with a floor area of approximately 4,200 sq. ft. (0.84 FAR) and a rear yard with a depth of 23.67 feet (the “Home”), which is currently approximately 90 percent complete; and

WHEREAS, the subject site is located within an R4-1 zoning district; and

WHEREAS, on April 30, 2008 (the “Enactment Date”), the City Council voted to adopt the Yards Text Amendment, which modified certain yard regulations for residential developments; and

WHEREAS, specifically, the Yards Text Amendment changed the required rear yard depth for interior lots located within 100 feet of a corner in R4-1 zoning districts from zero feet to 30 feet; and

WHEREAS, the applicant states that the Home complied with the R4-1 zoning district parameters prior to the Enactment Date, specifically with regard to the rear yard depth of 23.67 feet; and

WHEREAS, however, the Home does not comply with the current R4-1 zoning district parameters, which require a rear yard with a minimum depth of 30 feet; and

WHEREAS, the Board observes that numerous cases establish that the requirement of a validly issued permit is a

fundamental requirement for a finding of common law vested rights, and no vesting may occur pursuant to an invalid permit (see e.g. Natchev v. Klein, 41 N.Y.2d 833 (1977); Jayne Estates v. Raynor, 22 N.Y.2d 417 (1968); Westbury Laundromat, Inc. v. Mammina, 879 N.Y.S.2d 188 (2d Dept. 2009); Vil. of Asharokan v. Pitassy, 119 A.D.2d 404 (2d Dept. 1986); Perrotta v. City of New York, Dept. of Bldgs., 486 N.Y.S.2d 941 (1st Dept. 1985); Reichenbach v. Windward at Southampton, 364 N.Y.S.2d 283 (Sup. Ct. 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 states that prior to the Enactment Date the Department of Buildings (“DOB”) approved Job Number 410073520 for the construction of the Home on April 16, 2008, and issued a Building Pavement Plan Permit (Permit No. 410097023) on April 22, 2008; and

WHEREAS, however, New Building Permit No. 410073520 (the “NB Permit”), authorizing construction of the Home, was erroneously issued on June 10, 2008, subsequent to the Enactment Date; and

WHEREAS, the Permit was invalid because it authorized work under the pre-Enactment Date zoning parameters; and

WHEREAS, on October 10, 2008, DOB filed a Notice of Audit Objections for the Permit, which included an objection regarding the non-complying rear yard depth; and

WHEREAS, on June 7, 2011, DOB issued a Notice of Intent to Revoke Approval and Permit based on the October 10, 2008 Objection Sheet; and

WHEREAS, on June 28, 2011, DOB revoked the approval and permit; and

WHEREAS, by letter dated July 28, 2011, DOB states that the NB Permit was issued in error after the adoption of the Yards Text Amendment on April 30, 2008, which modified regulations pertaining to yards and open space, and therefore the NB Permit was properly revoked; and

WHEREAS, the applicant states that construction of the Home commenced after the NB Permit was issued and is approximately 90 percent complete; and

WHEREAS, the applicant now requests that the Board find that the applicant has obtained a vested right to finish construction on the Home and obtain a certificate of occupancy under the pre-Enactment Date zoning parameters; and

WHEREAS, the applicant concedes that the NB Permit was issued subsequent to the Enactment Date and therefore all work on the Home was performed in the absence of valid permits; and

WHEREAS, however, the applicant makes the following arguments in support of its common law vested rights application: (1) the unique set of circumstances in this case require a “special facts” exception to the requirement that work be performed under a valid permit; (2) denying the vested rights application would constitute a denial of substantive due process and an unconstitutional taking of

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property; and (3) DOB had assumed a duty to notify the filing representative of the specific implications of the Yards Text Amendment on the subject site; and

WHEREAS, in support of the use of a “special facts” exception, the applicant cites Westbury Laundromat, Inc. v. Mammina, 879 N.Y.S.2d 188 (2d Dept. 2009), for the proposition that “[a] court will apply the zoning ordinance currently in existence at the time a decision is rendered unless ‘special facts’ are present to demonstrate that the municipality acted in bad faith and unduly delayed acting upon an application while the zoning law is being changed” (citing Matter of Greene v. Zoning Bd. of Appeals of Town of Islip, 25 A.D.3d 612); and

WHEREAS, the applicant acknowledges that DOB did not act in bad faith in the subject case, but requests that the Board employ the “special facts” exception because, due to the unique circumstances of the subject case, the general rule that vested rights cannot be acquired in reliance on an invalid permit would lead to an unfair result; and

WHEREAS, specifically, the applicant contends that the following constitute “special facts” in the subject case: (1) the plans were approved by a DOB plan examiner on April 16, 2008; (2) a sidewalk building pavement plan permit was issued on April 22, 2008; (3) there was a lack of notice regarding the passing of the Yards Text Amendment, as evidenced by the fact that neither the subject owner, engineer, nor the DOB plan examiners were aware of the text amendment when the permit was issued on June 10, 2008; (4) the owner constructed approximately 90 percent of the Home and expended approximately \$400,000 in furtherance of said construction following the issuance of the permit; and (5) the Home provides a rear yard with a depth of 23.67 feet, and the shortfall of 6.33 feet of the required depth of 30 feet is *de minimis*; and

WHEREAS, the Board notes that, regardless of whether the circumstances of the subject case are unique, the “special facts” exception propounded by the court in Mammina is limited to those facts which “demonstrate that the municipality acted in bad faith;” and

WHEREAS, as noted above, the applicant concedes that DOB did not act in bad faith; accordingly, the Board finds that the “special facts” exception is not applicable to the subject case; and

WHEREAS, the applicant further contends that the Board should make an exception to the requirement that work be performed pursuant to a valid permit because, pursuant to Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990), ZR § 11-331 did 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...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;” and

WHEREAS, the Board agrees that the common law doctrine provides a broader framework for the vested rights determination than the Zoning Resolution, however, as noted above, the relevant case law establishes that

construction pursuant to a valid permit remains a threshold requirement for the common law vested rights determination; and

WHEREAS, the Board notes that it is bound by the holdings of New York State courts, which have consistently found that vested rights cannot be acquired in reliance on an invalid permit (see e.g. Natchev v. Klein, 41 N.Y.2d 833 (1977); Jayne Estates v. Raynor, 22 N.Y.2d 417 (1968); Westbury Laundromat, Inc. v. Mammina, 879 N.Y.S.2d 188 (2d Dept. 2009); Vil. of Asharokan v. Pitassy, 119 A.D.2d 404 (2d Dept. 1986); Perrotta v. City of New York, Dept. of Bldgs., 486 N.Y.S.2d 941 (1st Dept. 1985); Reichenbach v. Windward at Southampton, 364 N.Y.S.2d 283 (Sup. Ct. 1975)); and

WHEREAS, specifically, in Natchev v. Klein, 41 N.Y.2d 833 (1977), the Court of Appeals upheld a Board determination affirming DOB’s revocation of a permit issued in error, stating that “[b]ecause the permit was invalidly issued there is no predicate for appellant’s assertion that vested rights have accrued to him in consequence of his construction;” and

WHEREAS, as to DOB’s revocation of the invalid permit, the Board notes the principle that government agencies, like DOB, maintain the ability to correct mistakes, such as the issuance of building permits (see Charles Field Delivery v. Roberts, 66 N.Y.2d 516 (1985) in which the court states that agencies are permitted to correct mistakes as long as such changes are rational and are explained), and that DOB may not be estopped from correcting an erroneous approval of a building permit (see Parkview Assoc. v. City of New York, 71 N.Y.2d 274, 282, cert. den., 488 U.S. 801 (1988)); and

WHEREAS, the applicant also argues that rejecting its vested rights claim would constitute a denial of substantive due process because the owner and its filing representatives lacked notice of the zoning change because they could not have been aware of it without an extraordinary level of effort to monitor numerous rules, regulations and Zoning Resolution changes in the City of New York; and

WHEREAS, specifically, the applicant claims that aside from the publication of a notice of hearing in the City Record, the only notice a landowner or its representative would have of a recent adverse zoning change in Queens is through monthly meetings convened by DOB to inform design professionals and builders about recent updates and zoning changes that may affect them; and

WHEREAS, the applicant submitted an affidavit from the engineer stating that he depended on the monthly meetings with DOB’s Queens Borough Office for notice about zoning changes, but that he was not notified of the subject Yards Text Amendment; and

WHEREAS, the Board observes that it is the burden of the owner and his or her filing representative to properly ascertain the applicable zoning regulations when applying to DOB for a permit; and

WHEREAS, the Board notes that a filing representative should be charged with constructive notice of the applicable zoning regulations, especially since a change

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in the zoning would likely have a substantive effect on a proposed development; and

WHEREAS, moreover, the Board finds that information regarding the zoning change for the subject site was readily available to the filing representative prior to issuance of the plan approval and the NB Permit; and

WHEREAS, specifically, the Board notes that an application to amend the Zoning Resolution was filed by the Department of City Planning (“DCP”) on September 14, 2007, and that in compliance with the notice provision in City Charter § 200(a)(1), on September 17, 2007 the proposed Yards Text Amendment was referred to all community boards, borough boards, and borough presidents for a 60 day review period; and

WHEREAS, subsequently, on March 24, 2008, CPC adopted the text amendment, published a report which explained the purpose and details of the text amendment, and filed the adopted resolution with the Office of the Speaker, City Council, and the Borough President; and

WHEREAS, the Board observes that DCP also maintains a website which provides information on all upcoming and recently passed text amendments and zoning changes; and

WHEREAS, accordingly, the Board finds that the owner and filing representative had constructive notice of the text amendment well before it was adopted on April 30, 2008, and that the failure to complete its own due diligence in preparing its application before DOB does not cure the invalidity of the permit nor allow the applicant to forego the requirement for a valid permit; and

WHEREAS, the applicant also contends that DOB’s voluntary undertaking of providing notice of recent zoning changes to landowners and design professionals at monthly meetings created in DOB a duty to inform the building community more explicitly of the subject zoning change, so that the engineer could have exercised more care in ascertaining the effect of the text amendment on the subject site; and

WHEREAS, as noted above, the City Charter sets forth a notification requirement for CPC regarding amendments to the Zoning Resolution, and the applicant has not provided any evidence indicating that CPC did not comply with these notification requirements in the context of the subject text amendment; and

WHEREAS, accordingly, the Board observes that CPC, and not DOB, is charged with providing notice of a text amendment, and the fact that DOB convened monthly meetings as a convenience to and for the benefit of the building community, neither indicates that DOB assumed the duty to notify nor relieves landowners and filing representatives of their duty to perform due diligence in preparing their application before DOB; and

WHEREAS, in addition to the above, the applicant also made arguments that the equities weigh in favor of the owner; and

WHEREAS, in sum and substance, the applicant points to the plan approval, the economic loss that the owner might suffer if vesting is denied, the *de minimis* nature of the

rear yard non-compliance, and the lack of harm that would result from vesting the project; and

WHEREAS, even presuming that each contention is accurate, the Board does not conclude that it must grant the instant application; and

WHEREAS, without a valid permit in place for the Home, the applicant was unauthorized to commence construction; and

WHEREAS, as noted above, the landowner and their filing representatives are charged with constructive knowledge of all changes in law that could affect his development, including zoning changes; and

WHEREAS, that the applicant made an error in not obtaining permits and commencing construction before the Enactment Date because of this due diligence failure is not a situation that must be remedied by the Board; and

WHEREAS, the Board notes that most, if not all vesting applications, if denied, result in a detriment to the owner, and the purported *de minimis* nature of the rear yard non-compliance has no bearing on the fundamental requirement that vesting must be predicated on a validly issued permit; and

WHEREAS, the Board acknowledges that the applicant has submitted evidence in support of its claim that construction of the Home is approximately 90 percent complete and that the owner has incurred approximately \$400,000 in expenditures made toward construction; and

WHEREAS, however, because the applicant did not have a valid permit authorizing construction of the Home, none of the work performed nor expenditures incurred can be counted towards the vested rights determination; 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 cannot accrue when the work was performed under an invalid permit; (2) DOB correctly determined that the NB Permit was invalid because it was issued after the Enactment Date and authorized work under the pre-Enactment Date zoning parameters; and (3) since none of the purported expenditures were incurred or work performed pursuant to a valid permit, the applicant has no vested right to continue construction on the Home; and

WHEREAS, since the Board disagrees with the applicant’s additional arguments, the instant application must be denied.

Therefore it is Resolved that this appeal made pursuant to the common law doctrine of vested rights, seeking to continue construction under New Building Application No. 410073520 is hereby denied.

Adopted by the Board of Standards and Appeals, November 1, 2011.

114-11-A
APPLICANT – Greenberg Traurig, LLP by Deirdre A. Carson, Esq., for Salanter Akiba Riverdale Academy, owner.

SUBJECT – Application August 10, 2011 – Proposed construction of stone wall, pier, curbs and related footings

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for an accessory parking area to SAR Academy to be located within the bed of the mapped street (West 245th), contrary to General City Law Section 35. R1-1/Riverdale SNAD zoning district.

PREMISES AFFECTED – 655 West 254th Street, north side of West 254th Street, between Palisade and Independence Avenues. Block 5947, Lot 1, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Randall Miner.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated August 8, 2011, acting on Department of Buildings Application No. 220123694, reads:

“Construction in the bed of mapped street requires BSA approval;” and

WHEREAS, this is an application under General City Law § 35, to permit the construction of a stone wall, stone pier, and curbing within the bed of a mapped street; and

WHEREAS, a public hearing was held on this application on October 18, 2011, after due notice by publication in the *City Record*, and then to decision on November 1, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the north side of West 254th Street between Palisades Avenue and Independence Avenue, in an R1-1 zoning district within the Riverdale Special Natural Area District; and

WHEREAS, the site has a total lot area of 202,392 sq. ft., and is occupied by the Salanter Akiba Riverdale Academy (the “School”); and

WHEREAS, the applicant states that the subject application will enable the School to reduce the opening into an existing parking area from 50 feet to 24 feet through the extension of an existing stone wall and the relocation of an existing stone pier, and to install curbing on the site for aesthetic and landscaping purposes; and

WHEREAS, by letter dated September 27, 2011, the Fire Department states that it has no objections to the subject proposal; and

WHEREAS, by letter dated September 9, 2011, the Department of Environmental Protection (“DEP”) requests that the applicant submit a survey/plan which provides (1) the width of the mapped portion of West 254th Street, and the width of the widening portion of the street between Independence Avenue and Palisades Avenue; (2) the distances between the southerly lot line of Lot 1 and the 36-inch/48-inch diameter combined sewer, the 12-inch diameter existing City water main and the eight-inch diameter existing City water main; and (3) a

33-ft. wide sewer easement for the ten-inch diameter existing force main and for a future 30-inch diameter combined sewer crossing the property; and

WHEREAS, in response, the applicant submitted a site plan as requested by DEP, however, the applicant requests that the Board not require that the School provide the 33-ft. wide easement requested by DEP; and

WHEREAS, the applicant states that the requested DEP easement has no nexus to the proposed construction, as the construction would not interfere with any existing or proposed sewer or water lines; and

WHEREAS, specifically, the applicant states that the proposed construction would be 40 feet from the centerline of the existing 36-inch/48-inch diameter combined sewer, 26 feet from the centerline of the existing 12-inch diameter water main and 28 feet from the centerline of the existing eight-inch diameter water main, and that the distance between the proposed construction and the easement requested by DEP is even greater; and

WHEREAS, the Board agrees with the applicant that the proposed construction would not interfere with any existing or proposed sewer or water lines, and therefore the easement requested by DEP has no nexus to the proposed construction; and

WHEREAS, by letter dated October 4, 2011, the Department of Transportation (“DOT”) states that it requires the applicant to install a sidewalk on the north side of West 254th Street between Palisades Avenue and Independence Avenue with a minimum width of five feet, to provide safe and adequate accessibility to and from the School; and

WHEREAS, in response, the applicant states that the proposed construction does not generate a need for a sidewalk, and therefore requests that the Board not require the installation of the sidewalk requested by DOT; and

WHEREAS, the applicant states that DOT’s request would necessitate the installation of a sidewalk along the entire West 254th Street frontage (approximately 650 feet), that the proposed construction is part of a project to increase the amount of on-campus parking at the School, and that there is no proposed increase in the number of students enrolled in or the number of faculty and staff employed by the School; and

WHEREAS, accordingly, the applicant states that the proposed construction will have the effect of reducing the number of people who walk to the School’s campus, and therefore the requested sidewalk has no nexus to the proposed construction, which actually contributes to reducing the need for such a sidewalk; and

WHEREAS, the applicant also submitted drawings which show the existing internal sidewalk system within the School’s campus; and

WHEREAS, the Board agrees with the applicant that there is no nexus between the proposed construction and DOT’s request that a sidewalk be installed along the entire West 254th Street frontage; and

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

Therefore it is Resolved that the decision of the Bronx

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Borough Commissioner, dated August 8, 2011, acting on Department of Buildings Application No. 220123694, 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 10, 2011"– (3) 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 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 review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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 1, 2011.

98-11-A

APPLICANT – Goldman Harris, LLC, for Bay People Inc., for Alloway Ahmed, owner.

SUBJECT – Application July 7, 2011 – Appeal Challenging Department of Buildings’ determination that accessory off-street parking under ZR §25-31 is not required. R4 Zoning District.

PREMISES AFFECTED – 2812-2814 Voorhies Avenue, south side of Voorhies Avenue between East 28th and East 29th Streets, Block 8791, Lots 5, 6 (tent 106), Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Howard Goldman.

For Opposition: Lisa M. Orrantia, Department of Buildings and Lamis Deek.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to November 22, 2011, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING TUESDAY AFTERNOON, NOVEMBER 1, 2011 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

221-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Chris Xu, owner.
SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the development of a transient hotel, contrary to district use regulations. M2-1 zoning district.

PREMISES AFFECTED – 34-08 Collins Place, north side of Collins Place, 34th Avenue, College Point Boulevard and 35th Avenue, Block 4945, Lot 34, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

Adopted by the Board of Standards and Appeal, November 1, 2011.

235-10-BZ

CEQR #11-BSA-047K

APPLICANT – Paul J. Proulux, Esq., c/o Cozen O’Connor, for Avenue K Corporation, owner; TD Bank c/o Facilities Department, lessees.

SUBJECT – Application December 30, 2010 – Variance (§72-21) to allow a commercial use in a residential zone, contrary to use regulations (§22-00). R3-2 zoning district.

PREMISES AFFECTED – 2363 Ralph Avenue, corner of Ralph Avenue and Avenue K, Block 8339, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Howard Hornstein.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 3, 2010, acting on Department of Buildings Application No. 320238694, reads in pertinent part:

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“Proposed bank, Use Group 6, not permitted in R3-2 district. Refer to Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-2 zoning district, the construction of a one-story bank (Use Group 6) with 20 accessory parking spaces, which does not conform to district use regulations, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on August 23, 2011 after due notice by publication in *The City Record*, with a continued hearing on September 27, 2011, and then to decision on November 1, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on a triangular-shaped lot bounded by Ralph Avenue to the west and Avenue K to the east, within an R3-2 zoning district; and

WHEREAS, the site has approximately 190'-6" of frontage on Ralph Avenue and 223'-5" of frontage on Avenue K, with a total lot area of 18,899 sq. ft.; and

WHEREAS, the site is currently occupied by a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1960 when, under BSA Cal. No. 546-59-BZ, the Board granted a variance to permit the construction of a gasoline service station with accessory uses on the site; and

WHEREAS, on July 11, 1967, under BSA Cal. No. 135-67-BZ, the Board granted an enlargement in the lot area of the site and the rearrangement of the gasoline service station, for a term of ten years; and

WHEREAS, subsequently, the grant was amended and the term extended on various occasions; and

WHEREAS, on December 22, 1998, the Board granted an extension of term, which expired on October 11, 2007; and

WHEREAS, the applicant now proposes to construct a one-story commercial building on the site, to be occupied by a bank (Use Group 6), with a total floor area of 2,560 sq. ft. (0.14 FAR), and with 20 accessory parking spaces; and

WHEREAS, because the prior variance has expired and commercial use is not permitted in the subject R3-2 zoning district, the applicant seeks a use variance to permit the proposed Use Group 6 use; 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 development: (1) the irregular shape of the subject lot; (2) the impact of a sewer easement on the site; and (3) the contamination of the soil on the site; and

WHEREAS, as to the site's irregular shape, the applicant states that due to the irregularity of the street grid, the subject site is an irregular, triangularly-shaped lot which is unsuitable for complying residential use; and

WHEREAS, the applicant states that the site is further constrained by the presence of a permanent sewer easement for

the benefit of the Department of Environmental Protection (“DEP” and the “DEP Easement”) on a portion of the site; and

WHEREAS, the applicant further states that, to protect DEP infrastructure that sits below grade, DEP has instituted an absolute prohibition on new building structures within the easement area; and

WHEREAS, the applicant submitted a survey reflecting that the DEP Easement is adjacent to Ralph Avenue between Avenue K and Bergen Avenue, and that it comprises the first 60 feet of the site's Ralph Avenue frontage; and

WHEREAS, the applicant notes that the DEP Easement occupies approximately 9,965 sq. ft. of the site's total lot area of 18,899 sq. ft., such that more than half (53 percent) of the total lot area on the site is prohibited from being developed; and

WHEREAS, the applicant represents that, together with the yards required under the R3-2 zoning district regulations, the DEP Easement reduces the developable area for a complying development on the subject site to 6,370 sq. ft.; and

WHEREAS, the applicant further represents that, although the next two easterly block fronts north of the site also have irregular angles along the Ralph Avenue frontage and are burdened by the DEP Easement, the subject site is uniquely burdened by the combination of its irregular shape and the DEP Easement on the site; and

WHEREAS, specifically, the applicant states that both of the blocks to the north of the site are comprised of single zoning lots that encompass the balance of the block, and are therefore much larger than the subject site, and both of the zoning lots have already been improved with large residential developments fronting the side streets, such that the easement area provides yards and open space for the residential developments; and

WHEREAS, the applicant further states that unlike the nearby zoning lots, the unique shape of the subject site and the DEP Easement combine to artificially limit the amount of developable square footage that the lot can be used for, such that it is impossible to fit all of the permitted floor area into a zoning compliant building; and

WHEREAS, specifically, the applicant states that although the subject R3-2 zoning district allows for a community facility FAR of 1.0 to be combined with a residential FAR of 0.6 to create an as-of-right mixed-use building with an FAR of 1.6, the maximum FAR that can be utilized on the subject site is 0.75 because the awkward shape of the zoning lot restricts the number of required parking spaces that can be provided; and

WHEREAS, the applicant also states that the site is subject to unique clean up obligations to address the type of soil remediation necessary for redevelopment; and

WHEREAS, specifically, the applicant states that the site has been occupied by a gasoline service station since 1960, and that a Phase II Site Investigation identified gasoline-related VOC contamination and select SVOC constituents at concentrations exceeding Department of Environmental Conservation standards; and

WHEREAS, the applicant submitted a report from an environmental consultant which estimates that the costs related

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to the management of the impacted soil and remedial oversight is approximately \$253,000; and

WHEREAS, the applicant notes that aside from the specific non-hazardous petroleum contamination on the site, the cost estimate also addresses the cost of dealing with the other municipal solid waste landfill, which may be contaminated; and

WHEREAS, the applicant represents that before 1960 the site was undeveloped and was used to deposit municipal solid waste landfill; and

WHEREAS, as evidence of the site's former landfill use, the applicant submitted a landfill report which notes that sites in close proximity to large surface-water bodies, such as the subject site, are prone to lateral transport of leachate; and

WHEREAS, the applicant states that, since it is impossible to select out the fill that is contaminated from the fill that is not, the whole site must be out-loaded, characterized, transported, disposed of, and then replaced with clean fill; 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 submitted a feasibility study which analyzed: (1) a conforming scenario consisting of a three-story mixed-use residential/community facility building with a 4,700 sq. ft. medical facility use on the first floor and two 4,700 sq. ft. stories of residential above; (2) an alternative conforming scenario consisting of a three-story 11,200 sq. ft. residential building; and (3) the proposed one-story commercial building occupied by a bank (Use Group 6); and

WHEREAS, the study concluded that the conforming scenarios would not result in a reasonable return, but that the proposed building would realize 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 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 represents that the surrounding area is occupied by a mix of residential, commercial, and community facility uses; and

WHEREAS, the applicant states that the subject site shares the block with a 25,000 sq. ft. medical facility which fronts three sides of the triangular-shaped block; and

WHEREAS, the applicant submitted a 400-ft. radius diagram and photographs of surrounding uses, reflecting that the area immediately surrounding the site consists of a significant commercial presence; and

WHEREAS, the applicant states that the subject site is located on the northeast corner of the intersection of Ralph Avenue and Avenue K, and both southerly corners of the intersection are occupied by commercial uses, including a bank

on the southwest corner; and

WHEREAS, the applicant notes that there are commercial overlays to the south and southwest of the site, which permit a range of retail options, including a plaza on the west side of Ralph Avenue and the Georgetown mall directly south of the site on the east side of Ralph Avenue; and

WHEREAS, the applicant notes a commercial overlay and manufacturing and commercial uses are also located a block north of the site, which permit a range of commercial uses as well; and

WHEREAS, the applicant further notes that the proposed variance would allow a bank (Use Group 6) to replace an existing gasoline service station (Use Group 16), and would therefore serve to bring the site closer to conformity with the subject R3-2 zoning district; and

WHEREAS, the applicant represents that a bank is a relatively benign use, as its hours would be during the day with shortened hours on the weekend, the site would be landscaped and well maintained, and it would aesthetically be a significant improvement over the uses which have existed at the site for more than 50 years; and

WHEREAS, as to bulk, the applicant states that he proposed one-story building has a floor area of 2,560 sq. ft. (0.14 FAR), which is considerably below the maximum density for the subject zoning lot, and will comply with all commercial bulk regulations; and

WHEREAS, the applicant further states that the proposed bank will comply with C1 district signage regulations and will provide 20 parking spaces, which is significantly more than the required ten spaces; 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 site's unique physical conditions; and

WHEREAS, 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 6 NYCRR, Part 617.2; 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. 11-BSA-047K dated September 2010; 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

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Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, DEP's Bureau of Environmental Planning and Analysis has reviewed the project for potential hazardous materials; and

WHEREAS, DEP accepts the June 2011 Remedial Action Plan and the May 2011 Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; 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 R3-2 zoning district, the construction of a one-story bank (Use Group 6) with 20 accessory parking spaces, which does not conform to district use regulations, contrary to ZR § 22-10; *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 13, 2011" – seven (7) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 2,560 sq. ft. (0.14 FAR); and 20 accessory parking spaces, as indicated on the BSA-approved plans;

THAT signage on the site shall comply with C1 district regulations;

THAT prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance for the proposed project, the applicant or successor shall obtain from DEP a Notice to Proceed;

THAT prior to the issuance by DOB of a temporary or permanent Certificate of Occupancy, the applicant or successor shall obtain from DEP a Notice of Satisfaction;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT 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 1, 2011.

17-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. David Mizrachi, owners.

SUBJECT – Application February 23, 2011 – Special Permit (§73-622) for the enlargement of an existing two family residence, to be converted to a single family residence, contrary to floor area, lot coverage and open space (§23-141(b)) and rear yard (§23-47) regulations. R4/OP zoning district.

PREMISES AFFECTED – 2255 East 2nd Street, East side of East 2nd Street, approximately 145 feet south of Gravesend Neck Road. Block 7154, Lots 71 & 72, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 5, 2011, acting on Department of Buildings Application No. 320256156, reads:

ZR 23-141(b) – Proposed floor area exceeds permitted one.

ZR 23-141(b) – Proposed lot coverage exceeds permitted one.

ZR 23-141 – Proposed open space is less than required one.

ZR 23-47 – Proposed rear yard is less than required one; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R4 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, open space, and rear yard contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on August 23, 2011, after due notice by publication in *The City Record*, with a continued hearing on September 27, 2011, and then to decision on November 1, 2011 and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

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

WHEREAS, the subject site is located on the east side of East 2nd Street, south of Gravesend Neck Road, within an R4 zoning district; and

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WHEREAS, the subject site has a total lot area of 6,000 sq. ft., Lot 72 is occupied by a two-family home with a floor area of 2,725 sq. ft. (0.45 FAR), and the adjacent Lot 71 is vacant; 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 2,725 sq. ft. (0.45 FAR) to 7,340 sq. ft. (1.22 FAR) for a three-story single-family home; the maximum permitted floor area is 4,500 sq. ft. (0.75 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of 49 percent (45 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide an open space of 51 percent (55 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a rear yard with a depth of 20'-0" (a rear yard with a minimum depth of 30'-0" is required); and

WHEREAS, the applicant performed a survey which reflected that there are 190 homes out of 657 homes within a 1,000-ft. radius of the site that have an FAR in excess of the proposed 1.22; and

WHEREAS, the applicant notes that a block like the subject block entirely within an R4 zoning district may be eligible for the predominantly built-up regulations, which include an increased floor area of 1.35 FAR as-of-right, but because the existing front yard of 15'-4" does not satisfy the minimum depth of 18'-0", the predominantly built-up area regulations cannot be applied to the subject site, thus the floor area request is required; and

WHEREAS, at the Board's direction, the applicant provided a plan sheet which clearly notes which portions of the home will remain; and

WHEREAS, based upon its review of the record, 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, within an R4 zoning district, the proposed enlargement of a single-family home, which

does not comply with the zoning requirements for floor area, lot coverage, 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 21, 2011"-(10) sheets, "September 14, 2011"-(2) sheets and "October 19, 2011"-(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 7,340 sq. ft. (1.22 FAR); a lot coverage of 49 percent; an open space of 51 percent; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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;

THAT substantial construction be completed in accordance with ZR §73-70; and

THAT the Department of Buildings must 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 1, 2011.

2-11-BZ

APPLICANT – Cozen O'Connor, for 117 Seventh Avenue South Property Company, LP, owner.

SUBJECT – Application January 4, 2011 – Variance (§72-21) to allow for a residential and community facility enlargement to an existing commercial building, contrary to setback (§33-432) and open space regulations (§23-14). C4-5 zoning district.

PREMISES AFFECTED – 117 Seventh Avenue South, southeast corner of Seventh Avenue South and West 10th Street, Block 610, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Howard Hornstein and Jack Freeman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to November 22, 2011, at 1:30 P.M., for decision, hearing closed.

MINUTES

21-11-BZ

APPLICANT – Eric Palatnik, P.C., for 1810-12 Voorhies Avenue, LLC, owner.

SUBJECT – Application February 28, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory or diagnostic treatment facility. C1-2/R4 zoning district.

PREMISES AFFECTED – 1810 Voorhies Avenue, south side of Voorhies Avenue, between East 19th Street and Sheepshead Bay Road, Block 8772, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January 24, 2012, at 1:30 P.M., for adjourned hearing.

67-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Joseph Kleinman, owner.

SUBJECT – Application May 13, 2011 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to floor area and open space (§23-141) side yard and (§23-47) rear yard. R-2 zoning district.

PREMISES AFFECTED – 1430 East 29th Street, West side of 29th Street between Avenue N and Kings Highway. Block 7682, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Jordan Most and Tom Winter.

ACTION OF THE BOARD – Laid over to November 22, 2011, at 1:30 P.M., for continued hearing.

73-11-BZ

APPLICANT – Rampulla Associates Architects, for Tora Development, LLC, owners.

SUBJECT – Application May 26, 2011 – Variance (§72-21) to allow a three-story, 87-unit residential building, contrary to use regulations of (§32-11), height (§23-631) and parking (§25-23) regulations. C3A/SRD zoning district.

PREMISES AFFECTED – 70 Tennyson Drive, north side Tennyson Drive, between Nelson Avenue and Cleveland Avenue, Block 5212, Lot 70, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Phillip L. Rampulla and Rebecca Pythosh.

For Opposition: Christine Colella and Andrew Poznarski.

ACTION OF THE BOARD – Laid over to December 6, 2011, at 1:30 P.M., for continued hearing.

74-11-BZ

APPLICANT – James Chin & Associates, LLC, for 1058 Forest Avenue Associates, owners.

SUBJECT – Application May 25, 2011 – Variance (§72-21) to allow the conversion of a community facility building for

office use, contrary to use regulations. R3-2 & R-2 zoning district.

PREMISES AFFECTED – 1058 Forest Avenue, southeast intersection of Forest Avenue and Manor Road in West Brighton, Block 315, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Mindy Chin, James Chin and Rebecca Pythosh.

ACTION OF THE BOARD – Laid over to December 6, 2011, at 1:30 P.M., for continued hearing.

89-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Annie and Kfir Ribak, owners.

SUBJECT – Application June 23, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461) and perimeter wall height (§23-631). R3-2 zoning district.

PREMISES AFFECTED – 2224 Avenue S, south west corner of Avenue S and East 23rd Street, Block 7301, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to November 22, 2011, at 1:30 P.M., for continued hearing.

115-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Thomas Schick, owner.

SUBJECT – Application August 15, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1110 East 22nd Street, between Avenue J and Avenue K, Block 7603, Lot 62, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 6, 2011, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

MINUTES

*CORRECTION

This resolution adopted on January 13, 2004, under Calendar No. 191-03-A and printed in Volume 89, Bulletin No. 4, is hereby corrected to read as follows:

191-03-A

APPLICANT – Sheldon Lobel, P.C., for Satya Sanatan Dharma Sabha, Inc., owner.

SUBJECT – Application June 9, 2003 – The legalization to permit the conversion of a portion of a two-story building to a temple and to permit an enlargement to the building of Class 2D construction, located within the Fire District, is contrary to §27-301 and §27-305 of the New City Administrative Code.

PREMISES AFFECTED – 87-48 215th Place, corner of Hillside Avenue, Block 10682, Lot 45, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAWN –

Affirmative: Chairman Chin, Vice-Chair Babbar, Commissioner Caliendo and Commissioner Miele.....4

Negative:.....0

Adopted by the Board of Standards and Appeals, January 13, 2004.

***The resolution has been revised to correct the ACTION OF THE BOARD which read:** “Application granted on condition.” **now reads:** “*Application withdrawn.*” **Corrected in Bulletin No. 45, Vol. 96, dated November 10, 2011.**

BULLETIN

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November 23, 2011

DIRECTORY

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Tuesday, November 15, 2011**

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17-99-BZ	1736 Leif Ericson Drive, Brooklyn
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789-45-BZ	56-02/56-20 Broadway, Queens
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188-96-BZ	444 Soundview Avenue, Bronx
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90-11-BZ & 91-11-BZ	23 & 25 Windom Avenue, Staten Island
94-11-BZ	149-06 Northern Boulevard, Queens
101-11-BZ	1152 East 24 th Street, Brooklyn
106-11-BZ	27-28 Thomson Avenue, Queens
123-11-BZ	350 Amsterdam Avenue, Manhattan
124-11-BZ	2488 Grand Concourse, Bronx

DOCKET

New Case Filed Up to November 15, 2011

172-11-A

119-43 197th Street, 413.81' south of intersection of east side of 197th Street and south side of 119th Avenue., Block 12653, Lot(s) 42, Borough of **Queens, Community Board: 12**. Appeal seeking determination that the owner of the premises has acquired a common law vested rights to complete construction under the prior R3-2 zoning . R3A zoning district . R3A district.

173-11-A

68-10 58th Avenue, south side of 58th Avenue, 80' east of intersection of 58th Avenue and Brown Place., Block 2777, Lot(s) 11, Borough of **Queens, Community Board: 5**. Appeal seeking determination that the owner of the premises has acquired a common law vested rights to complete construction under the prior R4 zoning . R4-1 Zoning district . R4-1 district.

174-11-BZ

145-15 33rd Avenue, north side of 33rd Avenue approximately 400' east of Parsons Boulevard., Block 4789, Lot(s) 81, Borough of **Queens, Community Board: 7**. Variance (§72-21) to permit a new 23,097sf chapel for Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-day Saints. The variances include (i) a variance from §24-111 to allow an FAR of 0.95, where 0.5 is permitted, (ii) a variance from §24-33 to allow side yard and rear obstructions consisting of a landscaped deck over a below-grade parking garage, and (iii) a variance from §25-635 to allow a driveway in the front yard with a slope of 13.5%, where 11% is permitted. R2A district.

175-11-BZ

550 West 54th Street, bounded by 11th Avenue, West 54th Street, 10th Avenue and West 53rd Street., Block 1082, Lot(s) 1, Borough of **Manhattan, Community Board: 9**. Special Permit (§73-36) 73-36 to permit the operation of a physical culture establishment. C6-3X district.

176-11-BZ

150 Norfolk Street, between Oriental and Shore Boulevard, Block 8756, Lot(s) 19, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing single family home contrary to lot coverage and floor area (§23-141(b)); side yards (§23-461(a)) and less than the required rear yard (§23-47). R3-1 zoning district. R3-1 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

DECEMBER 6, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 6, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

321-63-BZ

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for Verizon New York, Inc., owner; 1775 Grand Concourse LLC, lessee.

SUBJECT – Application October 13, 2011 – Amendment of a previously approved special permit (§73-65) which permitted the construction of an 8-story enlargement of a telephone exchange building. The Amendment seeks to permit portions of the building to be used for uses in Use Groups 6A, 6B and 6C pursuant to §122-10 of the zoning resolution. R8/Special Grand Concourse Preservation District.

PREMISES AFFECTED – 1775 Grand Concourse, west side of the Grand Concourse at the southeast intersection of Walton Avenue and East 175th Street, Block 282, Lot 1001-1004, Borough of Bronx.

COMMUNITY BOARD #5BX

271-71-BZ

APPLICANT – Sheldon Lobel, P.C., for Plaza 400 Owners Corp., owner

SUBJECT – Application October 11, 2011 – Extension of Term for the continued use of transient parking in a residential apartment building which expired on July 6, 2011; waiver of the rules. R10/C1-5 zoning district.

PREMISES AFFECTED – 400 East 56th Street, corner of First Avenue, Block 1367, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

255-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Full Gospel New York Church, owner.

SUBJECT – Application August 12, 2011 – This application seeks to amend the previously granted variance to permit a change of use on the 2nd and 3rd floors of the existing building at the premises from UG4 house of worship to UG3 school.

PREMISES AFFECTED – 130-30 31st Avenue, north side of 31st Avenue, between College Point Boulevard and Whitestone Expressway, block 4360, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

302-01-BZ

APPLICANT – Deirdre A. Carson, Esq., for Creston Avenue Realty, LLC, owner.

SUBJECT – Application October 12, 2011 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance for the continued use of a parking facility accessory to commercial use which expired on April 23, 2033; waiver of the rules. R-8 zoning district.

PREMISES AFFECTED – 2519-2525 Creston Avenue, between East 190th and 191st Streets, Block 3175, Lot 26, Borough of Bronx.

COMMUNITY BOARD #7BX

8-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Adel Kassim, owner.

SUBJECT – Application January 21, 2010 – Dismissal for Lack of Prosecution – Variance (§72-21) to allow the legalization of an existing supermarket, contrary to use regulations, ZR §22-00. R4 zoning district.

PREMISES AFFECTED – 58-14 Beach Channel Drive, northeast corner of the intersection of Beach 59th Street and Beach Channel Drive, Block 16004, Lot 96, Borough of Queens.

COMMUNITY BOARD #14Q

155-10-BZ

APPLICANT – Sive, Paget & Riesel, P.C., for Wayne Hatami, owner.

SUBJECT – Application August 25, 2010 – Dismissal for Lack of Prosecution – Variance (§72-21) to allow for a conversion and enlargement of an existing residential building for community facility use, contrary to side yard (§24-35), front yard (§24-34) and lot coverage (§23-141) regulations. R3-1 zoning district.

PREMISES AFFECTED – 149-61 Willets Point Boulevard, corner parcel bound by Willets Point Boulevard, 150th Street and 24th Avenue, Block 4675, Lot 34, Borough of Queens.

COMMUNITY BOARD #7Q

APPEALS CALENDAR

125-11-A

APPLICANT – Law Offices of Marvin B. Mitzner for 514-516 E. 6th Street, LLC, owner.

SUBJECT – Application August 25, 2011 – Appeal challenging Department of Buildings determination denying the reinstatement of permits that allowed the enlargement to the existing building. R7B zoning district.

PREMISES AFFECTED – 514-516 East 6th Street, south side of East 6th Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.

COMMUNITY BOARD #3M

CALENDAR

DECEMBER 6, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 6, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

42-11-BZ

APPLICANT – Eric Palatnik, P.C., for Winden LLC, owner.

SUBJECT – Application April 12, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory or diagnostic treatment facility and for office uses. C4-2 zoning district.

PREMISES AFFECTED – 135-11 40th Road, between Prince and Main Streets, Block 5036, Lot 55, Borough of Queens.

COMMUNITY BOARD #7Q

96-11-BZ

APPLICANT – Law Office of Marvin B. Mitzner, for 514-516 East 6th Street, owners.

SUBJECT – Application June 30, 2011 – Variance (§72-21) to legalize existing residential building contrary to floor area (ZR §23-145) and dwelling units (ZR §23-22). R7B zoning district.

PREMISES AFFECTED – 514-516 East 6th Street, south side of east 6th Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.

COMMUNITY BOARD #3M

105-11-BZ

APPLICANT – Slater & Beckerman, LLP, for 147 Remsen Street Associates, LLC, owner; Team Wellness Corp., lessee.

SUBJECT – Application July 27, 2011 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Massage Spa Envy*). C5-2A (Special Downtown Brooklyn District) zoning district.

PREMISES AFFECTED – 147 Remsen Street, north side of Remsen Street, between Clinton Street and Court Street, block 250, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #2BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, NOVEMBER 15, 2011 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

727-59-BZ

APPLICANT – Sheldon Lobel, P.C., for Square-Arch Realty Corp., owner.

SUBJECT – Application August 11, 2011 – Extension of Term (§11-411) for transient parking in a multiple dwelling building which expired on July 12, 2011. R10/R6 zoning district.

PREMISES AFFECTED – 2 Fifth Avenue, corner through lot fronting on Fifth Avenue, Washington Square North and West 8th Street. Block 551, Lot 1. Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Elizabeth Bennett.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of the term of a previously granted variance for a transient parking garage, which expired on June 14, 2011; and

WHEREAS, a public hearing was held on this application on October 18, 2011, after due notice by publication in *The City Record*, and then to decision on November 15, 2011; and

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

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the west side of Fifth Avenue, between West 8th Street and Washington Square North, partially within an R10 zoning district and partially within an R6 zoning district; and

WHEREAS, the site is occupied by a 20-story (including penthouse) mixed-use commercial/residential building; and

WHEREAS, the cellar and first floor are occupied by a 146-space accessory garage, with 73 spaces located in the cellar and 73 spaces located on the first floor; and

WHEREAS, on July 12, 1960, under the subject calendar

number, the Board granted a variance to permit a maximum of 15 surplus parking spaces to be used for transient parking for a term of 21 years; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on January 15, 2002, the Board granted a ten-year extension of term, which expired on July 12, 2011; and

WHEREAS, the applicant now requests an additional extension of term; and

WHEREAS, the applicant submitted a photograph of the sign posted onsite, which states building residents' right to recapture the surplus parking spaces; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution having been adopted on July 12, 1960, 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 July 12, 2011, to expire on July 12, 2021; *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 11, 2011" –(2) sheets; and *on further condition*:

THAT this term shall expire on July 12, 2021;

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 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. 905/59)

Adopted by the Board of Standards and Appeals, November 15, 2011.

MINUTES

118-95-BZ

APPLICANT – Carl A. Sulfaro, for White Castle System, Incorporated, owner.

SUBJECT – Application April 11, 2011 – Extension of Term of a previously granted Special Permit (§73-243) for the continued operation of a drive-thru facility at an eating and drinking establishment (*White Castle*) which expires on July 25, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on May 22, 2008; Waiver of the rules. C1-2/R6 zoning district.

PREMISES AFFECTED – 89-03 57th Avenue, southeast corner of Queens Boulevard and 57th Avenue, Block 1845, Lot 45, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Application: Steven Sulfaro.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of term, and an extension of time to obtain a certificate of occupancy for a previously granted variance for a drive-through facility accessory to an existing eating and drinking establishment; and

WHEREAS, a public hearing was held on this application on June 14, 2011, after due notice by publication in *The City Record*, with continued hearings on July 26, 2011, September 13, 2011 and October 25, 2011, and then to decision on November 15, 2011; and

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

WHEREAS, the site is located on the northeast corner of Queens Boulevard and 57th Avenue, within a C1-2 (R7B) zoning district; and

WHEREAS, the site is occupied by an eating and drinking establishment with an accessory drive-through; and

WHEREAS, the site is operated as a White Castle restaurant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 23, 1996 when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-243, to permit the construction of a drive-through to be accessory to an existing eating and drinking establishment, for a period of five years; and

WHEREAS, on December 11, 2001, the Board granted a five-year extension of the term; and

WHEREAS, most recently, on May 22, 2007, the Board granted a five-year extension of the term, to expire on July 25, 2011, and an extension of time to obtain a certificate of occupancy, to expire on May 22, 2008; and

WHEREAS, the applicant now seeks an additional extension of the term and an extension of time to obtain a

certificate of occupancy; and

WHEREAS, at hearing, the Board questioned whether the signage on the site complied with C1 district signage regulations; and

WHEREAS, in response, the applicant removed excessive signage from the site and submitted revised signage calculations reflecting that the site is now in compliance with C1 district regulations; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and extension of time to obtain a certificate of occupancy 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, *reopens*, and *amends* the resolution, dated July 23, 1996, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for a period of five years from July 25, 2011, to expire on July 25, 2016, and to grant a one-year extension of time to obtain a certificate of occupancy, to expire on November 15, 2012; *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 17, 2011”–(3) sheets; and *on further condition*:

THAT this grant shall expire on July 25, 2016;

THAT all signage on the site shall comply with C1 district regulations;

THAT the above conditions shall be set forth in the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by November 15, 2012;

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 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. 402469208)

Adopted by the Board of Standards and Appeals, November 15, 2011.

17-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Cropsey and Mitchell, owners; TSI Brooklyn Belt LLC dba New York Sports Club, lessee.

SUBJECT – Application July 21, 2011 – Extension of Term of a Special Permit (§73-36) for the continued operation of a Physical Culture Establishment (*New York Sports Club*), on portions of the first floor and second floor of the subject

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premises, which expired on December 29, 2008; Waiver of the Rules. M3-1 zoning district.

PREMISES AFFECTED – 1736 Leif Ericson Drive, west side of Leif Ericson Drive, south of Bay Parkway, block 6419, Lot 198, Borough of Brooklyn.

COMMUNITY BOARD #11BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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 previously granted special permit for a physical culture establishment (“PCE”), which expired on December 28, 2008; and

WHEREAS, a public hearing was held on this application on October 25, 2011, after due notice by publication in *The City Record*, and then to decision on November 15, 2011; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application; and

WHEREAS, the PCE is located on the west side of Leif Ericson Drive, south of Bay Parkway, within an M3-1 zoning district; and

WHEREAS, the PCE occupies a total of 40,067 sq. ft. of floor area in portions of the first floor and second floor of a two-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 9, 1999 when, under the subject calendar number, the Board granted a special permit for a PCE in the subject building for a term of ten years, to expire on December 28, 2008; and

WHEREAS, the applicant now seeks to extend the term of the special permit for an additional ten years; and

WHEREAS, based upon its review of the record, the Board finds 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, as adopted on November 9, 1999, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from December 28, 2008, to expire on December 28, 2018, *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 21, 2011’-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on December 28, 2018;

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;

THAT the Department of Buildings must ensure compliance 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. 300796823)

Adopted by the Board of Standards and Appeals, November 15, 2011.

75-06-BZ

APPLICANT – Eric Palatnik, P.C., for Cord Meyer Development Company, owner.

SUBJECT – Application April 27, 2011 – Extension of Time to complete construction of a variance (§72-21) for a mixed use building contrary to FAR, open space and sky exposure plane regulations, and an amendment to eliminate a sub-cellar and modify the building envelope. C1-2/R7-1 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 – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of time to complete construction and obtain a certificate of occupancy for a previously approved variance, and an amendment to permit certain modifications to the previously-approved plans; and

WHEREAS, a public hearing was held on this application on September 20, 2011, after due notice by publication in *The City Record*, with a continued hearing on October 25, 2011, and then to decision on November 15, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Queens, recommends approval of this application; and

WHEREAS, certain members of the community provided testimony in opposition to this application; and

WHEREAS, the subject site is located on the northwest corner of Queens Boulevard and 71st Road, with additional frontage on 71st Avenue; and

WHEREAS, the site is irregularly-shaped, with 87.5 feet of frontage on 71st Avenue, 191.45 feet of frontage on Queens

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Boulevard, 91.36 feet of frontage on 71st Road, and a lot area of approximately 27,002 sq. ft.; and

WHEREAS, a small triangular portion of the site along 71st Avenue is within an R7-1 zoning district and the remainder of the site is within a C1-2 (R7-1) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the site since August 7, 2007 when, under the subject calendar number, the Board granted an application under ZR § 72-21, to permit the construction of a 16-story residential building with 102 units, a community facility, commercial use, and 126 parking spaces, which does not comply with residential floor area and open space regulations, contrary to ZR §§ 23-142, 35-22, and 35-33; and

WHEREAS, substantial construction was to be completed by August 7, 2011 in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that construction has been delayed due to financing concerns; and

WHEREAS, accordingly, the applicant now requests an extension of time to complete construction; and

WHEREAS, the applicant also seeks an amendment to permit certain modifications to the previously-approved plans; and

WHEREAS, specifically, the applicant proposes to: (1) shift the proposed building towards 71st Avenue and away from 71st Road; (2) increase the open space ratio from 15.2 percent to 17.6 percent; (3) eliminate the sub-cellar; (4) decrease the community facility floor area from 2,313 sq. ft. to 800 sq. ft. and provide a corresponding increase in the commercial floor area from 16,065 sq. ft. to 17,578 sq. ft.; (5) increase the number of stories from 16 to 17, while maintaining the previously approved height of 178 feet; and (6) re-design certain building elements related to fire safety and egress to accommodate the new Building Code; and

WHEREAS, the applicant represents that the proposed modifications were deemed necessary to avoid interfering with the existing supermarket business located on the site, which the construction of the previously-approved building would have disrupted; and

WHEREAS, the applicant states that the proposed changes will not result in an increase in the previously-approved floor area, height, or unit count of the building, and will actually increase the open space ratio, thereby bringing it closer to compliance with the required open space ratio of 22 percent; and

WHEREAS, the Board notes that the relocation of the tower will not have an adverse impact on the adjacent residential uses, as it is set back 25'-0" from the street and set back an additional 10'-9" above a height of 159'-0", and the tower complies with all zoning requirements and does not encroach into the required height and setback along 71st Avenue; and

WHEREAS, based upon the above, the Board finds that the requested extension of time and amendment to the 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 August 7,

2007, 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, to expire on November 15, 2015, and to permit the noted modifications to the previously-approved plans; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received November 7, 2011"- seventeen (17) sheets and *on further condition*:

THAT substantial construction shall be completed and a new certificate of occupancy obtained by November 15, 2015;

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. 420370592)

Adopted by the Board of Standards and Appeals, November 15, 2011.

789-45-BZ

APPLICANT – Walter T. Gorman, P.E., for Woodside 56 LLC, owner; Getty Properties Corp., lessee.

SUBJECT – Application July 6, 2011 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a (UG16) gasoline service station (*Getty*) which expired on July 13, 2006; Extension of Time to Obtain a Certificate of Occupancy which expired February 4, 2005; Waiver of the Rules. M1-1/R5 zoning district.

PREMISES AFFECTED – 56-02/56-20 Broadway, south east corner of 56th Street, Block 1195, Lot 44, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: John Ronan.

ACTION OF THE BOARD – Laid over to December 13, 2011, at 10 A.M., for continued hearing.

285-52-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Astoria 42, LLC, owner; Neil Tannor, lessee.

SUBJECT – Application July 8, 2011 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a gasoline service station (*Getty*) which expired on October 21, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on March 9, 2000; Waiver of the rules. R-5 zoning district.

PREMISES AFFECTED – 30-14 34th Avenue, southwest corner of the intersection of 34th Avenue and 31st Street, Block 607, Lot 29, Borough of Queens.

COMMUNITY BOARD #1Q

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APPEARANCES –

For Applicant: Hiram Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 6, 2011, at 10 A.M., for decision, hearing closed.

188-96-BZ

APPLICANT – Mitchell S. Ross, Esq., for 444 Soundview Services Stations, Incorporated c/o William McCombs, owner; Scott Greco, lessee.

SUBJECT – Application June 22, 2010 – Extension of Term (§11-411) of a variance for the continued operation of a Gasoline Service Station (*Gulf*) with accessory convenience store which expired January 6, 2008; Waiver of the rules. R5 zoning district.

PREMISES AFFECTED – 444 Soundview Avenue, north side of Soundview Avenue and west of Underhill Avenue, Block 3498, Lot 51, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Laid over to December 13, 2011, at 10 A.M., for continued hearing.

185-05-BZ

APPLICANT – John C. Chen for 62-02 Roosevelt Avenue Corporation, owner; Lapchi, Incorporated, lessee.

SUBJECT – Application April 20, 2011 – Extension of Term of a Variance (§72-21) for an eating and drinking establishment with dancing (UG12A) which expired on January 10, 2008; Amendment to permit the enlargement of the dance floor and kitchen; Extension of Time to complete construction which expired on January 10, 2009; waiver of the rules. C1-2/R6 zoning district.

PREMISES AFFECTED – 62-02 Roosevelt Avenue, south side of Roosevelt Avenue 192.59' west side of intersection of 63rd Street/Roosevelt Avenue. Block 1294, Lot 58. Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: John C. Chen.

For Opposition: Patrick A. O'Brien, Community Board 2, Queens.

For Administration: Anthony Scaduto, Fire Department.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 13, 2011, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

182-06-A thru 211-06-A

APPLICANT – Akerman Senterfitt, LLP, for Boymelgreen Beachfront Community, LLC, owners.

SUBJECT – Application April 18, 2011 – Extension of time to complete construction and obtain a Certificate of Occupancy for a previously-granted Common Law Vesting which expired March 19, 2011. R4A zoning district.

PREMISES AFFECTED – 126, 128, 130, 134, 136, 140, 146, 148, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 161, and 163 Beach 5th Street. 150, 152, 154, 156, 158, 160, and 162 Beach 6th Street and 511 SeaGirt Avenue Block 15609, Lots 1, 3, 6, 8, 10, 12, 14, 16, 18, 58, 63, 64, 65, 66, 67, and 68 and Block 15608, Lots 1, 40, 42, 45, 51, 52, 53, 57, 58, 61, 63, 65, 67, and 69. Borough the Queens.

COMMUNITY BOARD #14Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an amendment to a previous grant to permit an extension of time to complete construction and obtain a certificate of occupancy for a prior Board determination that the owner of the premises obtained the right to complete construction of a multiple-unit residential development under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this appeal on July 12, 2011, after due notice by publication in *The City Record*, with continued hearings on September 13, 2011 and October 25, 2011, and then to decision on November 15, 2011; and

WHEREAS, the site was inspected by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, the appellant states that the subject premises consists of 30 separate tax lots on two separate blocks; and

WHEREAS, the appellant states that 14 of the tax lots are located on the entire northern half of Block 15608, which is 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; and

WHEREAS, the appellant states that 16 of the tax lots are located on the entirety of Block 15609, which is bounded by Seagirt Avenue to the north, Beach 4th Street to the east, Beach 5th Street to the west, and Reynolds Channel to the south; and

WHEREAS, for purposes of this application, appellant referred to Block 15608, Lots 1, 57, 58, 61, 63, 65, 67, and 69 as “Cluster 1”; Block 15608, Lots 40, 42, 45, 51, 52 and 53 as “Cluster 2”; Block 15609, Lots 6, 8, 10, 12, 14, 16 and 18 as “Cluster 3”; and Block 15609, Lots 1, 3, 58, 63, 64, 65, 66, 67 and 68 as “Cluster 4”; and

WHEREAS, the proposed development on these two

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blocks contemplates the construction of 30 attached three-story, two-family homes, one on each lot; and

WHEREAS, the applicant states that when the development commenced in March of 2004, subsequent to the issuance of foundation and piles permits, the site was located within an R5 zoning district; and

WHEREAS, on September 15, 2005 (the "Enactment Date"), the City Council adopted the Far Rockaway and Mott Creek Rezoning, which changed the zoning of the subject site from R5 to R4A; and

WHEREAS, the applicant represents that the development complies with the former R5 zoning district; and

WHEREAS, however, attached homes are not permitted in the current R4A zoning district; and

WHEREAS, because the proposed development is not in compliance with the provisions of the R4A zoning district and work on the foundations was not completed as of the Enactment Date, the permits lapsed by operation of law; and

WHEREAS, subsequently, the applicant filed a request to continue construction pursuant to the common law doctrine of vested rights; and

WHEREAS, on March 20, 2007, the Board determined that, as of the Enactment Date, the owner had undertaken substantial construction and made substantial expenditures on the project, and that serious loss would result if the owner was denied the right to proceed under the prior zoning, such that the right to continue construction was vested under the common law doctrine of vested rights; and

WHEREAS, the Board granted the applicant four years to complete construction and obtain a certificate of occupancy, which expired on March 20, 2011; and

WHEREAS, accordingly, the applicant is now seeking an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, the applicant states that the development was not completed by the stipulated date due to financing delays; and

WHEREAS, however, the applicant summarizes the completed work on the site as follows: (1) Cluster 1 – piles have been driven and excavation has been completed; (2) Cluster 2 – piles have been driven, excavation has been completed, foundations have been poured and framing and roofing for six of the proposed homes have been completed; (3) Cluster 3 – piles have been driven; and (4) Cluster 4 – piles have been driven, and on Lot 1, excavation has been completed and grade beams have been installed; and

WHEREAS, as to expenditures, the applicant states that the owner has expended approximately \$3,800,000 out of a total projected development cost of \$13,000,000, or 29 percent; and

WHEREAS, at hearing, the Board raised questions related to (1) the number of piles driven at the site; (2) the condition and sustainability of the piles previously driven at the site; (3) the projected construction timeline; (4) the prospects of securing financing to complete the project; and (5) site safety; and

WHEREAS, in response, the applicant submitted a plot

plan reflecting that 652 piles have been driven at the site, and a letter from the architect stating that frequent site visits have been performed on the site since the Enactment Date and all of the piles that have been driven are in sound condition; and

WHEREAS, as to the anticipated construction timeline, the applicant represents that the owner expects to resume construction soon after the renewal of the DOB permits, to complete construction within 24 months after it is commenced, and to obtain certificates of occupancy approximately ten months after construction is completed; and

WHEREAS, the applicant submitted a letter from a private financing firm stating that the applicant will likely be able to obtain traditional bank financing at market terms soon after the DOB permits are renewed; and

WHEREAS, as to site safety, the applicant states that the owner has conducted monthly inspections and has performed regular maintenance of the site, including the securing of the perimeter fence, removing debris, and clearing unwanted vegetation and weeds; and

WHEREAS, the Board has reviewed the evidence and has determined that an extension of time is warranted; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a four-year extension of time to complete construction and obtain a certificate of occupancy; and

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting the renewal of DOB Permit Nos. 402146487-01, 402016625-01, 402016634-01, 402016643-01, 402016652-01, 402016661-01, 402016670-01, 402016689-01, 401712759-01, 401712811-01, 401708345-01, 401712740-01, 401712820-01, 401712768-01, 402063217-01, 402063226-01, 402063501-01, 402063510-01, 402063529-01, 402063538-01, 402063547-01, 402146931-01, 402146940-01, 402146959-01, 402146968-01, 402146977-01, 402146986-01, 402146995-01, 402147002-01, and 402147011-01, 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, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for four years from the date of this grant.

Adopted by the Board of Standards and Appeals, November 15, 2011.

219-10-A

APPLICANT – Sheldon Lobel, P.C., for 74-76 Adelphi Realty LLC, owner.

SUBJECT – Application November 24, 2010 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R6 zoning district. R5B zoning district.

PREMISES AFFECTED – 74-76 Adelphi Street, west side of Adelphi Street, between Park and Myrtle Avenues, Block 2044, Lots 52, 53, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES – None.

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ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, November 15, 2011.

116-11-A

APPLICANT – Deidre Duffy, for Breezy Point Cooperative, Inc., owner; Mary Collins, lessee.

SUBJECT – Application August 15, 2011 – Proposed reconstruction and enlargement of an existing single family home which does not front on a legally mapped street, contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 835 Liberty Lane, west side of Liberty Lane, 139’ north of Marshall Avenue, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Deidre Duffy

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated July 21, 2011, acting on Department of Buildings Application No. 420374918, reads in pertinent part:

A1 – The street giving access to the existing building to be reconstructed and enlarged 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 Art. 3, Sect. 36 of the General City Law;
- B) The building to be reconstructed and enlarged does not have at least 8% of total perimeter of the building fronting directly upon a legally mapped street or frontage space contrary to Section 27-291 of the Administrative Code; and

WHEREAS, a public hearing was held on this application on November 15, 2011 after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated September 1, 2011, the Fire Department states that it has no objection to the subject proposal, with the following conditions: (1) the entire building be fully sprinklered in conformance with the sprinkler provisions of Fire Code § 503.8.2, Local Law 10/99, and Reference Standard 17-2B of the Building Code; and (2) interconnected smoke alarms be installed in accordance with

Building Code § 907.2.10; and

WHEREAS, in response, the applicant submitted plans reflecting that the building will be fully sprinklered and interconnected smoke alarms will be installed in accordance with the Fire Department’s request; and

WHEREAS, accordingly, the Board has determined 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 July 21, 2011, acting on Department of Buildings Application No. 420374918 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 17, 2011”–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 building shall be fully sprinklered in accordance with the BSA-approved plans;

THAT interconnected smoke alarms shall be installed in accordance with the BSA-approved plans;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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 15, 2011.

139-11-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; William Diffendale, lessee.

SUBJECT – Application September 8, 2011– Proposed reconstruction and enlargement of an existing single home partially in the bed of the mapped street, contrary to General City Law Section 35. R4 zoning district.

PREMISES AFFECTED – 63 Hillside Avenue, south side Hillside Avenue, east of mapped Beach 178th Street, 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 GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and

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Commissioner Montanez5
Negative:.....0

WHEREAS, the decision of the Queens Borough Commissioner dated August 16, 2011 acting on Department of Buildings Application No. 420462831, reads in pertinent part: “The existing building to be altered lies within 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 November 15, 2011, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated October 6, 2011, the Fire Department states that it waives the requirement for a sprinkler system for the subject home and has no further objections to the proposal; and

WHEREAS, by letter dated October 14, 2011, the Department of Environmental Protection states that it has no objection to the subject proposal; and

WHEREAS, by letter dated November 4, 2011, the Department of Transportation (“DOT”) states that it has no objection to the subject proposal; and

WHEREAS, DOT states that the subject lot is not currently included in the agency’s Capital Improvement Program; and

WHEREAS, accordingly, the Board has determined 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 August 16, 2011, acting on Department of Buildings Application No. 420462831, 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 8, 2011” - 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 DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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 15, 2011.

148-11-A

APPLICANT – Gary Lenhart, for The Breezy Point Cooperative, Inc., owner; Mary and Andrew McNermev, lessee.

SUBJECT – Application September 16, 2011 – Proposed reconstruction and enlargement of an existing single family dwelling which does not front on a mapped street, contrary to General City Law Section 36, and the proposed upgrade of an existing non-conforming private disposal system partially in the bed of the service road, contrary to Building Department policy. R4 zoning district.

PREMISES AFFECTED – 32 Kildare Walk, 183’ north of Breezy Point, Block 16350, Lot p/o 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, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner dated September 9, 2011, acting on Department of Buildings Application No. 420460067, 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 Art. 3, Sect. 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 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 November 15, 2011 after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated October 6, 2011, the Fire Department states that it has no objection to the subject proposal, with the following conditions: (1) the entire building be fully sprinklered in conformance with the sprinkler provisions of Fire Code § 503.8.2, Local Law 10/99, and Reference Standard 17-2B of the Building Code; and (2) interconnected smoke alarms be installed in accordance with Building Code § 907.2.10; and

WHEREAS, the applicant submitted plans reflecting that the building will be fully sprinklered and interconnected smoke alarms will be installed in accordance with the Fire Department’s request; and

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WHEREAS, accordingly, the Board has determined 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 9, 2011, acting on Department of Buildings Application No. 420460067, 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 16, 2011" - 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 building shall be fully sprinklered in accordance with the BSA-approved plans;

THAT interconnected smoke alarms shall be installed in accordance with the BSA-approved plans;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

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 15, 2011.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING TUESDAY AFTERNOON, NOVEMBER 15, 2011 1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

46-10-BZ

CEQR #10-BSA-059K

APPLICANT – Eric Palatnik, P.C., for 1401 Bay LLC, owner.

SUBJECT – Application April 8, 2010 – Special Permit (§73-44) to permit a reduction in required parking for ambulatory and diagnostic treatment center. C4-2 zoning district.

PREMISES AFFECTED – 1401 Sheepshead Bay Road, Avenue Z and Sheepshead Bay Road, Block 7459, Lot 1, 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, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 10, 2010, acting on Department of Buildings Application No. 301625604, reads in pertinent part:

Request for reduction of 50% of the parking spaces for both ambulatory diagnostic or treatment facilities listed in Use Group 4 in parking requirement category B1 and also uses (commercial offices) in parking category B1 in Use Group 6 in a C4-2 zoning district under ZR 73-44 is denied and referred to the NYC Board of Standards and Appeals for review under a special permit application; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, within a C2-4 zoning district, a reduction in the required number of accessory parking spaces for a mixed-use residential/office/community facility building from 77 to 53, contrary to ZR § 36-21; and

WHEREAS, the applicant initially filed a companion application under BSA Cal. No. 54-10-BZ, which would have provided 45 of the subject site's required 53 parking spaces within a proposed building at 1501C Sheepshead Bay Road, and would have permitted an additional reduction in the required number of accessory parking spaces for the

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proposed building at 1501C Sheepshead Bay Road, pursuant to ZR § 73-44; and

WHEREAS, subsequently, the applicant withdrew the companion application filed under BSA Cal. No. 54-10-BZ; and

WHEREAS, a public hearing was held on this application on April 12, 2011, after due notice by publication in The City Record, with a continued hearing on October 18, 2011, and then to decision on November 15, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 15, Brooklyn, recommended disapproval of the initial application, which included the companion application under BSA Cal. No. 54-10-BZ; and

WHEREAS, certain members of the community provided oral testimony in opposition to this application, citing concerns with its effect on parking in the surrounding neighborhood; and

WHEREAS, the subject site is located on a triangular-shaped corner lot bounded by Sheepshead Bay Road to the south, East 14th Street to the west and Avenue Z to the north, with a total lot area of 6,087 sq. ft.; and

WHEREAS, the site is occupied by a five-story mixed-use residential/commercial/ community facility building, with a total floor area of 28,011 sq. ft., and eight accessory valet parking spaces located at the cellar; and

WHEREAS, the applicant states that the uses at the site are as follows: (1) eight accessory valet parking spaces at the cellar level; (2) retail space (Use Group 6) on the first floor; (3) retail space and ambulatory diagnostic or treatment facility space (Use Group 4) on the second floor; (4) office space (Use Group 6) on the third and fourth floors; and (5) residential space on the fifth floor; and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject C2-4 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 ambulatory diagnostic or treatment facilities and the noted Use Group 6 office use in the parking category B1; in the subject zoning district, 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, pursuant to ZR § 36-21 the total number of required parking spaces for all uses at the site is 77; and

WHEREAS, the applicant represents that the proposed 53 parking spaces are sufficient to accommodate the parking demand generated by the use of the site; and

WHEREAS, the applicant notes that 6,614 sq. ft. of floor area in the building is occupied by retail space and 4,707 sq. ft. of floor area in the building is occupied by residential space, which are not in parking category B1 and therefore the associated 22 required spaces have been excluded from the calculations for the requested reduction in parking; and

WHEREAS, the applicant states that the remaining 16,688 sq. ft. of floor area at the site will be occupied either by ambulatory diagnostic or treatment facility space or professional offices, which are eligible for the parking reduction under ZR § 73-44; at a rate of one required parking space per 300 sq. ft. of floor area, 55 parking spaces are required for these uses; and

WHEREAS, accordingly, the total number of parking spaces which are eligible under the special permit is 55; as noted, the special permit allows for a reduction from one space per 300 sq. ft. of floor area to one space per 600 sq. ft. of floor area, which would reduce the required parking for these uses to 28 spaces; and

WHEREAS, as noted, an additional 22 parking spaces are required for the 6,614 sq. ft. of floor area occupied by retail space, which is not eligible for the special permit; and

WHEREAS, thus, a total of 50 parking spaces are required for the uses on the site; and

WHEREAS, the applicant proposes to provide eight accessory valet parking spaces on the subject site, and an additional 45 accessory parking spaces at an off-site parking lot located at 2554 East 16th Street (Block 7436, Lot 30); and

WHEREAS, the applicant submitted an off-site parking restrictive declaration which reflects that the site located at 2554 East 16th Street will be used to accommodate the parking requirements generated by the subject site; and

WHEREAS, the applicant notes that the proposed total of 53 accessory parking spaces would provide three more spaces than the minimum of 50 required under the special permit; and

WHEREAS, the applicant further notes that pursuant to ZR § 36-43, required off-street parking spaces accessory to commercial or community facility uses may be provided on a zoning lot other than the same zoning lot as such uses, provided that all required spaces are located no further than 600 feet from the nearest boundary of the zoning lot on which such uses are located; and

WHEREAS, the applicant provided a drawing which reflects that 2554 East 16th Street is located 231'-2" from the nearest boundary of the subject zoning lot, and therefore satisfies the requirement of ZR § 36-43; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the ambulatory diagnostic or treatment facility and Use Group 6 use in the B1 parking category are contemplated in good faith; and

WHEREAS, the applicant has submitted an affidavit from the owner of the premises stating that a portion of the second floor will be used as an ambulatory diagnostic and treatment facility, and the third and fourth floors will be used for Use Group 6 professional offices; and

WHEREAS, in addition, the applicant states that any Certificate of Occupancy for the building will state that no subsequent Certificate of Occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius; and

MINUTES

WHEREAS, the Board finds that the applicant has submitted sufficient evidence of good faith in maintaining the noted uses at the site; and

WHEREAS, however, while ZR § 73-44 allows the Board to reduce the required accessory parking, the Board requested an analysis about the impact that such a reduction might have on the community in terms of available on-street parking; and

WHEREAS, in response, the applicant submitted a trip generation and parking analysis, which reflects that during the peak morning period there is a demand for only 30 parking spaces from all uses in the subject building combined; and

WHEREAS, the parking analysis provided by the applicant further reflects that, throughout the course of the day, there are between 29 and 89 available on-street parking spaces within the immediate vicinity of the site; and

WHEREAS, based upon this study, the Board agrees that the accessory parking space needs can be accommodated even with the parking reduction; 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. 10BSA059K, dated February 8, 2011; 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 a C2-4 zoning district, a reduction in the required number of accessory parking spaces for a mixed-

use residential/commercial/community facility building from 77 to 53, contrary to ZR § 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 November 14, 2011"--one (1) sheet and "Received November 7, 2011"--twelve (12) sheets, and on further condition:

THAT there shall be no change in the operation of the site without prior review and approval by the Board;

THAT a minimum of eight parking spaces shall be provided in the accessory parking garage in the subject building, and a minimum of 45 parking spaces shall be provided in the accessory parking lot located at 2554 East 16th Street;

THAT no certificate of occupancy may be issued if the use is changed to a use listed in parking category B unless additional accessory off-street parking spaces sufficient to meet such requirements are provided on the site or within the permitted off-street radius;

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, November 15, 2011.

31-10-BZ

APPLICANT – Eric Palatnik, P.C., for 85-15 Queens Realty, LLC, owner.

SUBJECT – Application March 16, 2010 – Variance (§72-21) to allow for a commercial building, contrary to use (§22-00), lot coverage (§23-141), front yard (§23-45), side yard (§23-464), rear yard (§33-283), height (§23-631) and location of uses within a building (§32-431) regulations. C1-2/R6, C2-3/R6, C1-2/R7A, R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard, aka 51-35 Reeder Street, north side of Queens Boulevard, between Broadway and Reeder Street, Block 1549, Lot 28, 41, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik, Robert Pauls, Hiram Rothkrug and Roy Chen.

ACTION OF THE BOARD – Laid over to December 13, 2011, at 1:30 P.M., for continued hearing.

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231-10-BZ

APPLICANT – Eric Palatnik, PC, for WIEDC (Williamsburg Infant & Early Childhood Development Center), owners.

SUBJECT – Application December 17, 2010 – Variance (§72-21) to permit the development of a six-story school (*Williamsburg Infant and Early Childhood Development center*), contrary to use regulations (§42-11); floor area (§43-122), rear yard (§43-26), and wall height, total height, number of stories, setback, and sky exposure plane (§43-43). M1-1 zoning district.

PREMISES AFFECTED – 430-440 Park Avenue, Between Kent Avenue and Franklin Avenue. Block 1898, Tent. Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik and Gilly Youner.

ACTION OF THE BOARD – Laid over to December 13, 2011, at 1:30 P.M., for continued hearing.

90-11-BZ & 91-11-BZ

APPLICANT – Malcom Kaye, AIA, for Jian Guo, owner.

SUBJECT – Application June 23, 2011 – Variance (§72-21) to allow the legalization of two semi-detached homes, contrary to lot area and lot width (§23-32), rear yard (§23-47), parking (§25-141) and floor area (§23-141) regulations. R3-1 zoning district.

PREMISES AFFECTED – 23 & 25 Windom Avenue, east side of Windom Avenue, 210' south of Cedar Avenue, Block 3120, Lot 19, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Malcom Kaye and Albert Wesley McKee.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 6, 2011, at 10 A.M., for decision, hearing closed.

94-11-BZ

APPLICANT – Victor K. Han, RA, AIA, for 149 Northern Plaza, LLC & Seungho Kim, owners. New York Spa & Sauna Corp., lessee.

SUBJECT – Application June 27, 2011 – Special Permit (§73-36) to allow a physical culture establishment (*New York Spa & Sauna*). C2-2/R6A&R5 zoning district.

PREMISES AFFECTED – 149-06 Northern Boulevard, Southeast of Northern Boulevard, 0' Southeast of 149th. Block 5017, Lot 11, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Victor K. Han.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 6, 2011, at 10 A.M., for decision, hearing closed.

101-11-BZ

APPLICANT – Dennis D. Dell' Angelo, for Edward Stern, owner.

SUBJECT – Application July 12, 2011 – Special Permit (§73-622) for the enlargement of an existing two-family home, to be converted to a single-family home, contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1152 East 24th Street, west side of East 234th Street, 400' south of Avenue K, Block 623, Lot 67, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Dennis D. Dell' Angelo.

For Opposition: Jerome Katz.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 6, 2011, at 10 A.M., for decision, hearing closed.

106-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Tag Court Square, LLC, owner; Long Island City Fitness Group, LLC, owner.

SUBJECT – Application August 2, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). M1-5/R7-3/Long Island City zoning district.

PREMISES AFFECTED – 27-28 Thomson Avenue, triangular zoning lot with frontages on Thomson Street and Court Square, adjacent to Sunnyside Yards. Block 82, Lots 7501 (1001), Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to December 13, 2011, at 1:30 P.M., for continued hearing.

123-11-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr LLP, for Harrison Retail Associates LLC, owner, SoulCycle 350 Amsterdam, LLC, lessee.

SUBJECT – Application August 24, 2011 – Special Permit (ZR §73-36) to allow the operation of a physical culture

MINUTES

establishment (*SoulCycle*). C2-7A & C4-6A zoning districts.
PREMISES AFFECTED – 350 Amsterdam Avenue, west side Amsterdam Avenue between West 76th Street and West 77th Street. Block 1168, Lots 1001/7501, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: EllenHay

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 13, 2011, at 10 A.M., for decision, hearing closed.

124-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Wagner Associates LLC, owner, 2480 Grand Concourse Fitness Group, LLC, lessee.

SUBJECT – Application August 24, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C4-4 zoning district.

PREMISES AFFECTED – 2488 Grand Concourse, located on the east side of Grand Concourse between East 188th Street and Fordham Road. Block 3153, Lot 9, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 13, 2011, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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November 30, 2011

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72-11-BZ	101-06 Astoria Boulevard, Queens

DOCKET

New Case Filed Up to November 22, 2011

177-11-BZ

601 East 156th Street, northeast corner of East 156th Street and St. Ann's Avenue., Block 2618, Lot(s) 7501, Borough of **Bronx, Community Board: 1**. Special Permit (§73-36) to permit physical culture establishment within portions of an existing building in a C2-3(R7X) zoning district. C2-3(R7X) 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

DECEMBER 13, 2011, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 13, 2011, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

248-75-BZ

APPLICANT – Alfonso Duarte, P.E., for 444 East 86th Street Owners Corp., owner; Quick Park, lessee.
SUBJECT – Application August 8, 2011 – Extension of Term permitting the use of no more than 50 unused and surplus tenant parking spaces, within an accessory garage, for transient parking granted by the Board pursuant to §60 (3) of the Multiple Dwelling Law (MDL) which expired on October 14, 2010; Waiver of the Rules of Practice and Procedure. R8B, R10 & C1-5 zoning districts.
PREMISES AFFECTED – 1621 York Avenue aka 436 East 86th Street, west side of York Avenue, Block 1565, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #8M

280-98-BZ

APPLICANT – Rampulla Associates Architects, LLP, for MARS Holding, LLC, owner.
SUBJECT – Application November 1, 2011– Extend the Time to obtain a Certificate of Occupancy for a previously granted Variance (72-21) for the continued operation of a UG4 Dental Office which expired on June 15, 2011. R2 zoning district.
PREMISES AFFECTED – 2936 Hylan Boulevard, east side of Hylan Boulevard, 100' north of Isabella Avenue, Block 4015, Lot 14, Borough of Staten Island.

COMMUNITY BOARD #3SI

11-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Jovkiss Management, LLC, owner; East Manor Restaurant, lessee.
SUBJECT – Application November 1, 2011 – Extension of Time to obtain a Certificate of Occupancy for a UG6 Eating and Drinking Establishment (Eastern Pavilion Chinese Restaurant) which expired on October 5, 2011. C2-2/R3-2 zoning district.
PREMISES AFFECTED – 46-45 Kissena Boulevard, northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

COMMUNITY BOARD #7Q

18-09-BZ

APPLICANT – Stuart A. Klein, for Ascot Properties Ltd., owner; Gold's Gym, lessee.
SUBJECT – Application October 6, 2011 – Extension of Term of a previously granted Special Permit (73-36) for the continued operation of a Physical Culture Establishment (*Gold's Gym*) which expired on November 1, 2011. C6-5 zoning district.
PREMISES AFFECTED – 250 West 54th Street, between Broadway and 8th Avenue, Block 1025, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEALS CALENDAR

233-10-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Alco Builders Incorporated, owners.
SUBJECT – Application December 23, 2010 – Appeal seeking a common law vested right to continued development commenced under the prior R6 Zoning District. R4-1 Zoning District.
PREMISES AFFECTED – 90-22 176th Street, between Jamaica and 90th Avenues, Block 9811, Lot 61(tent), Borough of Queens.

COMMUNITY BOARD #12Q

86-11-A

APPLICANT – Cozen O'Connor, for Perlbindler Holdings, LLC, owner.
SUBJECT – Application June 10, 2011 – An appeal of the Department of Buildings revocation of non-conforming sign approval. C1-9 zoning district.
PREMISES AFFECTED – 663-673 2nd Avenue, northwest corner of East 36th Street and 2nd Avenue, Block 917, Lot 21, 24-31, Borough of Manhattan.

COMMUNITY BOARD #6M

170-11-A & 171-11-A

APPLICANT – Randy M. Mastro of Gibson, Dunn & Crutcher, LLP, for Win Restaurant Equipment and Supply Corporation, owner; Fuel Outdoor, LLC, lessee.
SUBJECT – Application October 28, 2011– Appellant seeks confirmation that its rights vested on February 27, 2001 and its permit did not "lapse".
PREMISES AFFECTED – 318 Lafayette Street, north west corner of Houston and Lafayette Streets, Block 522, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #2M

CALENDAR

DECEMBER 13, 2011, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 13, 2011, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

66-11-BZ

APPLICANT – Jesse Masyr, Wachtel & Masyr LLP, for Whole Foods Market Group, owner.

SUBJECT – Application May 13, 2011 – Variance (§72-21) to permit a UG6 food store (*Whole Foods*), contrary to use regulations. M2-1 zoning district.

PREMISES AFFECTED – 172-220 Third Street, block bounded by 3rd Street, 3rd Avenue, 4th Street Basin and Gowanus Canal, Block 978, Lot 1, 7, 16, 19, 23, 30, 32, Borough of Brooklyn.

121-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Convent Avenue Baptist Church, owners.

SUBJECT – Application August 22, 2011– Variance application to legalize a two story and basement rear yard enlargement in an existing church (*Convent Avenue Baptist Church*) that exceeds the permitted height and contains two stories contrary to the permitted one story and that violates a rear yard requirements and exceeds the permitted lot coverage. R7-2 zoning district.

PREMISES AFFECTED – 351 Convent Avenue aka 420 West 145th Street and 418 West 145th Street, southeast corner of Convent Avenue and West 145th Street, Block 2050, Lot 42 & 47, Borough of Manhattan.

COMMUNITY BOARD #9M

128-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Levana Pinhas and David Pinhas, owners.

SUBJECT – Application August 31, 201 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (23-141); side yard (23-461) and less than the required rear yard (23-47). R3-2 zoning district.

PREMISES AFFECTED – 1860 East 23rd Street, west side of East 23rd Street, between Avenue R and Avenue S, Block 6828m Kit 31, Borough of Brooklyn.

COMMUNITY BOARD #15BK

158-11-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for C and A Capital, LLC, owner; Blink Nostrand, Inc., lessee.

SUBJECT – Application October 11, 2011 – Special Permit (§73-36) to permit physical culture establishment (*Blink*) within portions of a proposed building located in an C4-4A zoning district.

PREMISES AFFECTED – 2166 Nostrand Avenue, east side of Nostrand Avenue, 180.76’ south of intersection of Nostrand Avenue and Flatbush Avenue, Block 7557, Lot 124, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, NOVEMBER 22, 2011 10:00 A.M.

Present: Chair Srinivasan, Vice-Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.

SPECIAL ORDER CALENDAR

281-39-BZ

APPLICANT – Eric Palatnik, P.C., for 1599 Lexington Avenue Corporation, owner.

SUBJECT – Application May 3, 2011 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) with accessory uses which expired on May 18, 2009; Waiver of the Rules. C1/R7-2 zoning district.

PREMISES AFFECTED – 1605 Lexington Avenue, southeast corner of 102nd Street, Block 1629, Lot 150, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: Trevis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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 previously granted variance for a gasoline service station, which expired on May 18, 2009; and

WHEREAS, a public hearing was held on this application on July 12, 2011, after due notice by publication in *The City Record*, with continued hearings on August 23, 2011, September 27, 2011, and November 1, 2011, and then to decision on November 22, 2011; and

WHEREAS, Community Board 11, Manhattan, recommends approval of this application, with the following conditions: (1) the tow truck operation be limited to one vehicle; (2) the parking and storage shall be limited to two vehicles; (3) there shall be no dead storage of motor vehicles; and (4) all vehicles be kept within the property and not on the street or sidewalk; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the southeast corner of East 102nd Street and Lexington Avenue, within a C1-5 (R7-2) zoning district; and

WHEREAS, the site is occupied by a gasoline service

station with accessory uses; and

WHEREAS, on May 18, 1954, under the subject calendar number, the Board granted a variance to permit a gasoline service station, lubritorium, auto-washing, motor vehicle repairs and to permit parking on the unbuilt portion of the site for a term of 15 years; and

WHEREAS, the variance was subsequently amended and extended at various times; and

WHEREAS, most recently, on October 17, 2000, the Board granted an amendment and extension of term to expire on May 18, 2009; 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; and

WHEREAS, the Board raised concerns about the parking of U-Haul trucks and vans on the site and (1) asked the applicant to describe the operational plan for the rental business and (2) directed the applicant to establish that the proposed designated spaces are able to accommodate the trucks and vans; and

WHEREAS, in response, the applicant (1) stated that the operator will limit parking to three rental vehicles at the site, as reflected on the plans, and that excess vehicles will be taken to a companion site at 3260 Broadway, where the use is permitted as-of-right and (2) provided architectural standards for truck parking and specifications on the size of the U-Haul trucks, which reflect that the allocated spaces are sufficiently sized; and

WHEREAS, in response to the conditions requested by the Community Board, the applicant notes that the conditions were incorporated in prior approvals and that it will continue to comply; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain 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 having been adopted on May 18, 1954, 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 May 18, 2009, to expire on May 18, 2019; *on condition* that all use and operations shall substantially conform to plans filed with this application marked “Received October 31, 2011”-(5) sheets and “November 10, 2011”-(1) sheet; and *on further condition*:

THAT this term shall expire on May 18, 2019;

THAT U-Haul parking be limited to one truck and two vans, as reflected on the approved plans;

THAT parking on the site shall be otherwise limited to vehicles awaiting service, and no dead storage or parking shall be permitted;

THAT all vehicles be contained within the site and not parked on the street or sidewalk;

THAT the above conditions and all relevant conditions from the prior resolutions shall appear on the certificate of occupancy;

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) and/or configuration(s) not related to the relief granted.”

(Alt 854/80)

Adopted by the Board of Standards and Appeals, November 22, 2011.

88-81-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for JFAM Realty, owner.

SUBJECT – Application August 1, 2011 – Extension of Term of a variance (§72-21) which permitted the conversion of an existing two-story building from a dwelling and day care center to an office building which expired on July 21, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on June 18, 2003. R3-1 zoning district.

PREMISES AFFECTED – 3309 Richmond Avenue, 365’ south of the intersection of Richmond Avenue and Gurley Avenue, Block 5533, Lot 20, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Travis Savage.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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, and an extension of time to obtain a certificate of occupancy for a previously granted variance permitting the conversion of an existing dwelling and day care center to an office building; and

WHEREAS, a public hearing was held on this application on November 1, 2011, after due notice by publication in *The City Record*, and then to decision on November 22, 2011; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 3, Staten Island, recommends approval of this application; and

WHEREAS, the site is located on the east side of Richmond Avenue between Gurley Avenue and Barlow Avenue, within an R3-1 zoning district; and

WHEREAS, the subject site is occupied by a one-story and basement office building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 17, 1981 when, under the subject

calendar number, the Board granted a variance to permit the conversion of an existing dwelling and day care center to an office building, for a term of ten years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, most recently, on December 18, 2001, the Board granted an additional ten-year extension of the term, which expired on July 21, 2011; a condition of the grant was that a certificate of occupancy be obtained by May 18, 2003; and

WHEREAS, the applicant now seeks an additional extension of term and extension of time to obtain a certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and extension of time 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 August 17, 1981, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from July 11, 2011, to expire on July 11, 2021, and to grant a one-year extension of time to obtain a certificate of occupancy, to expire on November 22, 2012; *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, 2011’-(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on July 11, 2021;

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

THAT a certificate of occupancy shall be obtained by November 22, 2012;

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;

THAT the Department of Buildings must ensure compliance 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. 500462402)

Adopted by the Board of Standards and Appeals, November 22, 2011.

250-00-BZ

APPLICANT – Bryan Cave LLP, for New York University, owner.

SUBJECT – Application August 10, 2011 – Extension of term a variance (§11-411) to allow transient parking for 149 cars in an existing multiple dwelling accessory garage, and a minor amendment to permit parking on the access ramp. R7-2/C1-5 zoning district.

PREMISES AFFECTED – 521-541&553-563 LaGuardia

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Place, block bounded by LaGuardia Place, West 3rd Street, Mercer Street and Bleecker Street. Block 533, Lot 1. Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Judith Gallant.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an extension of the term of a previously granted variance for a transient parking garage, and an amendment to the previous approval; and

WHEREAS, a public hearing was held on this application on November 1, 2011, after due notice by publication in *The City Record*, and then to decision on November 22, 2011; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application, with the following conditions: (1) all conditions from previous Board resolutions related to the operation of the garage be continued; (2) the yellow markings in front of the car parking areas be repainted on both the upper and lower levels; (3) no commercial vehicles be permitted in the garage; and (4) a stop sign be added at the top of the exit ramp; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, the subject site is located on the superblock bounded by LaGuardia Place to the east, West Third Street to the south, Mercer Street to the west, and Bleecker Street to the north, partially within an R7-2 zoning district and partially within a C1-5 (R7-2) zoning district; and

WHEREAS, the site is occupied by the Washington Square Village (“WSV”) housing complex, which consists of two 17-story (including penthouse) residential buildings; and

WHEREAS, portions of the cellar and sub-cellar are occupied by an accessory garage; and

WHEREAS, the garage’s most recent certificate of occupancy, dated June 18, 2002, provides that the garage has a minimum capacity of 388 cars and a maximum capacity of 1,296 cars, and that no more than 149 transient spaces are permitted; and

WHEREAS, the current Department of Consumer Affairs license for the garage states that it accommodates 670 cars; and

WHEREAS, on February 7, 1961, under BSA Cal. No. 374-60-BZ, the Board granted a variance to permit a maximum of 149 surplus parking spaces to be used for transient parking for a term of 21 years; and

WHEREAS, on May 25, 1982, the Board extended the term of the variance for an additional ten years, to expire on

February 7, 1992; and

WHEREAS, the variance was not renewed following its expiration in 1992; and

WHEREAS, most recently, on August 14, 2001, the Board permitted the reestablishment of the lapsed variance pursuant to ZR § 11-411 for a term of ten years, which expired on August 14, 2011; and

WHEREAS, the applicant now requests an additional extension of term; and

WHEREAS, the applicant also requests an amendment to the previous grant to modify certain conditions of the resolution; and

WHEREAS, specifically, the applicant requests that the Board permit (1) the modification of the condition that the certificate of occupancy state that all new residential leases indicate tenants’ right to recapture any space devoted to transient parking on 30 days’ notice to the owner; and (2) the modification of the condition that there be no parking on or blocking of the ramp or exit leading to the garage; and

WHEREAS, as to the condition regarding tenants’ recapture rights, the applicant submitted an affidavit from NYU’s Vice President of Faculty Housing and Residential Services stating that each new WSV residential tenant is advised of the availability of parking in the subject garage and given the contact information for the garage operator; and

WHEREAS, the applicant also submitted an affidavit from the garage operator stating that residents are given priority over transient parkers in the event of a conflict over parking in the garage, and no WSV resident requesting parking has ever been denied a space in the garage due to lack of capacity or any other reason; and

WHEREAS, the applicant requests that the Board modify this condition by removing the requirement that tenant leases contain the recapture language, and instead substitute a requirement that it post a sign with the recapture language at the garage entrance, where it will be clearly visible; and

WHEREAS, the applicant represents that placing the language in the residential leases is unnecessary to insure that WSV residents receive priority in the garage, and that a permanent sign in the garage is a more effective means of notifying residents of their rights because it is more likely to be seen by residents interested in parking; and

WHEREAS, as to the condition regarding the exit ramp, the applicant states that it operates the garage so that its entrance and exit ramps are not blocked, but requests that the Board modify this condition to allow three ZipCars to be parked on the ramp to provide easy access to those cars for people picking-up and returning them; and

WHEREAS, the applicant notes that the ramp in question is used solely as an exit, and with a width of 26’-2” and a roadway of 20’-6” it is wide enough to accommodate the ZipCars, as well as exiting vehicles; and

WHEREAS, therefore, the applicant states that the ZipCars do not block the ramp or interfere with the efficient operation of the garage, and requests that the Board amend the condition to allow ZipCars to be parked on the exit ramp; and

WHEREAS, in response to the conditions requested by the Community Board, the applicant states that the yellow

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markings will be repainted in front of the car parking areas and a stop sign will be added at the top of the exit ramp by February 1, 2012, and that no commercial vehicles are permitted in the garage; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term and amendment are appropriate with certain conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the 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 grant for an additional ten years from August 14, 2011, to expire on August 14, 2021, and to permit the noted modifications to the previous approval; *on condition*:

THAT this term shall expire on August 14, 2021;

THAT a sign indicating that the spaces devoted to transient parking can be recaptured by residential tenants on 30-days’ notice to the owner shall be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT a maximum of three ZipCars may be parked on the garage’s exit ramp provided they do not interfere with egress from the garage;

THAT the above conditions and all relevant conditions from the prior resolutions shall appear on the certificate of occupancy;

THAT a stop sign shall be installed at the top of the exit ramp, the yellow markings in front of the car parking areas shall be repainted on both the upper and lower levels, and the recapture sign shall be installed by February 12, 2012;

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 Application No. 5931960)

Adopted by the Board of Standards and Appeals, November 22, 2011.

112-10-BZ

APPLICANT – Sheldon Lobel, P.C., for John Grant, owner.
SUBJECT – Application July 6, 2011 – Amendment to a Special Permit (§73-44) to permit the reduction in required parking with change of use from UG16 to UG6. M1-1 zoning district.

PREMISES AFFECTED – 915 Dean Street, north side of Dean Street between Classon and Grand Avenues, Block 1133, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #8BK

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an amendment to a previously approved special permit that allowed a reduction in the number of accessory parking spaces for a proposed conversion of the second story of a two-story building from Use Group 16 warehouse to UG 6 professional office; and

WHEREAS, a public hearing was held on this application on November 1, 2011, after due notice by publication in *The City Record*, and then to decision on November 22, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Hinkson; and

WHEREAS, Community Board 8, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Dean Street, between Classon Avenue and Grand Avenue, and has a lot area of 11,440 sq. ft.; and

WHEREAS, the site is currently occupied by an 11,414 sq. ft. two-story building with professional offices on the first floor and accessory storage on the second floor; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 19, 2010 when, under the subject calendar number, the Board granted a special permit under ZR § 73-44 to allow a reduction in the required number of accessory parking spaces for a proposed conversion of the second story of a two-story building from Use Group 16 warehouse to UG 6 professional office building parking category B1, from 38 to 28 attended spaces, contrary to ZR § 44-21; and

WHEREAS, the applicant now requests an amendment to permit a further reduction in the number of accessory parking spaces provided on the site from 28 to 21; and

WHEREAS, the applicant states that the requested amendment is necessary because: (1) certain site fences and bumpers reduce the effective area available for parking from the larger area that was believed to be available; (2) DOB required the applicant to show a parking attendant shelter in the parking area; and (3) due in part to the odd shape of the parking area, the lot did not realistically accommodate 28 parking spaces; and

WHEREAS, the applicant notes that the requested reduction in parking to 21 spaces is permitted under the provisions of ZR § 73-44; and

WHEREAS, as discussed in the Board’s prior grant, the applicant proposes to convert the entire 5,707 sq. ft. second floor to UG 6 professional offices; 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

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Use Group 6 uses in the parking category B1; in the subject zoning district, 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, therefore, the number of parking spaces could be reduced to 19 for the proposed use; and

WHEREAS, the applicant proposes to provide a total of 21 attended parking spaces; and

WHEREAS, the applicant submitted a transit area map reflecting that the immediate vicinity is served by numerous bus lines and subway lines, as well as the Long Island Rail Road; and

WHEREAS, the applicant also submitted a parking survey which indicates that out of 105 parking spaces in the study area, 21 spaces were available at the time the survey was conducted; thus, there is sufficient available parking in the surrounding neighborhood to accommodate any parking overflow that may result from the reduced number of parking spaces provided on the site; and

WHEREAS, the applicant represents that based on the facility's users (dialysis patients) it is anticipated that many users will arrive by mass transit or be dropped off via ambulette, car service or taxi, lessening the demand for on-site parking; and

WHEREAS, based upon the above, the Board finds that the requested amendment 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, as adopted on October 19, 2010, so that as amended this portion of the resolution shall read: "to permit a reduction in the required number of accessory parking spaces, from 28 to 21; *on condition* that any and all work shall substantially conform to drawings filed with this application and marked 'Received July 6, 2011' – one (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)/configuration(s) not related to the relief granted." (DOB Application No. 320155522)

Adopted by the Board of Standards and Appeals, November 22, 2011.

529-52-BZ

APPLICANT - Alfonso Duarte, P.E., for Alacorn-Mordini Enterprises Inc., owner.

SUBJECT – Application June 7, 2011 – Extension of Term (§11-411) of a variance permitting automotive repair (UG 16B) with accessory uses which expired on May 9, 2011. C2-3/R6 zoning district.

PREMISES AFFECTED – 77-11 Roosevelt Avenue, north

west corner Roosevelt Avenue & 78th Street. Block 1288, Lot 39. Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Alfonso Duarte.

ACTION OF THE BOARD – Laid over to January 10, 2012, at 10 A.M., for continued hearing.

335-59-BZ

APPLICANT – Alfonso Duarte P.E., for 3485 Atlantic Avenue Realty Corp., owner; Royal Motor Mart Inc., lessee. SUBJECT – Application July 11, 2011 – Extension of Term (§11-411) of a variance permitting the storage and sales of used cars with accessory office (UG 16B) which expired on December 7, 2009; Waiver of the Rules. R5 zoning district. PREMISES AFFECTED – 3485/95 Atlantic Avenue, North-East corner Nichols Avenue. Block 4151, Lot 1. Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Alfonso Duarte.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 13, 2011, at 10 A.M., for decision, hearing closed.

390-61-BZ

APPLICANT – Peter Hirshman, for Rapid Park Industries, owner.

SUBJECT – Application February 22, 2011 – Amendment (§11-413) of a variance for a UG8 parking garage (*Rapid Park Industries*) to permit the addition of an auto rental establishment (UG8) in the cellar level; extension of time to obtain a certificate of occupancy which expired on June 29, 2008. R8B zoning district.

PREMISES AFFECTED – 148-150 East 33rd Street, south side of East 33rd Street, 151.9' east of East 33rd Street and Lexington Avenue. Block 888, Lot 51. Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Peter Hirshman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 13, 2011, at 10 A.M., for decision, hearing closed.

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742-70-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 830 Bay Street, LLC, owner.

SUBJECT – Application May 27, 2011 – Extension of Term of a Variance (§72-21) for the continued operation of an automotive service station which expired on May 18, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on February 26, 2009 and waiver of the rules. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 830 Bay Street, southwest corner of Bay Street and Vanderbilt Avenue. Block 2836, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 7, 2012, at 10 A.M., for decision, hearing closed.

252-71-BZ

APPLICANT – Alfonso Duarte, for Alan Pearlstein, owner.

SUBJECT – Application June 23, 2011 – Extension of Term of a variance (§72-21) for the continued sale and installation of automobile seat covers and convertible tops (UG 7), furniture sales (UG 6C), and automotive repairs (UG 16B) which expired on July 13, 2011. R3-2 zoning district.

PREMISES AFFECTED – 190-18 Northern Boulevard, Southside Northern Boulevard between 189th and 192nd Streets. Block 5513, Lot 22. Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Alfonso Duarte.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 13, 2011, at 10 A.M., for decision, hearing closed.

608-85-BZ

APPLICANT – Sheldon Lobel, P.C., for J.C. Organization, LLC, owner.

SUBJECT – Application July 18, 2011 – Extension of Term of a variance (72-21) which permitted a custom Woodworking Shop (UG 16) which expired on June 17, 2011; Amendment to permit a change of use to a (UG16) General Contractors Establishment and to allow the expansion of two existing mezzanines to create a full second floor. R5 zoning district.

PREMISES AFFECTED – 33-56 11th Street, located on the west side of 11th Street, 235' south of 33rd Street, Block 319,

Lot 36, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Richard Lobel and Nora Martins.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 13, 2011, at 10 A.M., for decision, hearing closed.

332-98-BZ

APPLICANT – Sheldon Lobel, P.C., for Workmen's Circle MultiCare Center, owner.

SUBJECT – Application September 20, 2011 – Amendment to a previously granted Variance (§72-21) for an enlargement to an existing nursing home (*Workmen's Circle MultiCare*). R5 zoning district.

PREMISES AFFECTED – 3155 Grace Avenue, entire block bounded by Burke, Grace, Hammersley and Ely Avenues, Block 4777, Lot 2, 57, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to January 10, 2012, at 10 A.M., for continued hearing.

290-03-BZ

APPLICANT – Patrick W. Jones, P.C., for Joseph Rosenblatt, owner; Graceful Services, Inc., lessee.

SUBJECT – Application September 15, 2011 – Extension of Term for a previously granted Special Permit (§73-36) for a Physical Culture Establishment (*Graceful Services*) which expired on September 26, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on April 20, 2005; and an Amendment to legalize an increase in floor area; and Waiver of the Rules. C2-8 (TA) zoning district.

PREMISES AFFECTED – 1097 Second Avenue, west side of Second Avenue, 40' south of East 58th Street, Block 1331, Lot 126, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Patrick W. Jones and Steve Lee.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to January 31, 2012, at 10 A.M., for continued hearing.

40-05-BZ

APPLICANT – Patrick W. Jones, P.C., for 2nd Avenue, Property LLC, owner; Graceful Services, Inc., lessees.

SUBJECT – Application September 15, 2011 – Extension of Term for a previously granted Special Permit (§73-36) for a Physical Culture Establishment (*Graceful Services*) which expired on September 26, 2011; Extension of Time to obtain

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a Certificate of Occupancy which expired on April 20, 2005; and an Amendment to legalize an increase in floor area; and Waiver of the Rules. C2-8 (TA) zoning district.

PREMISES AFFECTED – 1095 Second Avenue, west side of Second Avenue 60.5’ south of East 58th Street, Block 1331, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Patrick W. Jones and Steve Lee.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to January 31, 2012, at 10 A.M., for continued hearing.

170-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Cornell University, owner.

SUBJECT – Application September 28, 2011 – Amendment to a variance (§72-21) for a 16-story biomedical research building (*Weill Cornell Medical College*) to permit Hunter College to occupy one floor for medical research purposes. R8 zoning district.

PREMISES AFFECTED – 411-431 East 69th Street, midblock bounded by East 69th and 70th Streets, York and First Avenues, Block 1464, Lot 8, 14, 15, 16 p/21, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Gary Tarnoff.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 6, 2011, at 10 A.M., for decision, hearing closed.

187-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation & Yeshiva Machzikei Hadas Inc., owner.

SUBJECT – Application July 18, 2011 – Amendment to a variance (§72-21) to allow a five-story school (*Congregation & Yeshiva Maschzikei Hadas*) to add a sub-cellar level, add additional floor area, increase in lot coverage and building heights, and additional interior changes. M1-2/R6B zoning district.

PREMISES AFFECTED – 1247 38th Street, north side of 38th Street, 240’ west of 13th Avenue, lock 5295, Lots 52 & 56, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 6, 2011, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

98-11-A

APPLICANT – Goldman Harris, LLC, for Bay People Inc., for Alloway Ahmed, owner.

SUBJECT – Application July 7, 2011 – Appeal Challenging Department of Buildings’ determination that accessory off-street parking under ZR §25-31 is not required. R4 Zoning District.

PREMISES AFFECTED – 2812-2814 Voorhies Avenue, south side of Voorhies Avenue between East 28th and East 29th Streets, Block 8791, Lots 5, 6 (tent 106), Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Howard Goldman.

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to the determination of the First Deputy Commissioner of the Department of Buildings (“DOB”), dated June 7, 2011, to uphold the approval of New Building Permit No. 320041129 (the “Permit”), for the construction of a house of worship at the subject site (the “Final Determination”); and

WHEREAS, the Final Determination reads, in pertinent part:

Per ZR 25-31, the parking requirements for houses of worship are applicable only to the facility’s

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largest room of assembly, provided that “rooms separated by movable partitions shall be considered a single room.” The term “movable partitions” means partitions that fold, pivot or retract. Such term does not mean solid partitions that are non-structural. In this case, the partitions separating the rooms are solid, non-structural partitions and are therefore not considered movable. Therefore, the parking calculations approved on 10/22/2010 by John Gallagher are compliant with the plain reading of the text of ZR 25-31; and

WHEREAS a public hearing was held on this application on November 1, 2011, after due notice by publication in *The City Record*, and then to decision on November 22, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commission Hinkson, and Commissioner Montanez; and

WHEREAS, the subject site is located on the south side of Voorhies Avenue, between East 28th Street and East 29th Street, within an R4 zoning district; and

WHEREAS, this appeal is brought on behalf of Bay People, Inc., an organization comprising residents of the affected block and neighborhood, formed to oppose the proposed house of worship (the “Appellant”); and

WHEREAS, a representative for the owner of 2812-2814 Voorhies Avenue (the “Owner”) provided testimony in opposition to this appeal; and

WHEREAS, DOB appeared and made submissions in opposition to this appeal; and

PROCEDURAL HISTORY

WHEREAS, on November 12, 2010, DOB approved the Permit for construction of the subject three-story house of worship with no accessory off-street parking on the site; and

WHEREAS, the proposal includes a main prayer room with 1,383.5 sq. ft. of floor area on the first floor (the “Main Prayer Room”), and a secondary prayer room with 615 sq. ft. of floor area on the second floor (the “Secondary Prayer Room”); and

WHEREAS, on December 8, 2010, the Appellant submitted a Zoning Challenge and Appeal Form to the Brooklyn Borough Commissioner requesting that DOB overturn its issuance of the Permit because, *inter alia*, the plans do not provide any off street parking, contrary to ZR § 25-31; and

WHEREAS, in response, on February 10, 2011, DOB upheld its issuance of the Permit, stating that the proposed house of worship qualified for a waiver of the off-street parking requirement because the required number of parking spaces for the facility was less than ten; and

WHEREAS, subsequently, on February 25, 2011, the Appellant appealed DOB’s February 10, 2011 determination, resulting in DOB’s issuance of the Final Determination, which forms the basis of this appeal; and

THE APPELLANT’S POSITION

WHEREAS, the Appellant contends that the Final Determination should be overturned because the site does

not provide the required number of parking spaces under ZR § 25-31 and does not qualify for a waiver of the parking requirement under ZR § 25-33; and

WHEREAS, the relevant provisions of the Zoning Resolution are as follows:

ZR § 25-31 – General Provisions (Required Accessory Off-Street Parking Spaces for Permitted Non-Residential Uses)

In all districts, as indicated, accessory off-street parking spaces, open or enclosed, shall be provided in conformity with the requirements set forth in the table at the end of this Section for all development after December 15, 1961, for the uses listed in the table...

Houses of worship, applicable only to the facility’s largest room of assembly; however, rooms separated by movable partitions shall be considered a single room

None required – R6 R7 R8 R9 R10

1 per 10 persons – R1 R2 R3

1 per 15 persons – R4 R5

* * *

ZR § 25-33 – Waiver of Requirements for Spaces below Minimum Number

R1 R2 R3 R4 R5 R6 R7 R8 R9 R10

In all districts, as indicated...the parking requirements set forth in Section 25-31 (General Provisions)...shall not apply to permitted non-residential uses if the total number of accessory off-street parking spaces required for all such uses on the zoning lot is less than the number of spaces set forth in the following table:

Number of Spaces

Districts

10

R1 R2 R3 R4 R5...; and

WHEREAS, the Appellant states that, pursuant to ZR § 25-31, the Main Prayer Room has a rated capacity of 138 occupants, which would require nine off-street parking spaces, and the Secondary Prayer Room has a rated capacity of 61 occupants, which would require four off-street parking spaces; for a total of 13 required parking spaces; and

WHEREAS, the Appellant notes that services for the house of worship will be conducted in the Main Prayer Room, which can be viewed from the Secondary Prayer Room through windows located in a solid non-structural wall which faces the Main Prayer Room below; and

WHEREAS, the Appellant contends that the Main Prayer Room will be used in conjunction with the Secondary Prayer Room, and therefore the rooms should be considered a single room of assembly for the purpose of calculating the required number of accessory parking spaces; and

WHEREAS, accordingly, the Appellant argues that the proposed house of worship has an off-street parking requirement of 13 spaces (nine spaces for the Main Prayer Room plus four spaces for the Secondary Prayer Room), and therefore does not qualify for a waiver of the parking requirement under ZR § 25-33 because more than ten spaces are required; and

WHEREAS, the Appellant claims that the capacity of

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the Main Prayer Room was intentionally limited in order to fall below the ten-space threshold for the parking waiver under ZR § 25-33, and that the separation of the Main Prayer Room and the Secondary Prayer Room is a subterfuge to avoid the requirement to provide off-street parking at the site; and

WHEREAS, specifically, the Appellant contends that the Secondary Prayer Room is proposed to be constructed as a separate room with a non-load bearing wall and viewing windows between it and the the Main Prayer Room below, rather than as a balcony or mezzanine, solely in order to qualify for the parking waiver under ZR § 25-33; and

WHEREAS, the Appellant further contends that there has been no justification for the need for the wall, which suggests that its only purpose is to allow the Secondary Prayer Room to be characterized as a separate room, and notes that the non-structural wall can be removed in the future pursuant to an Alteration Type 2 application, which would not require any public review; and

WHEREAS, the Appellant argues that the Secondary Prayer Room is intended for female worshippers, and there is no land use or other rationale indicating that female worshippers should not be accounted for in determining the parking requirement; and

WHEREAS, the Appellant notes that in 2004 the City Planning Commission (“CPC”) adopted the Community Facility Zoning Text Amendment, which replaced the term “churches” with the term “houses of worship” in the Zoning Resolution, and amended ZR § 25-31 by modifying the methodology for calculating parking requirements for houses of worship by basing it on “persons rated capacity” rather than the number of “fixed seats”; and

WHEREAS, the Appellant asserts that the purpose of the 2004 text amendment was to address local traffic congestion and illegal parking that occurs at many houses of worship; and

WHEREAS, specifically, the Appellant notes that the CPC Report (N 040202 ZRY), issued at the time the 2004 text amendment was adopted (the “CPC Report”), states that houses of worship often bring “large amounts of automobile traffic to religious services and related functions. The combination of a lack of any effective parking requirement and the changing character of many houses of worship results in local traffic congestion and illegal parking;” and

WHEREAS, the Appellant argues that the separation between the Main Prayer Room and Secondary Prayer Room, and the exclusion of the Secondary Prayer Room from parking calculations, is contrary to the intent of the Zoning Resolution because it undercounts the number of people and cars coming to religious services; and

WHEREAS, finally, the Appellant argues that allowing the Secondary Prayer Room to be excluded from parking calculations will set a precedent that other houses of worship throughout the City can follow in order to avoid the off-street parking requirement; and

WHEREAS, based upon the above, the Appellant requests the following relief: (1) the Final Determination be overturned and the Main Prayer Room and the Secondary

Prayer Room be counted together in determining whether accessory off-street parking is required pursuant to ZR § 25-31; (2) the matter be remanded to DOB to determine the need for the non-load bearing wall and the intended use of the Secondary Prayer Room; and/or (3) the Board order that the non-load bearing wall separating the Secondary Prayer Room from the Main Prayer Room may not be removed in the future unless the parking requirement is recalculated based on the combined area; and

DOB’S POSITION

WHEREAS, DOB contends that no accessory off-street parking spaces are required for the proposed house of worship, pursuant to ZR § 25-31; and

WHEREAS, at hearing, the Owner provided testimony in support of DOB’s position; and

WHEREAS, specifically, DOB states that pursuant to ZR § 25-31, the parking requirements for houses of worship are only applicable to the facility’s largest room of assembly, provided that rooms separated by movable partitions are considered a single room; and

WHEREAS, DOB represents that the term “movable partitions” means partitions between two rooms that fold, pivot or retract; and

WHEREAS, DOB states that, for the proposed house of worship, the assembly room on the first floor (the Main Prayer Room) is separated from the assembly room on the second floor (the Secondary Prayer Room) both horizontally and vertically, by a floor and a non-structural solid wall; and

WHEREAS, DOB further states that neither the floor nor the wall are movable partitions (they do not fold, pivot or retract), and therefore the Main Prayer Room and Secondary Prayer Room are not considered a single room for the purpose of determining the required number of parking spaces; and

WHEREAS, as to the calculation of the parking requirement, DOB states that the largest room of assembly (the Main Prayer Room) is 1,383.5 sq. ft. with a rated capacity of 138 occupants, and that the parking requirement of one space per 15 persons rated capacity results in a requirement of nine off-street parking spaces; and

WHEREAS, DOB further states that pursuant to ZR § 25-33, the parking requirements of ZR § 25-31 do not apply to permitted non-residential uses if the total number of accessory off-street parking spaces required for all the uses on the zoning lot is less than ten spaces; and

WHEREAS, accordingly, DOB concludes that no accessory off-street parking spaces are required for the proposed house of worship; and

CONCLUSION

WHEREAS, the Board is not persuaded by the Appellant’s assertions that DOB erred in calculating the parking requirement for the proposed house of worship, and finds that DOB correctly considered the Main Prayer Room and Secondary Prayer Room as separate rooms of assembly because (1) the text is unambiguous, (2) DOB’s interpretation was not contrary to the intent of the Zoning Resolution, and (3) DOB may not deny a permit based on speculation that there will be future illegal use; and

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WHEREAS, the Board finds that the methodology for calculating the parking requirement for a house of worship under ZR § 25-31 is clear in that it only applies “to the facility’s largest room of assembly; however, rooms separated by movable partitions shall be considered a single room;” and

WHEREAS, in the subject case, the Main Prayer Room and Secondary Prayer Room are located on separate floors and are separated both horizontally and vertically by a floor/ceiling and a solid wall; and

WHEREAS, the Board notes that the Appellant has not argued that either the floor or wall separating the two rooms should be considered a “movable partition;” and

WHEREAS, accordingly, the Board finds that the Main Prayer Room and Secondary Prayer Room are properly classified as two separate rooms of assembly; and

WHEREAS, as to the Appellant’s arguments based on the CPC Report and the intent of the Zoning Resolution, the Board agrees that one of the purposes of the text amendment was to address traffic and parking concerns, but notes that the CPC Report specifically contemplated that the parking calculations “would be based on ‘persons rated capacity’ of the largest room of assembly” (emphasis added); and

WHEREAS, the Board further notes that the Appellant’s strained interpretation of the subject text is not supported by the language of the CPC Report, which expressed an intent “to provide houses of worship with flexible methods for the provision of parking,” and specifically retained the existing parking waiver for houses of worship that generate a small number of parking spaces (ZR § 25-33); and

WHEREAS, the Board notes that houses of worship often have multiple prayer rooms, and that the reference to the “largest room of assembly” in ZR § 25-31 indicates that multiple rooms of assembly for prayer were contemplated and that only the largest of such rooms is intended to count toward the parking requirement for a house of worship; and

WHEREAS, accordingly, the Board finds the Appellant’s arguments regarding the intent of the Zoning Resolution to be vague and unsubstantiated, and does not find any evidence in the CPC Report to support the Appellant’s interpretation of the parking requirements for houses of worship; and

WHEREAS, the Board notes that the Appellant’s assertion that the separation between the Main Prayer Room and Secondary Prayer Room is a subterfuge to avoid the parking requirements of ZR § 25-31 and that the rooms operate in conjunction and should therefore be considered a single room of assembly for the purposes of calculating the parking requirement is not supported by any evidence submitted into the record; and

WHEREAS, as to the Appellant’s assertions regarding the potential for future non-compliance of the subject building by removing the wall that separates the two rooms, the Board notes that DOB is prohibited from denying a permit based on a speculative future illegal use (see Matter of Di Milia v. Bennett, 149 A.D.2d 592, 593 (2d Dep’t 1989) (“[t]he standard to be applied herein is the actual use of the

building in question, not its possible future use”)); and

WHEREAS, the Board further notes that the plans associated with DOB’s approval reflect a wall and floor between the Main Prayer Room and the Secondary Prayer Room, and the Board thus rejects the Appellant’s request that it condition its decision on the parking requirement being recalculated if the wall is removed; and

WHEREAS, therefore, the Board finds that DOB properly considered the Main Prayer Room and Secondary Prayer Room to be separate rooms, and properly waived the parking requirement for the subject house of worship pursuant to ZR § 25-33 based on the Main Prayer Room’s total rated capacity of 138 persons and a corresponding parking requirement of nine spaces under ZR § 25-31.

Therefore it is resolved that the subject appeal, seeking a reversal of the Final Determination of the Department of Buildings, dated June 7, 2011, is hereby denied.

Adopted by the Board of Standards and Appeals, November 15, 2011.

29-11-A & 30-11-A

APPLICANT – Randy M. Mastro-Gibson, Dunn & Crutcher LLP, for Win Restaurant Equipment & Supply Corporation, owner; Fuel Outdoor, lessee.

SUBJECT – Application March 24, 2011 – An appeal challenging the Department of Building's revocation of sign permits. M1-5B Zoning District.

PREMISES AFFECTED – 318 Lafayette Street, Northwest corner of Houston and Lafayette Streets. Block 522, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Trevis D. Lenkner.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 31, 2012, at 10 A.M., for decision, hearing closed.

40-11-A

APPLICANT – Bryan Cave LLP, Margery Perlmutter, Esq., for CPW Retail, LLC c/o American Continental Properties, LLC, owner.

SUBJECT – Application April 8, 2011 – Appeal challenging the Department of Building’s determination that non-conforming commercial use was discontinued pursuant to ZR §52-61. R10A & C4-7 LSD Zoning district.

PREMISES AFFECTED – 25 Central Park West, West 62nd and West 63rd Streets, Block 1115, Lot 7501(2) Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Margery Perlmutter.

THE VOTE TO CLOSE HEARING –

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Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 6, 2011, at 10 A.M., for decision, hearing closed.

61-11-A

APPLICANT – Fire Department of New York, for Mark Scharfman, owner; Multiple Dwelling, lessee.

SUBJECT – Application May 6, 2011 – Application seeking to modify Certificate of Occupancy to require an automatic sprinkler system for residents on upper floors of building.

PREMISES AFFECTED – 134 9th Avenue, West 18th and West 19th Street, Block 742, Lot 4, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Anthony Scaduto, Fire Department.

For Opposition: James I. Moore.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 10, 2012, at 10 A.M., for decision, hearing closed.

138-11-A

APPLICANT – Sheldon Lobel, P.C., for 64-01 Woodside Realty, Inc., owner.

SUBJECT – Application September 7, 2011 – Appeal seeking a common law vested right to complete construction under the prior R6 zoning district regulations. R5D zoning district.

PREMISES AFFECTED – 64-01 Woodside Avenue, between 64th and 65th Street, Block 1295, Lot 75, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 13, 2011, at 10 A.M., for decision, hearing closed.

140-11-A & 141-11-A

APPLICANT – Sheldon Lobel, P.C., for BQM Management, LLC, owner.

SUBJECT – Application September 8, 2011 – Appeal seeking a common law vested right to complete construction under the prior R6 zoning district regulations. R5D zoning district.

PREMISES AFFECTED – 69-17 & 69-19 38th Avenue, between the BQE and 69th Street, Block 1282, Lot 64 & 65, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 13, 2011, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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REGULAR MEETING

TUESDAY AFTERNOON, NOVEMBER 22, 2011

1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

2-11-BZ

CEQR #11-BSA-049M

APPLICANT – Cozen O’Connor, for 117 Seventh Avenue South Property Company, LP, owner.

SUBJECT – Application January 4, 2011 – Variance (§72-21) to allow for a residential and community facility enlargement to an existing commercial building, contrary to setback (§33-432) and open space regulations (§23-14). C4-5 zoning district.

PREMISES AFFECTED – 117 Seventh Avenue South, southeast corner of Seventh Avenue South and West 10th Street, Block 610, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Anthony Bartolacci.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 6, 2010, acting on Department of Buildings Application No. 110408513, reads in pertinent part:

ZR 23-632: Proposed front setback does not comply.

ZR 23-142: Proposed open space ratio does not comply; and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C4-5 zoning district within the Greenwich Village Historic District, a residential/community facility enlargement to an existing commercial building, which does not comply with front setback and open space ratio requirements, contrary to ZR §§ 23-632 and 23-142; and

WHEREAS, a public hearing was held on this application on May 10, 2011, after due notice by publication in the *City Record*, with continued hearings on August 23, 2011 and November 1, 2011, and then to decision on November 22, 2011; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and

Commissioner Ottley-Brown; and

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

WHEREAS, the site is located on the southeast corner of Seventh Avenue South and West 10th Street; and

WHEREAS, the site has a triangular shape with 135 feet of frontage along Seventh Avenue and 16 feet of frontage along West 10th Street, with a lot area of approximately 5,786 sq. ft.; and

WHEREAS, the site is occupied by three-story commercial building, which was constructed in the early 1990s in accordance with Landmarks Preservation Commissions’ (LPC) approvals; and

WHEREAS, a portion of the building is occupied by a PCE, pursuant to the Board’s approval associated with BSA Cal. No. 1-95-BZ and the remainder is occupied by a grocery store; and

WHEREAS, the building has a floor area of approximately 17,505 sq. ft. (3.02 FAR), a streetwall and total height of 52’-4”, and no open space; and

WHEREAS, the applicant now proposes to add a fourth, fifth, and partial sixth floor to be occupied by a residential and community facility space on the fourth floor and residential use on the two upper floors; and

WHEREAS, the applicant proposes the following non-complying conditions: (1) a streetwall with a height of 74’-4” (a 15-ft. setback is required at a height of 60 feet); and no open space (the minimum open space ratio is 48 percent); and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the site’s irregular shape and (2) the constraints of the existing building; and

WHEREAS, the applicant states that the site’s shape approximates that of a right triangle with a notch carved out of the 90 degree angle at the rear with six distinct zoning lot lines; and

WHEREAS, the applicant states that the required setback from Seventh Avenue South shifts the building’s bulk away from the long end of the triangle into the right angle where the two sides of a triangle would come together; and

WHEREAS, the applicant states that the site’s irregular shape, including the notch in the rear presents practical difficulties in complying with the relevant zoning regulations; and

WHEREAS, the applicant notes that if the site were a perfect triangle, without the notch, a residential enlargement could be designed with internal circulation at the rear of the site, allowing for a more efficient floor; and

WHEREAS, the applicant represents that a design with the required 15-ft. initial setback would result in residential units with depths limited to 20 feet; and

WHEREAS, the applicant represents that the difference in leasable floor area attributed to the irregular shape would be from 3,829 sq. ft. of leasable residential floor area (subtracting community facility floor area and

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circulation space) to 2,025 sq. ft. of leasable space, with the setback; and

WHEREAS, the applicant states that the notch at the back of the building limits the potential uses for that area to non-residential or non-habitable accessory residential uses as it is bound by two lot lines and lacks the requisite access to light and air; and

WHEREAS, the applicant states that a regularly-shaped site would have less exterior perimeter, eliminate unnecessary circulation space, and provide more and better usable, residential floor area; and

WHEREAS, the applicant provided evidence to support a claim that the inclusion of a setback would also require increased structural engineering costs such as a transfer platform above the existing roof to support the new floor 15 feet back from the streetwall; and

WHEREAS, the applicant represents that the site's shape is a unique condition; and

WHEREAS, specifically, the applicant states that when the Westside IRT (2/3 subway) was built in 1917, Seventh Avenue was extended south through the Greenwich Village street grid, leaving irregularly-shaped lots along Seventh Avenue South; and

WHEREAS, the applicant asserts that it is unique from other seemingly similar sites in that (1) many others include contributing buildings in the historic district and thus are eligible for relief from the City Planning Commission pursuant to ZR § 74-711, which the subject noncontributing building is not; (2) few of the other nearby buildings on similarly shaped sites can structurally sustain enlargements; or (3) others are too small to accommodate residential additions, which are only permitted on zoning lots with a total lot area greater than 1,700 sq. ft.; and

WHEREAS, the applicant provided an analysis of all zoning lots bisected by the extension of Seventh Avenue South, which reflects that there are 32 bisected lots out of a much greater number of lots in the study area and only eight (25 percent) of the bisected sites are similar to the subject site with a basically triangular shape, underdeveloped, and non-contributing in the historic district; and

WHEREAS, the applicant cites to Douglaston v. Klein, 51 N.Y.2d 963 (1960) for the principle that a uniqueness finding "does not require that only the parcel of land in question and none other be affected by the condition which creates the hardship" but that the hardship condition not be so generally applicable such that the a series of potential variances be tantamount to a zoning change; and

WHEREAS, the Board agrees that Douglaston does not require that in order to satisfy the uniqueness finding that a site must be the only one with a particular set of conditions leading to hardship; 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 submitted a feasibility study which analyzed: (1) the complying mixed-use building with a

floor area of 26,388 sq. ft.; and (2) the proposed mixed-use building with floor area of approximately 33,344 sq. ft.; and

WHEREAS, the study concluded that the complying scenario would not result in a reasonable return, but that the proposed enlargement would realize 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 zoning 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, the applicant states that the proposed use is conforming and is consistent with the surrounding area and that the existing building with a height of 52'-4" is a full lot coverage building; although 1,041 sq. ft. of open space is required on the first residentially occupied floor, the creation of open space as part of the enlargement above the third floor would not benefit the surrounding area; and

WHEREAS, the applicant asserts that there is a range of building sizes and types in the surrounding area such that there is not a defined building form or profile, thus the absence of the setback and the sky exposure plane encroachment will not be out of character; and

WHEREAS, the applicant notes that the proposed FAR of 5.74 is less than the maximum 6.5 permitted and thus, the bulk is contemplated by zoning district regulations; and

WHEREAS, lastly, because the site is within the Greenwich Village Historic District, the applicant obtained approval of the design from the LPC in the form of a Certificate of Appropriateness, dated June 8, 2010 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 is a result of the historic street mapping and was not self-created; 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 notes that the proposal requires waivers for setback and for open space, and that all other zoning conditions are complying; and

WHEREAS, the Board notes that the proposal reflects a setback with a depth between 18 and 20 feet above the fifth floor height of 74'-4"; and

WHEREAS, accordingly, the Board finds that the requested relief is the minimum necessary to allow the applicant to enlarge the existing building to accommodate the available floor area; and

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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 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. 11BSA049M, dated November 12, 2010; 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 a C4-5 zoning district within the Greenwich Village Historic District, a residential/community facility enlargement to an existing commercial building, which does not comply with front setback and open space ratio requirements, contrary to ZR §§ 23-632 and 23-142, *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 18, 2011"- fourteen (14) sheets; and *on further condition*:

THAT the total building floor area post-enlargement shall not exceed 33,469 sq. ft. (5.74 FAR) and the front wall height shall not exceed 74'-4", 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 substantial construction shall be completed pursuant to ZR § 72-23;

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 22, 2011.

81-11-BZ CEQR #11-BSA-105X

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Parkchester Preservation Co., LP, owner; Blink Metropolitan Avenue, Inc., lessee.

SUBJECT – Application June 7, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Blink Fitness*). C4-2 zoning district.

PREMISES AFFECTED – 1380 Metropolitan Avenue, aka 44/64 Metropolitan Oval, south side of Parkchester Road, 200' east of intersection of Parkchester Road and Metropolitan Avenue, Block 3938, Lot 7501, Borough of the Bronx.

COMMUNITY BOARD #9BX

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated October 24, 2011, acting on Department of Buildings Application No. 220119574, reads in pertinent part:

"The proposed physical culture establishment in a C4-2 (PC) district is contrary to Section ZR 32-10 and requires a special permit from the Board of Standards and Appeals pursuant to ZR Section 73-36;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-2 zoning district within the Special Parkchester Planned Community Preservation District, the operation of a physical culture establishment ("PCE") on portions of the cellar and first floor of a 13-story commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 25, 2011, after due notice by publication in *The City Record*, and then to decision on November 22, 2011; and

WHEREAS, the subject site is an irregular-shaped lot which occupies the entire block bounded by McGraw

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Avenue to the south, Metropolitan Avenue to the west, and Unionport Road to the east, in a C4-2 district within the Special Parkchester Planned Community Preservation District; and

WHEREAS, the subject site is occupied by a 39-building complex containing 12,271 dwelling units and approximately 500,000 sq. ft. of retail space; and

WHEREAS, the proposed PCE will occupy 525 sq. ft. of floor area on a portion of the first floor of the 13-story commercial/residential building located on the site, with an additional 14,874 sq. ft. of floor space located in a portion of the cellar; and

WHEREAS, the PCE will be operated as Blink Fitness; and

WHEREAS, the proposed hours of operation for the PCE are: Monday through Saturday, from 5:30 a.m. to 11:00 p.m.; and Sunday, from 7:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the applicant states that the Special Parkchester Planned Community Preservation District regulations do not restrict the use of portions of the cellar and first floor of the subject building for the proposed PCE use; 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 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 617.2; 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. 11BSA105X, dated June 3, 2011; and

WHEREAS, the EAS documents 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, 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 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, on a site located in a C4-2 zoning district within the Special Parkchester Planned Community Preservation District, the operation of a physical culture establishment (“PCE”) on portions of the cellar and first floor of a 13-story commercial/residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received September 6, 2011” - (3) sheets, and *on further condition*:

THAT the term of this grant shall expire on November 22, 2021;

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 all massages shall be performed by New York State licensed massage therapists;

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

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT substantial construction shall be completed in accordance with ZR §73-70;

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

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, November 22, 2011.

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126-11-BZ

CEQR #12-BSA-017M

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for 87 Chambers LLC and IBC Chambers LLC, owners.

SUBJECT – Application August 19, 2011 – Variance (§72-21) to allow for the construction of a new mixed use building, contrary to lot coverage and rear yard equivalent (§§23-145 and 23-532) and accessory off-street parking regulations (§13-00). C6-3A/Tribeca Special District PREMISES AFFECTED – 87-89 Chambers Street, midblock bounded by Chambers Street, Church Street, Reade Street and Broadway, Block 149, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Jay Segal.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 16, 2011, acting on Department of Buildings Application No. 120571194, reads in pertinent part:

1. ZR 23-145. Proposed building lot coverage exceeds maximum percentage allowed under ZR 23-145 (proposed 84% > allowed 70%).
2. ZR 23-532. An open space with a minimum depth of 60 feet, midway (or within 5 feet of being midway) between the two street lines is required.
3. ZR 13-12. Proposed off-street parking spaces exceed the amount permitted under ZR 13-12 which only permitted 8 parking spaces; and

WHEREAS, this is an application under ZR § 72-21, to permit, in a C6-3A zoning district within the Tribeca South Historic District and the Special Tribeca Mixed Use District, construction of an eight-story residential building with 36 dwelling units and ground floor retail use, and 11 accessory off-street parking spaces, which does not comply with the zoning regulations related to lot coverage, rear yard equivalent and parking, contrary to ZR §§ 23-145, 23-532 and 13-12; and

WHEREAS, a public hearing was held on this application on October 25, 2011, after due notice by publication in the *City Record*, and then to decision on November 22, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Manhattan, recommends approval of the application; and

WHEREAS, the subject premises is located on a through lot with frontage on Chambers Street and Reade Street,

between Broadway and Church Street, in a C6-3A zoning district within the Tribeca South Historic District and the Special Tribeca Mixed Use District; and

WHEREAS, the site has 49’-4” of frontage on Chambers Street and 49’-4” of frontage on Reade Street, a depth of 151’-1”, and a total lot area of 7,459 sq. ft.; and

WHEREAS, the applicant states that the subject site was previously occupied by a five-story mixed-use building which partially collapsed as a result of construction on the adjacent lot to the west of the site; the remaining portion of the former building was subsequently demolished by order of the Department of Buildings; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct an eight-story, 36-unit residential building with commercial use at the cellar and ground floor, and 11 accessory off-street parking spaces located in the cellar; and

WHEREAS, the proposed building will have the following complying parameters: a residential floor area of 40,997 sq. ft. (5.5 FAR), a commercial floor area of 3,871 sq. ft. (0.52 FAR), a total floor area of 44,868 sq. ft. (6.02 FAR), a wall height of 72’-2”, a total height of 87’-8”, and a 15’-0” setback from Chambers Street and Reade Street above the seventh floor; and

WHEREAS, however, the proposed building will have the following non-compliances: lot coverage of 84 percent (the maximum permitted lot coverage is 70 percent); an open area measuring 33’-4” by 36’-0” in the rear yard equivalent (an open area with a minimum depth of 60 feet, midway between the two street lines upon which the through lot fronts is required for the rear yard equivalent); and 11 accessory off-street parking spaces (the maximum permitted number of accessory off-street parking spaces is eight); and

WHEREAS, because relief from the bulk requirements of the underlying zoning district is necessary, the applicant requests the subject variance; 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 the underlying district regulations: (1) the site is a vacant through lot with a shallow depth; and (2) the building configuration is constricted by the site’s location in both the Tribeca South Historic District and the Special Tribeca Mixed Use District; and

WHEREAS, the applicant states that the subject through lot is vacant and has a shallow depth of 151’-1”; and

WHEREAS, as to the uniqueness of the site’s 151’-1” depth, the applicant submitted an analysis of the 14 blocks surrounding the site, which reflects that the average block width in the vicinity of the site is 171 feet; and

WHEREAS, the block study submitted by the applicant further reflects that the subject site is located on one of only two blocks in the surrounding area with an average width of less than 152 feet, and that the majority of blocks in the study area have widths ranging between 175 feet and 179 feet; and

WHEREAS, the Board notes that the street wall regulations under ZR § 111-20 for the Special Tribeca Mixed Use District and the requirements of the Tribeca South Historic

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District necessitate that any development on the site provide a street wall located along the street line on both the Chambers Street and Reade Street frontages; and

WHEREAS, the applicant submitted plans which reflect that, due to the constraints on the zoning lot, a complying development would have to be divided into two street wall components in order to comply with the required 60-ft. rear yard equivalent that must be located in the center of the lot; and

WHEREAS, the plans submitted by the applicant further reflect that a complying building on the subject lot would result in essentially two buildings with a shared common ground floor and lobby and two elevator service cores; and

WHEREAS, the Board notes that, because the lot is shallow at 151'-1", the two building components in a complying scenario would have a depth of only 45'-6" each, and a floor plate of approximately 2,250 sq. ft. at the base, with the floor plate of the upper floors further reduced; as a result, a complying building would have a maximum floor area of 32,736 sq. ft. (4.39 FAR), significantly less than the permitted FAR of 7.52; and

WHEREAS, the Board further notes that the effect of the small floor plate and the service core create building inefficiencies that reduce the amount of revenue generating space as compared to more typical through lot sites; and

WHEREAS, in order to address this unique condition, the applicant requests a waiver of the rear yard equivalent and lot coverage regulations; and

WHEREAS, the applicant notes that the proposed building provides a complying inner court that measures 33'-4" by 36'-0", which will provide sufficient light and air to the units in the building; and

WHEREAS, the Board notes that, due to the constraints on the site, even the proposed development requires two building cores and as a result is significantly underdeveloped with a floor area of 48,868 sq. ft. (6.02 FAR), which is far below the permitted FAR of 7.52; and

WHEREAS, in order to compensate for the unused floor area, the applicant requests a parking waiver to allow for three additional accessory parking spaces on the site; and

WHEREAS, as to the uniqueness of the conditions on the subject site, the applicant submitted a survey of lots within a study area bounded by Worth Street, Broadway, Park Place, and West Broadway; and

WHEREAS, the lot survey submitted by the applicant reflects that, of the 26 through lots in the study area, only three other lots (19 Park Place, 79-81 Chambers Street, and 91 Chambers Street) were "soft" or potential development sites (50 percent or less of the allowable FAR), and of those lots only the subject site is vacant; and

WHEREAS, the applicant represents that the subject site is uniquely constrained as compared to the other underdeveloped through lots in the study area; and

WHEREAS, the applicant states that 19 Park Place is located outside the Tribeca South Historic District and the Special Tribeca Mixed Use District, and as such is not subject to the same street wall continuity provisions and could therefore provide the 60-ft. required rear yard equivalent either at the center of the lot or along the front lot lines; and

WHEREAS, the applicant further states that the other two through lots are located on the subject block, however, 79-81 Chambers Street is part of a larger zoning lot consisting of an interior lot and a corner lot and therefore has multiple options for arranging its floor plates and could allocate some of its unused floor area to other portions of the zoning lot, while 91 Chambers Street (located adjacent to the subject site) obtained a special permit from the City Planning Commission allowing a new residential building which does not have to comply with the rear yard equivalent requirements of ZR § 23-532; and

WHEREAS, based upon the above, the Board finds that the shallow lot dimensions and requirements for street walls located along both street lines are unique physical conditions which, 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 that analyzed: (1) a complying eight-story mixed-use building with 8,025 sq. ft. of commercial space at the cellar and first floor, 22 dwelling units, a total floor area of 32,736 sq. ft., and six accessory off-street parking spaces in the cellar; (2) a lesser variance scenario consisting of an eight-story mixed-use building with 5,539 sq. ft. of commercial space at the cellar and first floor, 36 dwelling units, a total floor area of 44,868 sq. ft. and eight accessory off-street parking spaces in the cellar; and (3) the proposed building; and

WHEREAS, at hearing, the Board directed the applicant to revise its lesser variance scenario to reflect that additional cellar space could be devoted to commercial use; and

WHEREAS, in response, the applicant submitted a revised feasibility study with a lesser variance scenario showing an additional 306 sq. ft. of cellar floor space devoted to commercial use; and

WHEREAS, the revised study concluded that the as-of-right and lesser variance scenarios would not realize a reasonable return but that the proposed scenario would realize a reasonable return; and

WHEREAS, based upon its review of the applicant's submissions, the Board has determined that, because of the subject site'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 surrounding area is generally characterized by residential buildings with ground floor retail use and commercial office buildings; and

WHEREAS, the applicant states that almost all of the existing buildings along Chambers Street and Reade Street occupy their entire zoning lot so that providing the proposed inner court rather than a complying rear yard equivalent will not alter the built character of the area; and

WHEREAS, the applicant further states that the proposed

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building will have the same visible footprint as a complying building when viewed from the street; and

WHEREAS, the Board notes that the proposed building complies with all bulk provisions in the subject zoning district, aside from rear yard equivalent and lot coverage; and

WHEREAS, the applicant represents that the addition of three more parking spaces than would be permitted as-of-right is compatible with the conditions in the surrounding neighborhood; and

WHEREAS, the applicant submitted photographs reflecting that there are no lot line windows on either of the immediately adjacent buildings to the east or west of the site; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the subject property; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission (“LPC”) approving work associated with the proposed construction, dated October 19, 2011; 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 herein was not created by the owner or a predecessor in title, but is due to the unique dimensions of the lot; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is due to the unique dimensions of the lot; 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 project is classified as an Type I Action pursuant to Section 617.4 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. 12BSA017M, dated August 24, 2011; 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 each and every one of the required findings under ZR § 72-21, and grants a variance to permit, in a C6-3A zoning district within the Tribeca South Historic District and the Special Tribeca Mixed Use District, construction of an eight-story residential building with 36 dwelling units and ground floor retail use, and 11 accessory off-street parking spaces, which is contrary to ZR §§ 23-145, 23-532 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 August 25, 2011” – eight (8) sheets; and *on further condition*:

THAT the following shall be the parameters of the proposed building: a total floor area of 44,868 sq. ft. (6.02 FAR), lot coverage of 84 percent; an inner court measuring 33’-4” by 36’-0”; a street wall height of 72’-2”, a total building height of 87’-8”, and a maximum of 11 accessory off-street parking spaces, as indicated on the BSA-approved plans;

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

THAT construction shall be substantially completed in accordance with the requirements of ZR § 72-23; and

THAT 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.

Adopted by the Board of Standards and Appeals, November 22, 2011.

3-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chaya Schron and Eli Shron, owners.

SUBJECT – Application January 10, 2011 – Special Permit (§73-622) for the enlargement of a single family home, contrary to floor area and open space (§23-141) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1221 East 22nd Street, between Avenue K and Avenue L, Block 7622, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to February 7, 2012, at 1:30 P.M., for adjourned hearing.

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47-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for USA Outreach Corp., by Shaya Cohen, owner.

SUBJECT – Application April 13, 2011 – Variance (§72-21) to allow a three-story yeshiva (*Yeshiva Zichron Aryeh*) with dormitories, contrary to use (§22-13), floor area (§§23-141 and 24-111), side setback (§24-551) and parking regulations (§25-31). R2 zoning district.

PREMISES AFFECTED – 1213 Bay 25th Street, west side of Bay 25th Street, between Bayswater Avenue and Healy Avenue. Block 15720, Lot 67, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to December 6, 2011, at 1:30 P.M., for adjourned hearing.

54-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Bay Parkway Group LLC, owner.

SUBJECT – Application April 21, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory diagnostic or treatment facility building. R6/C1-3 zoning district.

PREMISES AFFECTED – 6010 Bay Parkway, west side of Bay Parkway between 60th Street and 61st Street, Block 5522, Lot 36 & 32, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Lyra J. Altman, Seth Wright and Jim Heineman.

For Opposition: Assemblyman William Colton, Council Member David G. Greenfield, Leo Weinberger, Anna Cali and Sal Cali.

ACTION OF THE BOARD – Laid over to January 10, 2012, at 1:30 P.M., for continued hearing.

67-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Joseph Kleinman, owner.

SUBJECT – Application May 13, 2011 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to floor area and open space (§23-141) side yard and (§23-47) rear yard. R-2 zoning district.

PREMISES AFFECTED – 1430 East 29th Street, West side of 29th Street between Avenue N and Kings Highway. Block 7682, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January

10, 2012, at 1:30 P.M., for decision, hearing closed.

76-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Eli Braha, owner.

SUBJECT – Application May 26, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); rear yard (§23-47) and side yard (§23-461). R4/Ocean Parkway zoning district.

PREMISES AFFECTED – 2263 East 2nd Street, approximately 235' south of Gravesend Neck Road, Block 7154, Lot 68, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 10, 2012, at 1:30 P.M., for decision, hearing closed.

82-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Livaho Choueka, owner.

SUBJECT – Application June 8, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141); side yard (§23-461); rear yard (§23-47) regulations. R5 zoning district.

PREMISES AFFECTED – 2020 Homecrest Avenue, west side of Homecrest Avenue, 165' south of Avenue T, Block 7316, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to December 13, 2011, at 1:30 P.M., for decision, hearing closed.

89-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Annie and Kfir Ribak, owners.

SUBJECT – Application June 23, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461) and perimeter wall height (§23-631). R3-2 zoning district.

PREMISES AFFECTED – 2224 Avenue S, south west corner of Avenue S and East 23rd Street, Block 7301, Lot 9,

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Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to December 6, 2011, at 1:30 P.M., for continued hearing.

92-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Eugene and Margaret Loevinger, owners.

SUBJECT – Application June 24, 2011 – Special Permit (§73-622) for the enlargement of an existing single-family home contrary to floor area and open space (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1349 East 26th Street, east side of East 26th Street, 390' south of Avenue M, block 7662, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to December 13, 2011, at 1:30 P.M., for continued hearing.

134-11-BZ

APPLICANT – Eric Palatnik, P.C., for 335 Madison Avenue LLC, owner, Madison Spa Castle, Inc., lessee.

SUBJECT – Application September 7, 2011 – Special Permit (ZR §73-36) to allow the operation of a physical culture establishment (*Spa Castle*). C5-3 zoning district.

PREMISES AFFECTED – 335 Madison Avenue, corner of Madison Avenue and East 43rd Street. Block 1278, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to December 13, 2011, at 1:30 P.M., for continued hearing.

137-11-BZ

APPLICANT – Slater & Beckerman, LLP, for 455 Carroll Street LLC, owner.

SUBJECT – Application September 7, 2011 – Variance (§72-21) to allow the conversion of the second floor and second floor mezzanine from manufacturing and commercial uses to residential use, contrary to §42-10. M1-2 zoning district.

PREMISES AFFECTED – 455 Carroll Street, mid-block on the north side of Carroll Street between Nevins Street and Third Avenue, Block 447, Lot 47, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Stuart Beckerman and David Belt.

ACTION OF THE BOARD – Laid over to January 10, 2012, at 1:30 P.M., for continued hearing.

152-11-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 240 East 38th Street Condominium on behalf of New York University, owner.

SUBJECT – Application September 19, 2011 – Variance (§72-21) to allow modifications to the existing plazas and arcades associated with the partial re-use of an existing building for a community facility (*NYU Langone Medical Center*), contrary to §37-625. C1-9 zoning district.

PREMISES AFFECTED – 240 East 38th Street, East 37th Street, Second Avenue, East 38th Street and Tunnel Exit Street, Block 918, Lot 1001-1026, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Elise Wagner, Erich Arcement, Signe Nielsen, Kate Parkin, Vicki March Suna and Joan Patey.

For Opposition: Hugh McGlincy.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to December 13, 2011, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

This resolution adopted on September 20, 2011, under Calendar No. 827-55-BZ and printed in Volume 96, Bulletin No. 39, is hereby corrected to read as follows:

827-55-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products, Incorporated, owner.

SUBJECT – Application October 5, 2010 – Extension of Term (§11-411) for the continued operation of a Gasoline Service Station (*British Petroleum*) which expires on January 31, 2011. R3-2 zoning district.

PREMISES AFFECTED – 245-20 139th Avenue, southwest corner of Conduit Avenue. Block 13614, Lot 23, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term for a previously granted variance for a gasoline service station with accessory uses, that expired on January 31, 2011; and

WHEREAS, a public hearing was held on this application on December 14, 2010, after due notice by publication in *The City Record*, with continued hearings on January 25, 2011, June 7, 2011, July 12, 2011 and August 23, 2011, and then to decision on September 20, 2011; and

WHEREAS, Community Board 13, Queens, recommends disapproval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the southwest corner of 246th Street and Conduit Avenue at 139th Avenue, within an R3-2 zoning district; and

WHEREAS, the site is occupied by a gasoline service station with accessory uses (Use Group 16); and

WHEREAS, the Board has exercised jurisdiction over the site since January 31, 1956 when, under the subject calendar number, the Board granted a variance to permit the site to be occupied by a gasoline service station with accessory uses; and

WHEREAS, subsequently, the grant was amended and the term extended at various times; and

WHEREAS, most recently, on September 10, 2002, the Board granted a ten-year extension of term, which expired on January 31, 2011; and

WHEREAS, the applicant now seeks an additional ten-year extension of term; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, at hearing, the Board raised concerns about the following site conditions: (1) parked cars on the sidewalk, (2) signage in excess of the Board approval, and (3) the presence of graffiti; and

WHEREAS, in response, the applicant submitted (1) evidence that the owner installed wheel stops to prevent parking on the sidewalk and (2) photographs of the site, which reflect the removal of excess signage and graffiti; 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 *reopens* and *amends* the resolution, dated January 31, 1956, so that as amended this portion of the resolution shall read: “to extend the term for ten years from January 31, 2011, to expire on January 31, 2021; *on condition* that all use and operations shall substantially conform to plans filed with this application marked ‘May 24, 2011’-(3) sheets; and *on further condition*:

THAT the term of the grant shall expire on January 31, 2021;

THAT all exterior lighting shall be directed downward and away from adjacent residential uses;

THAT the site shall be maintained free of debris and graffiti;

THAT all signage shall comply with the Board-approved signage plan;

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; and

THAT the Department of Buildings must ensure compliance 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. 420232885)

Adopted by the Board of Standards and Appeals September 20, 2011.

***The resolution has been revised to correct the DOB Application No. which read: “401419924” now reads: “420232885”. Corrected in Bulletin No. 48, Vol. 96, dated November 30, 2011.**

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*CORRECTION

This resolution adopted on October 25, 2011, under Calendar No. 72-11-BZ and printed in Volume 96, Bulletin No. 44, is hereby corrected to read as follows:

72-11-BZ

APPLICANT – Walter t. Gorman, P.E., for Tannor and Rothafel Partnership, owner; Lukoil (Getty Service Station), lessee.

SUBJECT – Application May 24, 2011 – Re-Instatement (§11-411) of a previously approved variance permitting the operation of an automotive service station (UG 16B) which expired on October 8, 1994. R3-2 zoning district.

PREMISES AFFECTED - 101-06 Astoria Boulevard, south east corner of 101st Street. Block 1688, Lot 30. Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Kieron Bachan.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated May 16, 2011, acting on Department of Buildings Application No. 420354850, reads in pertinent part:

“Proposal to extend the term of the zoning variance for a gasoline service station which is located in an R3-2 zoning district is contrary to the last resolution adopted by the Board of Standards and Appeals under Cal. No. 711-56-BZ and contrary to C.O. No. 202651 and must, therefore, be referred to the Board of Standards and Appeals for reinstatement of the variance since the variance has lapsed;” and

WHEREAS, this is an application for a reinstatement, an extension of term, an extension of time to obtain a certificate of occupancy, and an amendment to permit minor modifications to the approved plans for a prior Board approval of a gasoline service station with accessory uses (Use Group 16) within an R3-2 zoning district, pursuant to ZR § 11-411; and

WHEREAS, a public hearing was held on this application on August 23, 2011, after due notice by publication in the *City Record*, with a continued hearing on September 20, 2011, and then to decision on October 25, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 3, Queens, recommends approval of this application, with the following conditions: (1) the term be limited to five years; (2) the building remain graffiti free; (3) all landscaping be maintained in accordance with the approved plans; (4) all existing walls and fencing be repaired

and maintained; (5) all perimeter sidewalks and tree planting pits be maintained free of debris; and (6) all banners be removed, lighting upgraded, and surveillance cameras installed; and

WHEREAS, the premises is located on a through lot bounded by Astoria Boulevard to the north, 101st Street to the west, and 31st Avenue to the south, within an R3-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 31, 1959 when, under BSA Cal. No. 711-56-BZ, the Board granted a variance to permit the site to be occupied as a gasoline service station with accessory uses, for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended at various times; and

WHEREAS, most recently, on May 21, 1985, the Board granted a ten-year extension of term, which expired on October 8, 1994; and

WHEREAS, the term of the variance has not been extended since its expiration on October 8, 1994, and

WHEREAS, the applicant represents, however, that the use of the site as a gasoline service station with accessory uses has been continuous since the initial grant; and

WHEREAS, the applicant now proposes to reinstate the prior grant; and

WHEREAS, the applicant has requested a ten-year extension of term and extension of time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance for a term of not more than ten years; and

WHEREAS, the applicant also requests an amendment to reflect minor modifications to the site plan, including the installation of an air tower, yard light and car vacuum along the easterly side of the site, a modification to the dispenser arrangement previously-approved by the Board, and the conversion of the office and sales area to a snack shop; and

WHEREAS, at hearing, the applicant acknowledged that the site has the following non-compliances with the previously-approved plans: (1) the operation of a U-Haul rental business at the site; (2) the presence of debris within the area behind the service building designated as a landscaping area; (3) promotional signage which was not reflected on the approved plans; (4) failure to landscape the easterly side of the property in accordance with the approved plans; and (5) the presence of graffiti on the service building; and

WHEREAS, as evidence that these conditions have been brought into compliance, the applicant submitted a U-Haul Dealership Close-Out Notice and an affidavit from the operator of the site stating that the U-Haul rental business has been discontinued, and submitted photographs and revised plans reflecting the removal of debris from the site, the installation of landscaping along the easterly side of the property and behind the service building, the removal of excess signage, and the painting over of graffiti on the service building; and

WHEREAS, at the Board’s direction, the applicant also submitted revised drawings reflecting that two new street trees

MINUTES

will be planted along the 31st Avenue frontage; and

WHEREAS, the applicant also agreed to the conditions requested by the Community Board, with the exception of the suggested five year term and the requirement to install surveillance cameras at the site; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR § 11-411.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, 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 to permit the reinstatement, extension of term, extension of time to obtain a certificate of occupancy, and amendment to the previously-approved plans for a prior Board approval of a gasoline service station with accessory uses (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 September 1, 2011"-(6) sheets; and *on further condition*:

THAT the term of this grant shall be for ten years, to expire on October 25, 2021;

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

THAT all signage on the shall comply with C1 district regulations;

THAT landscaping and fencing shall be maintained in accordance with the BSA-approved plans;

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

THAT a new certificate of occupancy shall be obtained by October 25, 2012;

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;

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 25, 2011.

***The resolution has been corrected to reflect the 10 Year Term. Corrected in Bulletin No. 48, Vol. 96, dated November 30, 2011.**

BULLETIN

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321-63-BZ 1775 Grand Concourse, Bronx
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DOCKET

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178-11-BZ

1944 East 12th Street, East 12th Street between Avenues S and T., Block 7290, Lot(s) 24, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of an existing two story, semi-detached single family home contrary to floor area and open space (ZR 23-141(b)); side yard requirement (ZR 23-461) and less than the required rear yard (ZR 23-47). R5 zoning district. R5 district.

179-11-BZ

65-45 Otto Road, between 66th Street and 66th Place., Block 3667, Lot(s) 625, Borough of **Queens, Community Board: 5**. Special Permit (§73-36) to permit the operation of a physical culture establishment (New Retro Fitness) to be located within 1-story existing building. M1-1 zoning district. M1-1 district.

180-11-A

34-57 107th Street, between 34th and 37th Avenues, Block 1749, Lot(s) 60(Tent 61), Borough of **Queens, Community Board: 3**. An appeal seeking a common law vested right to continue development commenced under the prior R6B zoning district . R5 Zoining dsistrict . R5 district.

181-11-A

34-59 107th Street, between 34th and 37th Avenues, Block 1749, Lot(s) 60(Tent 60), Borough of **Queens, Community Board: 2**. An appeal seeking a common law vested right to continue development commenced under the prior R6B Zoning Distirct . R5 Zoning district . R5 district.

183-11-BZ

1133 York Avenue, property is situated on the north side of East 61st Street, westerly from the corner formed by the intersection of the northerly side of East 61st Street and the westerly side of York Avenue., Block 1456, Lot(s) 21, Borough of **Manhattan, Community Board: 8**. Variance (§72-21) to allow for the construction of a new outpatient surgical center (Memorial Hospital for Cancer and Allied Diseases) contrary to maximum floor area ratio (ZR§33-123); rear yard (ZR §33-261) height and setback regulations (ZR§33-432); curb cut (ZR§13-142) and signage (ZR §§32-643 & 32-655) C1-9/C8-4 zoning districts. C1-9; C8-4 district.

182-11-BZ

777 Broadway, located on the east corner of the intersection formed by Broadway and Summer Place, Block 3131, Lot(s) 6, Borough of **Brooklyn, Community Board: 4**. Special Permit (§73-36) to permit the operation of a physical culture establishment on a portion of the first, second and third floors of the existing three-story building. C4-3 zoning district. C4-3 district.

184-11-BZ

945 East 23rd Street, east side of East 23rd Street between Avenue I and Avenue J., Block 7587, Lot(s) 26, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (ZR 23-141) and less than the required rear yard (ZR 23-47). R2 zoning district. R2 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

JANUARY 10, 2012, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 10, 2012, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

118-53-BZ

APPLICANT – Issa Khorasanchi, for Henry R. Jenet, owner.

SUBJECT – Application October 24, 2011 – Pursuant to ZR 11-411 of the Zoning Resolution, this application is for an Extension of Term for the continued operation of UG6 retail stores which expired on December 7, 2011. R4 zoning district.

PREMISES AFFECTED – 106-57/61 160th Street, east side of 160th Street, 25' north of intersection of 107th Avenue and 160th Street, Block 10128, Lot 50, Borough of Queens.

COMMUNITY BOARD #12Q

295-57-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Aranoff Family Limited Partnership, owners.

SUBJECT – Application September 7, 2011 – Pursuant to (ZR 11-411) an Extension of Term for the continued operation of a Gasoline Service Station (*BP British Petroleum*) which expired on August 7, 2011; Extension of Time to obtain a Certificate of Occupancy which expired on February 7, 2002. C1-2/R4 zoning district.

PREMISES AFFECTED – 146-15 Union Turnpike, northwest corner of Union Turnpike and 147th Street, Block 6672, Lot 80, Borough of Queens.

COMMUNITY BOARD #8Q

737-65-BZ

APPLICANT – Sheldon Lobel, P.C., for Yorkshire Towers Company Successor II, L.P., owner.

SUBJECT – Application November 3, 2011 – Extension of Term permitting the use of no more than 50 unused and surplus tenant parking spaces, within an accessory garage, for transient parking granted by the Board pursuant to §60 (3) of the Multiple Dwelling Law (MDL) which expired on November 3, 2010; Waiver of the Rules of Practice and Procedure. C2-8 (TA), C2-8 and R8B zoning district.

PREMISES AFFECTED – 301-329 East 86th Street, corner through lot fronting on East 86th Street, East 87th Street and Second Avenue. Block 1549, Lot 1. Borough of Manhattan.

COMMUNITY BOARD #8M

352-69-BZ

APPLICANT – Sheldon Lobel, P.C., for Dr. Alan Burns, owner.

SUBJECT – Application September 29, 2011 – Extension of Term of a previously granted Variance (72-21) for the continued operation of a UG16 animal hospital (*Brooklyn Veterinary Hospital*) which expired on September 30, 1999; Waiver of the Rules. R6B zoning district.

PREMISES AFFECTED – 411 Vanderbilt Avenue, east side of Vanderbilt Avenue between Greene and Gates Avenue, Block 1960, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #2BK

156-03-BZ

APPLICANT – Goldman Harris LLC, for Northern RKO LLC, owner.

SUBJECT – Application November 30, 2011 – Extension of Time to Complete Construction of a previously granted Variance (72-21) for the construction of a seventeen story mixed-use commercial/community facility/residential condominium building which expires on January 12, 2012. R6/C2-2 zoning district.

PREMISES AFFECTED – 135-35 Northern Boulevard, north side of intersection of Main Street and Northern Boulevard. Block 4958, Lots 48, 38. Borough of Queens.

COMMUNITY BOARD #7Q

APPEALS CALENDAR

8-11-A

APPLICANT – Beach Haven Group, LLC, for MTA/SBRW, lessee.

SUBJECT – Application January 26, 2011 – Proposed reconstruction of a tennis club located within the bed of Atwater Court and Colby Court contrary to General City Law Section 35. R5 Zoning District.

PREMISES AFFECTED – 2781 Shell Road, Atwater Court bounded by Shell Road and West 3rd Street, Colby Court bounded by Bokee Court and Atwater Court, Block 7232, Lot 1, 70, Borough of Brooklyn.

COMMUNITY BOARD #13BK

45-07-A

APPLICANT – Eric Palatnik, P.C., for Debra Wexelman, owner.

SUBJECT – Application July 20, 2011 – Extension of time to complete construction in accordance with a previously approved resolution for a two-story and attic mixed-use residential and community facility building. R4-1 zoning district.

PREMISES AFFECTED – 1472 East 19th Street, between Avenue O and Avenue N, Block 6756, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

CALENDAR

JANUARY 10, 2012, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 10, 2012, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

87-11-BZ

APPLICANT – Eric Palatnik, P.C., for Leonid Vayner, owner.

SUBJECT – Application June 21, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, lot coverage and open space (§23-141(b)). R3-1 zoning district.

PREMISES AFFECTED – 159 Exeter Street, between Hampton Street and Oriental Boulevard, Block 8737, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #15BK

120-11-BZ

APPLICANT – Goldman Harris LLC. for Borden LIC Properties, LLC, owner.

SUBJECT – Application August 17, 2011 – Special Permit (§73-44) to reduce the parking requirement for office use and catering use (parking requirement category B1). M1-3 zoning district.

PREMISES AFFECTED – 52-11 29th Street, corner of 29th Street and Review Avenue. Block 295, Lot 1. Borough of Queens.

COMMUNITY BOARD #2Q

130-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Leah Gutman and Arthur Gutman, owners.

SUBJECT – Application September 2, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area and open space (23-141); side yard (23-461) and less than the required rear yard (23-47). R-2 zoning district.

PREMISES AFFECTED – 3600 Bedford Avenue, between Avenue N and Avenue O, Block 7678, Lot 90, Borough of Brooklyn.

COMMUNITY BOARD #14BK

166-11-BZ

APPLICANT – Ellen Hay/Wachtel & Masyr LLP, for Roc Le Triomphe Associates LLC, owners; Crunch LLC, lessee.

SUBJECT – Application October 24, 2011 – Special Permit (§73-36) to continue the operation of the Physical Culture Establishment (*Crunch Fitness*). C2-8 (TA) zoning district.

PREMISES AFFECTED – 1109 Second Avenue aka 245 East 58th Street, west side of Second Avenue between East 58th and East 59th Streets, Block 1332, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #6M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, DECEMBER 6, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

285-52-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Astoria 42, LLC, owner; Neil Tannor, lessee.

SUBJECT – Application July 8, 2011 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a gasoline service station (*Getty*) which expired on October 21, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on March 9, 2000; Waiver of the rules. R-5 zoning district.

PREMISES AFFECTED – 30-14 34th Avenue, southwest corner of the intersection of 34th Avenue and 31st Street, Block 607, Lot 29, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

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 a previously granted variance for a gasoline service station, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on November 15, 2011 after due notice by publication in *The City Record*, and then to decision on December 6, 2011 and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Montanez and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the southwest corner of the intersection of 34th Avenue and 31st Street, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 3, 1952 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with accessory uses, for a term of 15 years; and

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

WHEREAS, most recently, on March 9, 1999, the Board granted an extension of term for a period of ten years, which expired on October 21, 2007; a condition of the grant was that a new certificate of occupancy be obtained by March 9, 2000; and

WHEREAS, the applicant states that a new certificate of occupancy was never obtained, due to administrative oversight; and

WHEREAS, the applicant now seeks an additional ten-year extension of term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and extension of time 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 November 3, 1952, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from October 21, 2007, to expire on October 21, 2017, and to grant a one-year extension of time to obtain a certificate of occupancy, to expire on December 6, 2012; *on condition*:

THAT the term of the grant shall expire on October 21, 2017;

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

THAT a certificate of occupancy shall be obtained by December 6, 2012;

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

THAT the Department of Buildings must ensure compliance 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. 400896090)

Adopted by the Board of Standards and Appeals December 6, 2011.

926-86-BZ

APPLICANT – Sheldon Lobel, P.C., for Manes Bayside Realty LLC, owner.

SUBJECT – Application November 1, 2010 – Extension of Term of a variance for the operation of an automotive dealership with accessory repairs (UG 16B) which expired on November 4, 2010; Extension of time to obtain a Certificate of Occupancy which expired on January 6, 2006; Waiver of the Rules. C2-2/R6-B/R3X zoning district.

PREMISES AFFECTED – 217-07 Northern Boulevard, block front on the northerly side of Northern Boulevard between 217th Street and 218th Street, Block 6320, Lot 18, Borough of Queens.

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COMMUNITY BOARD #11Q

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, Commissioner Hinkson and Commissioner Montanez5

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 a previously granted variance for an automotive dealership with accessory repairs (Use Group 16B), and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on July 12, 2011 after due notice by publication in *The City Record*, with continued hearings on August 23, 2011, September 27, 2011 and October 25, 2011, and then to decision on December 6, 2011; and

WHEREAS, Community Board 11, Queens, recommends approval of this application, with the following conditions: (1) the term of the grant be limited to five years; (2) the lessee submit a report to the Community Board every six months detailing their compliance with the conditions of the grant; (3) lighting be installed; (4) all cars awaiting service be parked on-site and all work be performed on-site; (5) the fencing be repaired and graffiti removed; (6) the landscaping be maintained; (7) “grass” slats be installed in the chain link fence; (8) after-hour tow trucks turn off engines and flashing lights when on the property; (9) the hours of operation remain as previously approved; and (10) workers on the site not be allowed to barbecue or play excessively loud music; and

WHEREAS, Queens Borough President Helen Marshall recommends approval of this application, with similar conditions as stipulated by the Community Board; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the site is located on the north side of the Northern Boulevard between 217th Street and 218th Street, partially within a C2-2 (R6B) zoning district, and partially within an R3X zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 24, 1962 when, under BSA Cal. No. 1875-61-BZ, the Board granted a variance to permit, in conjunction with the construction of a one-story and basement building for use as an authorized car agency, accessory auto repairs and the use of the open area for sales and service of new and used cars and the parking of more than five vehicles; and

WHEREAS, on November 4, 1987, under the subject calendar number, the Board granted a special permit

pursuant to ZR § 11-412, to allow the expansion of the outdoor parking area of the automobile showroom and service facility, for a term of three years; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, most recently, on December 13, 2005, the Board granted a five-year extension of the term and an amendment to permit an increase from a maximum of 72 parking spaces to a maximum of 82 parking spaces on the site, which expired on November 4, 2010; and

WHEREAS, the applicant now seeks a ten-year extension of term, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, as to the conditions stipulated by the Community Board and the Queens Borough President, the applicant requests that the Board extend the term for a full ten years, and permit an extension of the hours of operation for the showroom portion of the site; and

WHEREAS, specifically, the applicant proposes to increase the hours of operation for the showroom to Monday through Friday, from 9:00 a.m. to 9:00 p.m., Saturday, from 9:00 a.m. to 6:00 p.m., and Sunday, from 9:00 a.m. to 5:00 p.m.; the hours of operation for the automotive service use would remain Monday through Thursday, from 8:00 a.m. to 7:00 p.m., Friday, from 8:00 a.m. to 6:00 p.m., Saturday, from 8:00 a.m. to 3:00 p.m., and closed on Sundays; and

WHEREAS, the applicant submitted a table reflecting the hours of operation for other automobile dealerships along Northern Boulevard, which reflects that the proposed extension of the hours of operation for the showroom is consistent with the hours for similar uses in the surrounding area; and

WHEREAS, the applicant agreed to comply with the remaining conditions proposed by the Community Board and the Borough President; and

WHEREAS, at the Board’s direction, the applicant submitted a contract with a fencing company for the removal and replacement of damaged fencing and cinder block walls on the site, and submitted photographs reflecting that said work has commenced on the site; and

WHEREAS, based upon the above, the Board finds that the requested extension of term and extension of time 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 November 4, 1987, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from November 4, 2010, to expire on November 4, 2020, and to grant a one-year extension of time to obtain a certificate of occupancy, to expire on December 6, 2012; *on condition*:

THAT the term of the grant shall expire on November 4, 2020;

THAT the site shall be maintained free of debris and graffiti;

THAT lighting shall be installed in accordance with

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the BSA-approved plans;

THAT all cars awaiting service shall be parked on-site and all work shall be performed on-site;

THAT fencing and landscaping shall be maintained as indicated on the BSA-approved plans;

THAT tow trucks arriving after business hours shall turn off engines and flashing lights while on the site;

THAT the hours of operation for the showroom shall be Monday through Friday, from 9:00 a.m. to 9:00 p.m., Saturday, from 9:00 a.m. to 6:00 p.m., and Sunday, from 9:00 a.m. to 5:00 p.m.; and the hours of operation for the automotive service use shall be Monday through Thursday, from 8:00 a.m. to 7:00 p.m., Friday, from 8:00 a.m. to 6:00 p.m., Saturday, from 8:00 a.m. to 3:00 p.m., and closed on Sundays;

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

THAT a certificate of occupancy shall be obtained by December 6, 2012;

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

THAT the Department of Buildings must ensure compliance 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. 402140875)

Adopted by the Board of Standards and Appeals December 6, 2011.

170-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Cornell University, owner.

SUBJECT – Application September 28, 2011 – Amendment to a variance (§72-21) for a 16-story biomedical research building (*Weill Cornell Medical College*) to permit Hunter College to occupy one floor for medical research purposes. R8 zoning district.

PREMISES AFFECTED – 411-431 East 69th Street, midblock bounded by East 69th and 70th Streets, York and First Avenues, Block 1464, Lot 8, 14, 15, 16 p/21, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Gary Tarnoff.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an amendment to a previously approved variance for the construction of an 18-story biomedical research building within an R8 zoning district; and

WHEREAS, a public hearing was held on this application on November 22, 2011, after due notice by publication in *The City Record*, and then to decision on December 6, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, this application is being brought on behalf of Weill Cornell Medical College (“WCMC”), a non-profit educational institution; and

WHEREAS, the subject site is located on the north side of East 69th Street between First Avenue and York Avenue, within an R8 zoning district; and

WHEREAS, on January 13, 2009, under the subject calendar number, the Board granted a variance to permit the construction of an 18-story biomedical research facility building to be occupied for community facility use by WCMC, that does not comply with zoning parameters for floor area, lot coverage, height and setback, and rear and side yards, contrary to ZR §§ 24-11, 24-36, 24-522, 24-552, and 24-35; and

WHEREAS, on March 30, 2010, the Board issued a letter of substantial compliance permitting certain modifications to the originally approved plans, including the elimination of one below-grade research support floor, the relocation of support and mechanical spaces, and the reconfiguration of the roof of the proposed building; and

WHEREAS, the applicant now requests an amendment to modify the prior resolution which stated that the subject building was “to be occupied for community facility use by the Weill Cornell Medical College;” and

WHEREAS, specifically, the applicant requests that the Board permit Hunter College of the City University of New York (“CUNY”) to occupy one laboratory floor (the fourth floor), with a total of 21,752 gross sq. ft., for research by its biomedical faculty and students; and

WHEREAS, the applicant states that the proposed amendment only relates to the ownership of the fourth floor of the proposed building, and would not affect the bulk variances that were granted or the proposed use of the space; and

WHEREAS, the applicant notes that the proposed building will be organized as a condominium, with the fourth floor unit owned by CUNY and the other condominium unit, consisting of the other 12 laboratory floors and the common areas, owned by WCMC; and

WHEREAS, the applicant states that WCMC would oversee all operations in the building, including safety training, materials deliveries and waste disposal; and

WHEREAS, the applicant represents that the need for the proposed amendment arises from an institutional collaboration between WCMC and Hunter College that has become critical to each institution since the time of the original variance; and

WHEREAS, the applicant further represents that the collaboration with Hunter College has helped WCMC accomplish its mission of responding to National Institution of Health (“NIH”) priorities and has led to several successful

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research partnerships between WCMC and Hunter College scientists; and

WHEREAS, specifically, the applicant states that Hunter College's participation was instrumental to WCMC's successfully obtaining the initial NIH funding to establish a "Clinical Translation Sciences Center," which represented the largest single grant in WCMC's history, and includes faculty from Hunter College among its members; and

WHEREAS, the applicant further states that allowing Hunter College to occupy the fourth floor of the building will help make both WCMC and Hunter College more attractive for NIH funding because it will enable some of Hunter College's research faculty to be located in a physical environment where they can have regular interactions with clinicians that will permit translation of their discoveries to new diagnostic and treatment modalities; and

WHEREAS, the applicant represents that the two institutions will also seek to develop a process whereby their respective faculty members can obtain joint appointments at Hunter College and WCMC, and the collaboration between the institutions' faculty and graduate students will make these programs more attractive to PhD degree applicants; and

WHEREAS, the applicant notes that the proposed change in occupancy of the fourth floor would not change the use of the space, and the type of scientific research that will be undertaken by Hunter College will be comparable and complimentary to that performed on WCMC's floors; and

WHEREAS, the applicant submitted a letter in support of the project from the President of Hunter College, which reiterates the collaboration between Hunter College and WCMC and that the scientific research performed on the fourth floor space will be comparable to that performed on the WCMC floors; and

WHEREAS, based upon the above, the Board finds that the requested amendment to the variance 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, as adopted on January 13, 2009, so that as amended this portion of the resolution shall read: "to permit the fourth floor of the proposed building to be occupied by Hunter College of the City University of New York for research by its biomedical faculty and students; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; 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. 110098787)

Adopted by the Board of Standards and Appeals, December 6, 2011.

187-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation & Yeshiva Machzikei Hadas Inc., owner.

SUBJECT – Application July 18, 2011 – Amendment to a variance (§72-21) to allow a five-story school (*Congregation & Yeshiva Maschzikei Hadas*) to add a sub-cellular level, add additional floor area, increase in lot coverage and building heights, and additional interior changes. M1-2/R6B zoning district.

PREMISES AFFECTED – 1247 38th Street, north side of 38th Street, 240' west of 13th Avenue, lock 5295, Lots 52 & 56, Borough of Brooklyn.

COMMUNITY BOARD #12BK

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, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an amendment to a previously approved variance for the construction of a five-story yeshiva; and

WHEREAS, a public hearing was held on this application on November 1, 2011, after due notice by publication in *The City Record*, with a continued hearing on November 22, 2011, and then to decision on December 6, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 12, Brooklyn, did not vote on the proposed amendment, but submitted a letter stating that it previously recommended approval of the original variance application, which would have permitted a yeshiva with a floor area of 135,390 sq. ft. (5.6 FAR) and a height of 80'-6" at the site; and

WHEREAS, New York City Council Member Brad Lander recommends approval of this application; and

WHEREAS, this application is being brought on behalf of Congregation and Yeshiva Machzikei Hadas (the "Yeshiva"), a not-for-profit religious and educational entity; and

WHEREAS, the subject site is located on the east side of 38th Street, between 12th Avenue and 13th Avenue, within an M1-2/R6B zoning district; and

WHEREAS, the applicant notes that at the time of the original grant the subject site was located within an M2-1 zoning district; however, on October 27, 2010, the subject site was rezoned to an M1-2/R6B zoning district; and

WHEREAS, on March 16, 2010, under the subject calendar number, the Board granted a variance to permit the

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construction of a five-story yeshiva, which did not conform with the use regulations of the former M2-1 zoning district, contrary to ZR § 42-00; and

WHEREAS, the applicant states that the proposed yeshiva now conforms with the use regulations of the subject M1-2/R6B zoning district; however, the applicant proposes amendments to the previously-approved plans which do not comply with the zoning regulations related to FAR, lot coverage, rear yard, height, and front setback in the M1-2/R6B zoning district, contrary to ZR §§ 24-11 and 23-633; and

WHEREAS, specifically, the applicant requests an amendment which would allow: (1) the addition of a sub-cellar; (2) changes to the interior layout of the cellar, first floor and fifth floor; (3) a floor area of 102,360 sq. ft. (the original proposal reflected 99,200 sq. ft. and 48,112 sq. ft. is the maximum permitted) and FAR of 4.25 (the original proposal reflected 4.1 and 2.0 is the maximum permitted); (4) a base height of 55'-0" with a setback of 10'-0" above the base height (the original proposal reflected a base height of 48'-8" with a setback of 10'-0" above the base height and the maximum permitted base height is 40'-0" with a setback of 10'-0" above the base height); (5) a total height of 70'-0" (the original proposal reflected a total height of 60'-0" and the maximum permitted total height is 50'-0"); (6) a lot coverage of 83 percent (the original proposal reflected 80 percent and 60 percent is the maximum permitted); and (7) the maintenance of the previously-approved rear yard with a minimum depth of 15'-0" (a rear yard with a minimum depth of 30'-0" is required); and

WHEREAS, the applicant states that the proposed sub-cellar is requested due to the soil conditions at the site as well as the depth of the cellar adjacent to the site which resulted in the placement of footings at a depth of 27'-0" below grade; and

WHEREAS, the applicant further states that the need to excavate to a depth of 27'-0" facilitates the construction of a sub-cellar, which can accommodate certain program space that would otherwise be located above grade, and which allows for a better layout for the yeshiva; and

WHEREAS, the applicant states that the proposed amendment would modify the interior layout of the cellar by providing a second multipurpose room, thereby increasing the total amount of multipurpose space in the cellar from 9,325 sq. ft. to 13,027 sq. ft.; and

WHEREAS, the applicant represents that the proposed increase in multipurpose space at the cellar will allow the yeshiva to improve the scheduling of student lunches and provide an expanded gymnasium space; and

WHEREAS, as to the layout of the first floor, the applicant states that the proposed amendment will increase the number of classrooms on the first floor from four to nine; and

WHEREAS, the applicant represents that the proposed increase in the number of classrooms at the first floor will enable the yeshiva to keep all kindergarten and pre-school children on the first floor, which provides better grouping of the students by floor and helps the yeshiva meet the requirements of the New York City Health Code and the Federal Head Start performance standards; and

WHEREAS, as to the layout of the fifth floor, the

applicant states that the proposed amendment will increase the floor area of the study hall at the fifth floor from 2,048 sq. ft. to 4,820 sq. ft.; and

WHEREAS, the applicant represents that a larger study hall would benefit the yeshiva's primary function as a place of religious learning, as typical yeshivas provide a study hall that allows large numbers of students to congregate for active and vocal learning; and

WHEREAS, as to the proposed increase in floor area, the applicant represents that the addition of 3,160 sq. ft. in floor area is minimal, and it primarily results from minor modifications to the building footprint which reduce the size of the proposed inner courts, enabling the applicant to increase the number of classrooms in the proposed yeshiva; and

WHEREAS, as to the proposed increase in the building height, the applicant represents that, due to the required duct work and mechanicals, the previously-approved plans resulted in sub-optimal clear ceiling heights of only 8'-0", while the proposed 13'-0" floor-to-floor height enables the yeshiva to provide clear ceiling heights of 9'-6" which is typical for classrooms; and

WHEREAS, at hearing, the Board raised concerns about the applicant's need for the proposed increase in height, and the effect it would have on the surrounding neighborhood; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that the increased height is necessary to provide clear ceiling heights of 9'-6" per floor, submitted a building height comparison chart which identified 11 buildings with a height of at least 70'-0" within a ¼-mile radius of the site, and submitted a classroom ceiling height survey which reflects that for the thirty schools surveyed in the vicinity of the site, most classrooms provide a ceiling height of at least 9'-6"; and

WHEREAS, the Board notes that the building height comparison chart submitted by the applicant was accompanied by a map identifying the location of the taller buildings in the surrounding area, several of which are located within two blocks of the subject site; and

WHEREAS, based upon the above, the Board concludes that the proposed changes will not affect the findings under ZR §§ 72-21 (c) or (e); and

WHEREAS, accordingly, the Board finds that the proposed modifications are necessary to meet the programmatic needs of the yeshiva; and

WHEREAS, accordingly, the Board finds that the requested amendment to the variance 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 16, 2010, so that as amended this portion of the resolution shall read: "to permit the noted modifications to the approved plans; *on condition* that the use shall substantially conform to drawings as filed with this application, marked "Received October 20, 2011"—Ten (10) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: five stories, a maximum floor area of 102,360 sq. ft. (4.25 FAR), a maximum lot coverage of 83

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percent, a maximum base height of 55'-0" with a setback of 10'-0" above the base height, a maximum total height of 70'-0", and a rear yard with a minimum depth of 15'-0", as illustrated 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. 302269925)

Adopted by the Board of Standards and Appeals, December 6, 2011.

155-10-BZ

APPLICANT – Sive, Paget & Riesel, P.C., for Wayne Hatami, owner.

SUBJECT – Application August 25, 2010 – Dismissal for Lack of Prosecution – Variance (§72-21) to allow for a conversion and enlargement of an existing residential building for community facility use, contrary to side yard (§24-35), front yard (§24-34) and lot coverage (§23-141) regulations. R3-1 zoning district.

PREMISES AFFECTED – 149-61 Willets Point Boulevard, corner parcel bound by Willets Point Boulevard, 150th Street and 24th Avenue, Block 4675, Lot 34, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

Adopted by the Board of Standards and Appeals, December 6, 2011.

321-63-BZ

APPLICANT – Greenberg Traurig, LLP by Jay A. Segal, Esq., for Verizon New York, Inc., owner; 1775 Grand Concourse LLC, lessee.

SUBJECT – Application October 13, 2011 – Amendment of a special permit (§73-65) which permitted the construction of an 8-story enlargement of a telephone exchange building.

The Amendment seeks to permit Use Groups 6A, 6B and 6C, pursuant to §122-10. R8/Special Grand Concourse Preservation District.

PREMISES AFFECTED – 1775 Grand Concourse, west side of the Grand Concourse at the southeast intersection of Walton Avenue and East 175th Street, Block 282, Lot 1001-1004, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Jay Segal.

ACTION OF THE BOARD – Laid over to January 10, 2012, at 10 A.M., for continued hearing.

624-68-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for MMT Realty Associates LLC, owner.

SUBJECT – Application June 7, 2011 – Extension of Term of a Variance (§72-21) to permit wholesale plumbing supply (UG16), stores and office (UG6) which expired on January 13, 2011; Extension of Time to obtain a Certificate of Occupancy and waiver of the rules. R3-2 zoning district.

PREMISES AFFECTED – 188-07 Northern Boulevard, north side of Northern Boulevard between Utopia Parkway and 189th Street, Block 5364, Lots 1, 5, 7, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Todd Dale.

For Opposition: Terr Pouymcri.

ACTION OF THE BOARD – Laid over to January 10, 2012, at 10 A.M., for continued hearing.

593-69-BZ

APPLICANT – Eric Palatnik, P.C., for Metro New York Dealer Stations, LLC, owner.

SUBJECT – Application May 27, 2011 – Amendment (§11-413) to convert automotive repair bays to an accessory convenience store at an existing gasoline service station (*Shell*). C2-2/R5 zoning district.

PREMISES AFFECTED – 108-01 Atlantic Avenue, Between 108th and 109th Street. Block 9315, Lot 23, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Trevis Savage.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 10, 2012, at 10 A.M., for decision, hearing closed.

271-71-BZ

APPLICANT – Sheldon Lobel, P.C., for Plaza 400 Owners Corp., owner

SUBJECT – Application October 11, 2011 – Extension of Term for the continued use of transient parking in a residential apartment building which expired on July 6, 2011; waiver of the rules. R10/C1-5 zoning district.

PREMISES AFFECTED – 400 East 56th Street, corner of First Avenue, Block 1367, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

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APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 10, 2012, at 10 A.M., for decision, hearing closed.

255-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Full Gospel New York Church, owner.

SUBJECT – Application August 12, 2011 – Amendment to a variance (§72-21) to permit a change of use on the 2nd and 3rd floors of the existing building at the premises from UG4 house of worship to UG3 school. M1-1/M2-1 zoning district.

PREMISES AFFECTED – 130-30 31st Avenue, north side of 31st Avenue, between College Point Boulevard and Whitestone Expressway, block 4360, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Josh Rinesmith.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 10, 2012, at 10 A.M., for decision, hearing closed.

302-01-BZ

APPLICANT – Deirdre A. Carson, Esq., for Creston Avenue Realty, LLC, owner.

SUBJECT – Application October 12, 2011 – Extension of Time to obtain a Certificate of Occupancy for a variance for the continued use of a parking facility accessory to commercial use which expired on April 23, 2033; waiver of the rules. R8 zoning district.

PREMISES AFFECTED – 2519-2525 Creston Avenue, between East 190th and 191st Streets, Block 3175, Lot 26, Borough of Bronx.

COMMUNITY BOARD #7BX

APPEARANCES –

For Applicant: Randell Miner.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 10, 2012, at 10 A.M., for decision, hearing closed.

8-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Adel Kassim, owner.

SUBJECT – Application January 21, 2010 – Dismissal for Lack of Prosecution – Variance (§72-21) to allow the legalization and enlargement of an existing supermarket, contrary to use regulations (§22-00). R4 zoning district.

PREMISES AFFECTED – 58-14 Beach Channel Drive, northeast corner of the intersection of Beach 59th Street and Beach Channel Drive, Block 16004, Lot 96, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to February 14, 2012, at 10 A.M., for adjourned, dismissal calendar.

APPEALS CALENDAR

40-11-A

APPLICANT – Bryan Cave LLP, Margery Perlmutter, Esq., for CPW Retail, LLC c/o American Continental Properties, LLC, owner.

SUBJECT – Application April 8, 2011 – Appeal challenging the Department of Building’s determination that non-conforming commercial use was discontinued pursuant to ZR §52-61. R10A & C4-7 LSD Zoning district.

PREMISES AFFECTED – 25 Central Park West, West 62nd and West 63rd Streets, Block 1115, Lot 7501(2) Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Margery Perlmutter.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the subject appeal comes before the Board in response to a Final Determination dated March 9, 2011 by the Department of Buildings’ (“DOB”) Counsel’s Office with denial affirmed on April 8, 2011 by the Manhattan Borough Commissioner (the “Final Determination”), and

WHEREAS, the Final Determination states, in pertinent part:

Your letters request confirmation that a non-conforming Use Group 6 grocery store in Unit C-1 that was vacant for two years was not discontinued and may change to a non-conforming Use Group 6 eating and drinking establishment in accordance with New York City Zoning Resolution (ZR)

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Section 52-61.1 In your letters, you also state that the current art gallery use of Unit C-1 that followed the grocery store's vacancy is a non-conforming Use Group 6 commercial art gallery, and not a conforming Use Group 3 community facility non-commercial art gallery.

The current certificate of occupancy for the building, No. 110135, dated September 19, 1996, is for a 34-story multiple dwelling with twelve doctors' offices, a beauty parlor, servants rooms, three stores, a building manager's office, an apartment lobby and mail room located on the first floor.² The building occupies the entire west side block of Central Park West between 62nd and 63rd Streets with 200 feet on the east side located in the C4-7 district, and 50 feet on the west side located in the R10A district. In your August 2nd letter you state that the three stores listed on the CO are located in the portion of the building in the R10A district. You state that Unit C-1 contains 5,511 square feet (53% of the total commercial area), Unit C-2 which is an actively operating non-conforming drug store that contains 2,886 square feet (28% of the total commercial area), and Unit C-3 which is an actively operating non-conforming dry cleaning establishment that contains 1,925 square feet (19% of the total commercial area). You state that the grocery store vacated Unit C-1 on July 28, 2007 and the space remained vacant until mid-August 2009 when the art gallery took occupancy. In your letters, you assert that ZR § 52-61 allows a non-conforming use of Unit C-1 to resume because its vacancy did not amount to a two-year discontinuance of active operation of substantially all the non-conforming uses in the building given that the non-conforming drug store in Unit C-2 and the non-conforming dry cleaning establishment in Unit C-3 remained in active operation.

Contrary to your claim, ZR § 52-11 and § 52-61 require the elimination of any non-conforming use whose active operation is discontinued by a vacancy for more than two years, notwithstanding the active operation of other non-conforming uses in the same building. This interpretation of ZR § 52-11 and § 52-61 fulfills the public policy expressed in ZR § 51-00 to achieve a gradual remedy for incompatible uses by providing for the termination of non-

conforming uses after a statutory time period and restricting further investment in non-conforming uses that adversely affect the development of a district with a more uniform character.

ZR § 52-11 provides that "a nonconforming use may be continued, except as otherwise provided in [Chapter 2 of Article 5]." Once a non-conforming use has changed to a conforming use, the use is no longer a non-conforming use eligible for protection under ZR § 52-11. Likewise, when an establishment ceases all business functions and the space is vacant for over two years, it cannot be said that there is still "a non-conforming use" to be "continued" and protected under the section. The rest of Article 5 Chapter 2 provides exceptions to ZR § 52-11 and does not grant further protection of non-conforming uses, but rather limits or terminates non-conforming uses.

Whereas the commencement of a conforming use immediately terminates the ability to continue a non-conforming use, ZR § 52-61 provides guidance as to how long a non-conforming use may remain vacant before it too is no longer "a non-conforming use" eligible to be "continued." ZR § 52-61 states: "If, for a continuous period of two years, . . . the active operation of substantially all the *non-conforming uses* in any *building or other structure* is discontinued, such . . . *building or other structure* shall thereafter be used only for a conforming use." The text contains only one exception to the requirement that a non-conforming use become conforming after a two-year discontinuance: certain Use Group 6 uses may resume after a two-year vacancy of ground floor or basement stores in a building designed for residential use located in R5, R6 or R7 districts that are not in historic districts. The active operation of the non-conforming use in Unit C-1 stopped for two years and the space does not fall under ZR § 52-61's exception, therefore, it was discontinued and cannot change to another non-conforming use or be reactivated.

The analysis of whether the active operation of "substantially all" of the non-conforming uses in the building has discontinued does not determine whether the non-conforming uses in the rest of the building (Units C-2 and C-3) may continue. Where one or more non-conforming uses are discontinued in a building with multiple non-conforming uses, ZR § 52-61 sets a threshold at which the remaining actively operating non-conforming uses in the same building must terminate as well so that the entire building is used only for conforming uses.³ As stated above, it is not proper to apply ZR § 52-61 as

1 Your letters also respond to the letters to the Department dated August 11, 2010, September 10, 2010, October 25, 2010 and January 21, 2011, written on behalf of the managers of the condominium at the premises, the Residential Board of Managers of the Century Condominium, in opposition to a determination that a non-conforming use may resume.

2 The certificate of occupancy contains an administrative error in that it classifies all the first floor uses within Use Group 2.

3 There appears to be no dispute that Unit C-1 does not comprise "substantially all" of the non-conforming uses in the building, and therefore the actively operating non-conforming drug store and dry cleaner uses may continue.

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a protective statute, therefore it is also not relevant that Unit C-1 comprises less than substantially all of the Use Group 6 non-conforming uses in the building.

The New York case law raised in your letters does not support a finding that the non-conforming use in Unit C-1 may resume. Both Toys R Us v. Silva, 89 N.Y.2d 411 (1996), and Daggett v. Putnam, 40 A.D.2d 576 (4th Dept. 1972), concern the right to continue a single non-conforming use and do not address the question of whether ZR § 52-61 allows a two-year vacancy of a non-conforming use in a building with more than one non-conforming use to resume. Agoglia v. Glass, 25 A.D.2d 954 (2nd Dept. 1970), is also not applicable because it concerns the authority of the Board of Standards and Appeals and the City Planning Commission to authorize non-conforming uses under ZR § 11-412 and ZR § 11-413.

Given that the non-conforming use of Unit C-1 was discontinued by the grocery store's two-year vacancy, the Department need not determine whether the non-conforming use would have been discontinued by the current art gallery use.

In the event the owner of the premises does not file an Alteration Type I permit application for a conforming use in Unit C-1, the Department may seek modification of the certificate of occupancy at the Board of Standards and Appeals; and

WHEREAS, a public hearing was held on this appeal on August 23, 2011, after due notice by publication in *The City Record*, with a continued hearing on October 18, 2011 and November 22, 2011, and then to decision on December 6, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the appeal is filed on behalf of the owner of the building's three commercial condominium units (the "Appellant") who contends that DOB's denial was erroneous; and

WHEREAS, the condominium's Residential Board of Managers initially made submissions and provided testimony in support of DOB's position; by letter dated November 15, 2011, the Residential Board of Managers stated that it withdraws its opposition to the appeal and requested that its submissions to the Board be withdrawn; and

WHEREAS, DOB, Appellant, and the Residential Board of Managers have been represented by counsel throughout this appeal; and

WHEREAS, the site is located partially within an R10A zoning district and partially within a C4-7 zoning district within the Special Lincoln Square District and is occupied by a 32-story mixed use commercial/residential/community facility condominium building; and

WHEREAS, the subject appeal concerns the question of whether the absence of a non-conforming Use Group 6 retail

use (formerly a grocery store) one of three commercial units (Unit C-1) for a period of greater than two years, while the other two commercial units (Units C-2 and C-3) remained occupied by non-conforming uses, causes Unit C-1 to lose the right to be re-occupied by another non-conforming Use Group 6 use; and

BACKGROUND

WHEREAS, the building (the "Building") was constructed in 1931 and occupies the entire west side block front of Central Park West between West 62nd Street and West 63rd Street with 250 feet of frontage on the side streets; and

WHEREAS, the 1954 Certificate of Occupancy (CO) states that the Building is a 32-story Class A Multiple Dwelling located in a "Business Use District" with apartments on all floors above the first floor and the following uses on the first floor: "eight (8) apartments, twenty-two (22) maids' rooms, three (3) doctors' offices, one (1) superintendent's office, five (5) stores[,], renting office"; and

WHEREAS, retail use was permitted as-of-right in "Business" districts pursuant to the 1916 Zoning Resolution; and

WHEREAS, in 1961, the site was mapped R10, a residential district which does not permit Use Group 6 use as-of-right, thus the existing Use Group 6 use was rendered non-conforming; and

WHEREAS, the 1983 CO, issued when the site was still within an R10 zoning district stated that the first floor contained "eleven (11) doctors' offices, beauty parlor, law office, storage, three (3) stores, building manager's offices, apartment, lobby and mail room"; the most recent CO, issued in 1996 reflects "three (3) stores" at the first floor, without any notation as to specific use within each store; and

WHEREAS, the site has since been rezoned and 200 feet are now located within an R10A zoning district and the westernmost 50 feet are within a C4-7 zoning district within the Special Lincoln Square District; all three of the retail spaces on the first floor are located within the R10A zoning district, where they are not permitted unless they are established as non-conforming uses; and

WHEREAS, the Appellant represents that the earliest available first floor plan is the 1989 Tax Lot Certification for the condominium which shows "commercial" Unit C-1 (Tax Lot 1001) (located at the corner of West 62nd Street and Central Park West) occupied by Gristedes a "Grocery Store," Unit C-2 (Tax Lot 1002) (located at the corner of West 63rd Street and Central Park West) occupied by a "Drug Store" or "Pharmacy," and Unit C-3 (Tax Lot 1003) (located immediately west of Unit C-2, on West 63rd Street) occupied by "Cleaners;" the building lobby and three doctors' offices separate Unit C-1 from Units C-2 and C-3, which are adjacent to each other; and

WHEREAS, the condominium formation documents reflect that Unit C-1 contains 5,511 sq. ft. of which 2,937 sq. ft. are on the first floor and the balance in the cellar (field measurements show the first floor portion at 3,298 sq. ft.), Unit C-2 contains 2,886 sq. ft. of which 1,062 sq. ft. is on the first floor (field measurements show the first floor portion at 1,580 sq. ft.), and Unit C-3 contains 1,925 sq. ft. of floor area, 888 sq.

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ft. of which is on the first floor (field measurements show the first floor portion at 1,119 sq. ft.), for a total of 5,997 sq. ft. in zoning floor area at the first floor based on field measurements, with Unit C-1 comprising 55 percent of the total; and

WHEREAS, the Appellant asserts that Unit C-1 is now occupied by a commercial art gallery, Unit C-2 is occupied by a drug store, and Unit C-3 is occupied by a dry cleaning establishment and that the drug store and dry cleaning establishment have occupied the building for decades; and

WHEREAS, the Appellant asserts that Gristedes grocery store occupied Unit C-1 from the 1950s until July 28, 2007 and the art gallery rented the space in August 2009; and

WHEREAS, the Board notes that none of the background information is being contested except whether or not the art gallery is a commercial use; the question of the art gallery's status is not relevant to this appeal and will not be discussed; and

RELEVANT PROVISIONS OF THE ZONING RESOLUTION

WHEREAS, the primary ZR provisions the Appellant and DOB cite are as follows, in pertinent part:

ZR § 12-10

Non-conforming, or non-conformity

A "non-conforming" #use# is any lawful #use#, whether of a #building or other structure# or of a #zoning lot#, which does not conform to any one or more of the applicable #use# regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto. . .

* * *

A "use" is:

(a) any purpose for which a #building or other structure# or an open tract of land may be designed, arranged, intended, maintained or occupied; or

(b) any activity, occupation, business or operation carried on, or intended to be carried on, in a #building or other structure# or on an open tract of land.

* * *

ZR § 52-11 – Continuation of Non-Conforming Uses/General Provisions

A #non-conforming use# may be continued, except as otherwise provided in this Chapter.

* * *

ZR § 52-61 – Discontinuance/General Provisions

If, for a continuous period of two years, either the #nonconforming use# of #land with minor improvements# is discontinued, or the active operation of substantially all the #non-conforming uses# in any #building or other structure# is discontinued, such land or #building or other structure# shall thereafter be used only for a conforming #use#. Intent to resume active operations shall not affect the foregoing . . .

Except in Historic Districts as designated by the Landmarks Preservation Commission, the provisions of this Section shall not apply to vacant

ground floor or #basement# stores in #buildings designed for residential use# located in R5, R6 or R7 Districts where the changed or reactivated #use# is listed in Use Group 6A, 6B, 6C or 6F excluding post offices, veterinary medicine for small animals, automobile supply stores, electrolysis studios and drive-in banks. In addition, the changed or reactivated #use# shall be subject to the provisions of Section 52-34 (Commercial Uses in Residence Districts); and

DISCUSSION

WHEREAS, the Appellant requests that the Board grant its appeal based on the following primary arguments: (1) ZR § 52-61 is clear and unambiguous; (2) substantially all of the non-conforming uses in the building have been continuous; and (3) case law and public policy compel the conclusion that the non-conforming use be entitled to continue as statutes in derogation of the common law are to be construed in favor of the owner; and

A. The Basis of the Appeal

The Plain Meaning of the Zoning Resolution

WHEREAS, the Appellant asserts that the Final Determination is contrary to the plain language of the ZR as ZR §§ 52-11 and 52-61 permit non-conforming uses to remain so long as they do not discontinue for a period of two years or longer because the text of ZR § 52-61 clearly states that "if for a continuous period of two years, . . . the active operation of substantially all the *non-conforming* uses in any *building or other structure* is discontinued, such . . . *building or other structure* shall thereafter be used only for a conforming use;" and

WHEREAS, the Appellant asserts that a plain reading results in the conclusion that all or substantially all of the non-conforming uses in the building must be discontinued for more than two years before the entirety of such building must be used only for conforming uses; and

WHEREAS, the Appellant cites to Toys "R" Us v. Silva, 89 N.Y.2d 411 (1996) in which the Court of Appeals stated that ZR § 52-61 "is not ambiguous – its clear language prohibits additional non-conforming activity when 'substantially all' of the 'active' nonconforming operations are discontinued;" and

WHEREAS, the Appellant notes that ZR § 52-11 states that "*non-conforming use* may be continued, except as otherwise provided in this Chapter" and that "as otherwise provided" is a reference to the ZR § 52-61 condition that "the active operation of substantially all the *non-conforming uses* in any *building or other structure*" must never discontinue for a period of two years or more; and

WHEREAS, the Appellant disagrees with DOB's assertion that the "'substantially all' of the non-conforming uses in any building" is meant to determine whether other non-conforming uses, by unit, in the building (in Unit C-2 and Unit C-3) may continue; and

WHEREAS, the Appellant asserts that such an interpretation which could potentially require active non-conforming uses to terminate is not supported by the text or public policy; and

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WHEREAS, the Appellant disagrees with DOB's conclusion that ZR §§ 52-11 and 52-61 "require the elimination of any non-conforming use whose active operation is discontinued by a vacancy for more than two years, notwithstanding the active operation of other non-conforming uses in the same building;" the Appellant states that DOB misreads the plain text in the interest of its stated public policy goals; and

WHEREAS, the Appellant finds that the text is clear that the unit of measure for the "substantially all" analysis is "uses" plural in the "building" as a whole and that there is no support for DOB's conclusion that each use in each unit be measured separately; and

The Substantially All of the Uses in the Building Test

WHEREAS, the Appellant cites to ZR § 52-61 for the rule that if "the active operation of substantially all the *non-conforming uses* in the *building or other structure* is discontinued, such . . . *building or other structure* shall thereafter be used only for a conforming use;" and

WHEREAS, the Appellant asserts that since all three stores were rendered non-conforming in 1961, the three stores are all of the non-conforming commercial uses in the building – because Unit C-1 includes 55 percent of the stores' total floor area and the other two stores, which no one argues have been discontinued, contain 45 percent, there was never a point when less than 45 percent of the stores' total floor area was in continuous use, so the facts do not trigger the limitation set forth in ZR § 52-61 when substantially all the uses are discontinued; and

WHEREAS, the Appellant notes that "substantially all" is not defined in the ZR, but asserts that New York State courts have established a standard which supports a conclusion that even a small percentage of remaining non-conforming use could defeat a claim that "substantially all" had been discontinued, including Marzella v. Munroe, 69 N.Y.2d 967 (1987) which concludes that "abandonment does not occur unless there has been a complete cessation of the non-conforming use;" and

WHEREAS, the Appellant also cites to Toys "R" Us in which the Court of Appeals clarified the distinction between the common law standard and that of ZR § 52-61, holding that "52-61 terminates a non-conforming use when only minimal non-conforming activity continues; in Toys "R" Us, the business maintained 19 crates in a 16-story warehouse which amounted to one-tenth of one percent of the building's volume; and

WHEREAS, the Appellant states that there is no support in ZR § 52-61 or in the case law for treating each commercial unit as a separate non-conforming use that might be susceptible to ZR § 52-61's "substantially all" discontinuance standard on a unit-by-unit basis; and

WHEREAS, the Appellant notes that the warehouse in Toys "R" Us was only occupied by a single use and, thus the court did not analyze the subject issue of how the rights for multiple non-conforming uses to continue in a single building must be preserved; and

WHEREAS, the Appellant finds that Daggett v. Putnam, 40 A.D.2d 576 (4th Dep't. 1972) in which the court determined

that two residential trailers constitute a single non-conforming use so removal of one trailer for six years did not result in the abandonment of the right to maintain two trailers more closely considers the subject issue; and

WHEREAS, the Appellant asserts that Daggett establishes a rule, not refuted by Toys "R" Us that an abandonment analysis should consider the non-conforming portion of the floor in its entirety and not the individual parts or rooms on a floor and that in New York City "substantially all the *non-conforming uses* in any *building*" is required for an abandonment to have occurred; and

WHEREAS, the Appellant concludes that whether the three Use Group 6 retail spaces on the first floor are a single "use" or multiple "uses," substantially all of the use or all of the uses in the building must have been discontinued in order for ZR § 52-61's discontinuance provision to apply in this case; and

WHEREAS, the Appellant analyzed the ZR and argues that there is no basis for considering "building" in ZR § 52-61 to alternately mean "part of a building" or to convert "uses" plural into "use" singular; and

WHEREAS, the Appellant notes that DOB's interpretation would require different language, such as the insertion of the word "establishment" if the intent of ZR § 52-61 were to isolate uses or portions of a building; and

WHEREAS, the Appellant cites to several New York State cases to support its contention that statutes concerning the cessation of non-conforming uses be construed in favor of the property owner; and

WHEREAS, the Appellant notes examples from elsewhere in the state where the complete cessation of non-conforming uses is required before a property owner must convert to a conforming use see Marzella v. Munroe, Agoglia v. Glass, Daggett v. Putnam, and Town of Islip v. P.B.S. Marina; and

WHEREAS, the Appellant cites the principle that zoning regulations, since they are in derogation of the common law, must be strictly construed against the municipality which has enacted and seeks to enforce them see Allen v. Adami, 39 N.Y.2d 275 (1976); and

WHEREAS, accordingly, the Appellant finds that even if there is ambiguity in the statute as DOB suggests, it would be improper to resolve the ambiguity so as to expand the regulatory reach of the ZR to further restrict the use of Unit C-1; and

WHEREAS, the Appellant asserts that there are two public policy goals, rather than one, with regard to the cessation of non-conforming uses which must be balanced; those are (1) to discontinue non-conforming uses in buildings where they have been abandoned and (2) to protect building owners from the harm they would suffer if an amendment to the zoning were to be applied retroactively to pre-existing buildings; and

B. The Department of Buildings' Interpretation

WHEREAS, DOB makes the following primary arguments in support of its position that ZR § 52-61 does not allow the discontinued non-conforming use on Unit C-1 to be reactivated: (1) the non-conforming use in Unit C-1

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ended and may no longer be continued per ZR § 52-11; (2) the “use” that may be continued pursuant to ZR § 52-11 refers to each individual non-conforming store; (3) the use was not “continued” per ZR § 52-11; and (4) ZR § 52-61 is not controlling where only one of several non-conforming uses in a building completely ceases; and

WHEREAS, DOB asserts that the plain meaning of ZR § 52-11 only authorizes present and ongoing non-conforming uses to keep operating and that ZR § 52-61 provides for the termination of such non-conforming use after a period of time when only a small portion of the establishment continues to operate; and

WHEREAS, DOB asserts that ZR § 52-11 authorizes each non-conforming “use” to be continued and provides that the right to a non-conforming use in Unit C-1 is examined independently from the other non-conforming uses in the building and not together with all the non-conforming uses in the building as part of a single non-conforming use; and

WHEREAS, DOB looks to the definition of “use” in ZR § 12-10(b) to include any activity, occupation, business or operation carried on in a building to support the position that ZR § 52-11 governs the right to continue each independently operating business in the building; DOB asserts that the text does not support a right to continue all the non-conforming uses as an indivisible category; and

WHEREAS, DOB states that to consider all three non-conforming uses as a single non-conforming use is broader than the definition of a “use” in ZR § 12-10 and is contrary to the public policy to reasonably restrict and ultimately eliminate such uses; and

WHEREAS, to the requirement for continuity, DOB asserts that the facts of allowing a single non-conforming use which was discontinued for a period of greater than two years to reactivate because the other non-conforming uses in the building have continued is not supported by the concept of continuation within ZR § 52-11; and

WHEREAS, DOB asserts that it must consider the general requirement for continuation in ZR § 52-11 together with the two-year discontinuation limit set forth at ZR § 52-61 such that a business which has discontinued does not satisfy the general provision of ZR § 52-11 which requires continuation or the limit that the discontinuation be for a period of less than two years; and

WHEREAS, DOB states that although ZR § 52-11 does not specify that non-conforming status is lost at the end of the second year of vacancy, it is reasonable to infer that an owner has abandoned a non-conforming use when the owner does not employ the space for the non-conforming use for two or more years; and

WHEREAS, to the applicability of ZR § 52-11, DOB states that it allows non-conforming uses to be continued unless limited or terminated by other sections of the ZR and that in the subject case it is not necessary to go any further since none of the section’s exceptions apply; and

WHEREAS, DOB asserts that the Appellant mistakenly treats ZR § 52-61 as a provision that protects the non-conforming use when ZR § 52-61 actually establishes

the point at which the non-conforming use or uses must change to a conforming use or uses, with exceptions as provided in ZR §§ 52-61 and 52-62; and

WHEREAS, DOB interprets ZR § 52-61 “If, for a continuous period of two years, . . . the active operation of substantially all the *non-conforming uses* in any *building or other structure* is discontinued, such . . . *building or other structure* shall thereafter be used only for a conforming use,” to mean that *each* non-conforming use must not discontinue for a period of two years or longer or else it loses the right to change or resume activity regardless of whether other non-conforming uses within the same building have been continuous; and

WHEREAS, to the applicability of ZR § 52-61, DOB asserts that ZR § 52-61 contemplates a limitation on the right to continue a non-conforming use in a building where substantially all of the sole non-conforming use, or substantially all of each of the multiple non-conforming uses, is discontinued; DOB asserts that the purpose of ZR § 52-61 is to set a threshold for when non-conforming uses are no longer allowed in the building; and

WHEREAS, DOB refers to Toys “R” Us v. Silva, 89 N.Y.2d 411 (1996) to support its claim that the courts have applied ZR § 52-61 as the standard for determining whether the sole non-conforming use in a building has substantially ceased operating and only minimal activity is taking place; in Toys “R” Us, the court determined that the occupancy of a small portion of the building by a non-conforming use could not establish the required continuance of the use and thus determined that the reactivation of the non-conforming use in the building was not permitted; and

WHEREAS, therefore, DOB asserts, the text must be read to require that active operation of substantially all of each non-conforming use be discontinued before the entire building must be used for a conforming use; and

WHEREAS, DOB states that ZR § 52-61 is not applicable to a building with multiple non-conforming uses unless each non-conforming uses is substantially discontinued; the discontinuance of the nonconforming use in Unit C-1 alone does not cause the entire building to conform; and

WHEREAS, DOB finds that where one non-conforming use completely ceases for more than two years in a building with several actively operating non-conforming uses, only that particular use is discontinued and the right to continue the use as a non-conforming use under ZR § 52-11 is lost; and

WHEREAS, DOB asserts that the ZR does not expressly provide for every instance in which a non-conforming use status is lost, but rather allows DOB to interpret the relevant provisions of Chapter 5 to achieve the purpose set for in ZR § 51-00 of gradually eliminating non-conforming uses; and

WHEREAS, DOB concludes that ZR § 52-61 does not allow the reactivation of the discontinued use in Unit C-1 as its purpose is to divest the right to a non-conforming use or uses in a building and not grant the right to resume a discontinued non-conforming use; and

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WHEREAS, DOB adds that it would seek to amend the certificate of occupancy to reflect a conforming use in Unit C-1; and

CONCLUSION

WHEREAS, the Board agrees with the Appellant's analysis that the ZR does not dictate that when there is a two-year discontinued use of one non-conforming Use Group 6 store while two other non-conforming Use Group 6 stores in the same building remain in continuous use, the vacated store may not reactivate; and

WHEREAS, the Board agrees with the Appellant that the appropriate methodology is to consider the text as follows: (1) begin at ZR § 52-11 which states that non-conforming uses may continue unless limited by the remainder of the chapter; (2) ZR § 52-61 sets forth limits which include that substantially all the non-conforming uses in a building may not discontinue for a period greater than two years; (3) the text reflects that the "substantially all" analysis applies to "uses" plural in the "building" as a whole; and (4) although "substantially all" is not defined, prior DOB determinations and case law do not support the conclusion that 45 percent of continuously operating non-conforming uses would be below the minimum threshold; and

WHEREAS, the Board finds that, although the text does not specifically address situations like the subject building where there are multiple independent stores, the Board does not find a basis for reading the word "establishment" or "portion of a building" into ZR § 52-61 and that the plain meaning of the text reflects a broader reading, as the Appellant suggests; and

WHEREAS, the Board recognizes a distinction between "establishment" and "use" and finds that there is no basis to impose the term "establishment" onto the reading of ZR § 52-61's "uses" so as to allow for a unit by unit analysis as DOB suggests; and

WHEREAS, the Board notes that if the drafters of the ZR intended ZR § 52-61 to apply to each unit, rather than the building as a whole, it could have included more specificity as it has done in regulations related to signage and adult use regulations; and

WHEREAS, the Board was not persuaded by DOB's premise that ZR § 52-11 and not ZR § 52-61 applies to the subject matter; the Board recognizes ZR § 52-11 as the general provision that refers property owners to the limits set forth within the chapter, such as at ZR § 52-61, and does not see any basis to limit the applicability of ZR § 52-61 to only the analysis of whether "substantially all" of the use has ceased; and

WHEREAS, the Board finds that ZR § 52-61 is necessary to inform property owners about the two-year discontinuance condition and does in fact apply to instances where non-conforming uses have been discontinued; and

WHEREAS, the Board acknowledges that there are public policy interests to eliminate non-conforming uses and that the text does not specifically address the subject facts with multiple units and uses in a single building, but it does not find a basis for the public policy as stated by DOB to

substitute for the text; and

WHEREAS, although the Residential Board of Managers withdrew its opposition, the Board notes that it made the following primary arguments in opposition to the appeal (1) the plain language of the ZR bars extension of a non-conforming use into the space at issue because "building" in ZR § 52-61 should be read to mean "any part of any building and "part of such building"; (2) there is a strong public policy goal of gradually eliminating non-conforming uses; (3) ZR § 52-61's "uses" should also be read to mean "use," singular; (4) the spirit of the ZR bars conversion of the vacated space to a non-conforming use; and (5) reviewing each non-conforming use in a building independently is a fair and effective means of administering zoning; and

WHEREAS, the Board acknowledges the Residential Board of Managers' withdrawal of its opposition, but because its arguments were entered into the record and the Board considered them when evaluating the merits of the case, the Board notes that it was not persuaded by any of the arguments; and

WHEREAS, the Board concludes that the evaluation of whether there is discontinuance of substantially all of the non-conforming uses applies to the uses within the building and not to each individual use and since it is not disputed that 45 percent of the building's non-conforming uses have been continuous, as defined by ZR § 52-61, since prior to 1961, a non-conforming Use Group 6 use may re-occupy Unit C-1; and

Therefore it is Resolved that the subject appeal, seeking a reversal of the Final Determination of the Manhattan Borough Commissioner, dated April 8, 2011, denying the non-conforming status of Unit C-1, is hereby granted.

Adopted by the Board of Standards and Appeals, December 6, 2011.

.125-11-A
APPLICANT – Law Offices of Marvin B. Mitzner for 514-516 E. 6th Street, LLC, owner.

SUBJECT – Application August 25, 2011 – Appeal challenging the Department of Buildings' determination to deny the reinstatement of permits that allowed an enlargement to an existing residential building. R7B zoning district.

PREMISES AFFECTED – 514-516 East 6th Street, south side of East 6th Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner.

For Opposition: John Bantos of Senator Duane Office, Jessica Napomiachi of Council Member Rosie Mendez Office, Alice Baldwin, Anoitto Lloyd and Kevin Shea.

For Administration: Mark Davis, Department of Buildings.

ACTION OF THE BOARD – Laid over to January 24, 2012, at 10 A.M., for continued hearing.

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232-10-A

APPLICANT – OTR Media Group, Incorporated, for 4th Avenue Loft Corporation, owner;

SUBJECT – Application December 23, 2010 – An appeal challenging Department of Buildings’ denial of a sign permit on the basis that the advertising sign had not been legally established and not discontinued as per ZR §52-83. C1-6 Zoning District.

PREMISES AFFECTED – 59 Fourth Avenue, 9th Street & Fourth Avenue. Block 555, Lot 11. Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Nadia Alexis.

ACTION OF THE BOARD – Laid over to February 7, 2012, at 10 A.M., for adjourned hearing.

15-11-A

APPLICANT – Slater & Beckerman, LLP., for 1239 Operating Corporation, owner.

SUBJECT – Application February 10, 2011 – Appeal challenging the Department of Building’s determination that a non-illuminated advertising sign and structure is not a legal non-conforming advertising sign pursuant to ZR §52-00. C6 zoning district.

PREMISES AFFECTED – 860 Sixth Avenue, through lot on the north side of West 30th Street, between Broadway and Avenue of the Americas, Block 832, Lot 1. Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to February 7, 2012, at 10 A.M., for adjourned hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING

TUESDAY AFTERNOON, DECEMBER 6, 2011

1:30 P.M.

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

39-11-BZ

CEQR #11-BSA-079K

APPLICANT – Bryan Cave LLP, for Kimball Group, LLC, owner.

SUBJECT – Application April 8, 2011 – Variance (§72-21) to legalize a mixed use building, contrary to floor area (§24-162), parking (ZR §25-31), permitted obstructions (§24-33/23-44), open space access (§12-10), side yard setback (§24-55), and distance required from windows to lot line (§23-861). R4 zoning district.

PREMISES AFFECTED – 2230-2234 Kimball Street, between Avenue U and Avenue V, Block 8556, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES – None.

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez4

Abstain: Commissioner Hinkson.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner dated March 31, 2011, acting on Department of Buildings Application No. 301146739, reads:

1. ZR 24-162: Proposed community facility FAR (1.05) exceeds the maximum permitted for community facility use (.4) in a building with a total FAR of more than .75 pursuant to ZR § 24-162(a).
2. ZR 25-31: Zero off-street parking spaces are provided where 11 parking spaces are required pursuant to ZR § 25-31.
3. ZR 24-33; 23-44: Hanging stairs are not a permitted obstruction in required side yard and are contrary to ZR § 24-33.
4. ZR 23-44; 24-33: Roof staircase is not a permitted obstruction in a required rear yard.
5. ZR 23-141; ZR 23-12; ZR 12-10: 4th through 6th floors do not have access to the proposed open space on the roof of the one-story rear yard extension as required by ZR § 12-10.
6. ZR 24-55: Building does not provide side yard setback above the 5th floor as required by ZR § 24-551.
7. ZR 23-861: Legally required windows on the

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west side of the third floor are located less than 15 feet from a side lot line per ZR § 23-861; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot within an R4 zoning district, the legalization of a partially constructed mixed-use residential/community facility building, which exceeds the community facility floor area ratio (FAR), fails to provide 11 required parking spaces, includes obstructions in the rear and side yards, fails to provide access to required open space, and fails to provide the required setback and required distance from window to lot line, contrary to ZR §§ 24-162, 25-31, 24-33, 23-44, 23-141, 23-12, 12-10, 24-55, and 23-861; and

WHEREAS, the applicant filed two companion applications – a common law vesting application pursuant to BSA Cal. No. 119-11-A and an administrative appeal pursuant to BSA Cal. No. 75-11-A, which the Board has not yet decided; and

WHEREAS, a public hearing was held on this application on October 18, 2011 after due publication in *The City Record*, and then to decision on December 6, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 18, Brooklyn, recommends that the application be disapproved because the building never complied with relevant zoning regulations; and

WHEREAS, New York State Senator Martin Golden, New York State Assemblyman Alan Maisel, and New York City Councilman Lewis Fidler provided written and oral testimony in opposition to the proposed variance; and

WHEREAS, certain community members provided written and oral testimony in opposition to the proposed variance; and

WHEREAS, the zoning lot is an interior lot with a width of 50'-6", a depth of 100 feet, and approximately 5,050 sq. ft. of lot area, and is located on Kimball Street between Avenue U and Avenue V in an R4 zoning district; the site is within a "predominantly built-up area;" and

WHEREAS, the subject site is occupied by a six-story building (the "Existing Building"), which is partially complete, but where construction has stopped pursuant to a Stop Work Order dated July 14, 2005; and

WHEREAS, the applicant seeks to legalize the Existing Building and complete construction pursuant to plans which do not comply with zoning district regulations; and

Procedural History

WHEREAS, the applicant sets forth the following procedural history; first, it represents that in April 3, 2001 it filed an application with DOB to construct a four-story building at the site, which would have included community facility use (medical offices) in the cellar and first and second floors and residential use on the third and fourth floors; and

WHEREAS, the project architect professionally certified the April 3, 2001 application as complying with all applicable codes and zoning regulations; and

WHEREAS, on April 19, 2001, DOB audited the plans and issued a series of objections, none of which are the subject of the current waiver requests except that the stair in the side yard did not comply with ZR § 24-33; several of the conditions addressed by the current waiver requests existed and were not in compliance with zoning regulations in effect for the first iteration of the building in 2001; and

WHEREAS, the architect revised the plans to reflect a four-story building, 1.05 FAR of community facility use, 0.72 FAR of residential use, and two accessory residential parking spaces, which DOB approved on June 12, 2001 (the "2001 Plans"); and

WHEREAS, on July 26, 2001, the New York City Planning Commission and City Council adopted zoning amendments which were applicable to the project; the applicable regulations include ZR § 24-162 (maximum floor area ratios and special floor area limitations for zoning lots containing residential and community facility uses in certain districts) (the "Zoning Change"); prior to the Zoning Change, ZR § 24-162 permitted mixed-use community facility/residential buildings in R4 zoning districts to contain a maximum FAR of 2.0 for community facility use, 1.35 for residential use, and 2.0 total; as amended, ZR § 24-162 reduced the maximum FAR to 0.4 for community facility use, 1.35 for residential use, and 1.75 total; and

WHEREAS, as a result of the Zoning Change, the 2001 Plans did not comply with the applicable zoning regulations related to FAR; and

WHEREAS, notwithstanding the Zoning Change and the 2001 Plans' zoning non-compliance, the applicant obtained a building permit to construct pursuant to the 2001 Plans on June 30, 2003 and began construction on July 15, 2003; and

WHEREAS, on October 14, 2003, the project architect filed revised plans adding a fifth floor, which was devoted to residential use; and

WHEREAS, in January 2004, DOB audited the plans and issued objections which did not include any of the issues that are the subject of the requested waivers, except for the stair in the side yard; the audit led to a stop work order/intent to revoke the permit dated January 27, 2004; and

WHEREAS, in February 2004, DOB revoked the permit, but reconsidered its objections and on March 29, 2004 approved the plans for the five-story building with 1.05 FAR of community facility use, 0.89 FAR of residential use, and two accessory residential parking spaces (the "March 2004 Plans"); and

WHEREAS, on October 15, 2004, the project architect submitted amended plans adding a sixth floor also for residential use, with 1.05 FAR of community facility use, 1.09 FAR for residential use, and two accessory residential parking spaces; and

WHEREAS, DOB did not issue any objections related to any of the waivers sought, except for the stair in the side

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yard, and approved the plans on December 3, 2004 (the "December 2004 Plans"); and

WHEREAS, on June 28, 2005, DOB advised the owner that it intended to revoke the approvals and permits on the ground that the audit revealed non-compliance with the Zoning Change including that the community facility FAR exceeded the 0.4 maximum permitted (as of July 26, 2001 and prior to the issuance of any permits or the commencement of construction); the applicant asserts that as of July 2005, the six-story building approved in the December 2004 Plans was 65 percent complete and topped off at six stories; and

WHEREAS, on July 14, 2005, DOB revoked the Building Permit and ordered all work to stop immediately; in August 2005, DOB conducted an additional audit and issued further objections to the December 2004 Plans; and

WHEREAS, on August 3, 2005, the project architect filed an amendment to the December 2004 Plans making several changes necessary to bring the plans into compliance with the ZR and other regulations; the applicant submitted a request to allow the filing of an alteration application to remedy the objection that the plan contained too much floor area while allowing the sixth floor to remain; and

WHEREAS, on December 9, 2005, the DOB Deputy Commissioner stated that an Alteration Type II application could be filed to answer objections; on December 20, 2005, the Borough Commissioner added a note which stated that the application would comply with an agreement with the community, not described in the note; and

WHEREAS, on March 16, 2006, DOB issued 33 objections and the applicant states that by December 4, 2006 all but two of the objections had been resolved by revisions to the plans; and

WHEREAS, on December 11, 2006, DOB approved revised plans for a five-story building (the "December 2006 Plans" and the "Complying Development") which reflects 0.4 FAR for community facility use, 1.32 FAR for residential use, and three accessory residential parking spaces; and

WHEREAS, however, DOB only partially lifted the July 2005 Stop Work Order, to allow the owner to remove the sixth floor; and

WHEREAS, the applicant notes that on February 2, 2011, the New York City Planning Commission and City Council adopted zoning amendments which were applicable to the project; the applicable regulations include ZR §§ 24-01 and 24-551 (the applicability of side yard setback regulations for community facility buildings contained in ZR Article II, Chapter 4); these sections make ZR § 23-631 applicable to the proposal rather than ZR §§ 24-01 and 24-551 and requires that the maximum permitted height before setback would be reduced to 25 feet instead of 35 feet as formerly permitted; and

WHEREAS, in its companion common law vesting application, the applicant seeks to have the pre-February 2011 regulations apply since it asserts that its foundations were complete prior to the second zoning change; however, the applicant notes that it does not even comply with the

pre-February 2011 regulations as the sixth floor height does not comply with the required side yard setback under the pre-February 2011 or post-February 2011 scheme and thus it seeks a variance to the pre-February 2011 ZR § 24-551; and

WHEREAS, the applicant submitted an analysis of the Complying Development which reflects the elimination of the sixth floor, reduction in the community facility floor area, increase in the residential floor area, and resolution to all other non-complying conditions; and

WHEREAS, the applicant states that the Complying Development is a five-story building with a height of 51'-10", a total of 1.72 FAR, including 0.4 community facility FAR, 1.32 residential FAR, zero community facility parking spaces, and three accessory residential parking spaces, a total floor area of 8,690 sq. ft. (2,007 sq. ft. of community facility floor area and 6,883 sq. ft. of residential floor area); and

WHEREAS, after the negotiations with DOB subsequent to the objections raised in August 2005, the owner received approval in December 2006 for the Complying Development; and

The Variance Proposal

WHEREAS, the applicant proposes to maintain a six-story building with a maximum height of 61'-9", a total of 2.14 FAR, including 1.05 FAR of community facility use and 1.09 FAR of residential use, and two accessory residential parking spaces, with 10,800 sq. ft. of floor area (5,310 sq. ft. community facility and 5,490 sq. ft. residential); and

WHEREAS, the requested relief is as follows: a total height of 61'-9" (a maximum height of 51'-10" is permitted per the sky exposure plane); a total FAR of 2.14 (1.75 is the maximum total permitted); a community facility FAR of 1.05 (0.4 is the maximum permitted); zero community facility parking spaces (11 are the minimum required); two residential parking spaces (three are the minimum required); a total floor area of 10,800 sq. ft. (8,837.5 sq. ft. is the maximum permitted); 5,310 sq. ft. of community facility floor area (2,020 sq. ft. is the maximum permitted); staircase obstructions in the side yard and rear yard; 28.3 percent open space (a minimum of 45 percent is required); a side yard setback of eight feet on each side (a minimum side yard setback of 13.38 feet is required on each side); and a distance of eight feet from window to side lot line at the third floor (a minimum distance of 15 feet is required); and

WHEREAS, as to the FAR, the applicant seeks an increase in the amount permitted; and

WHEREAS, as to the 11 required parking spaces, the applicant asserts that the building's foundation was completed and thus would have been able to vest prior to the May 2004 enactment of the current ZR § 25-31 which requires one parking space per 500 sq. ft. of floor area for medical offices and ZR § 25-33, which only allows waiver of ten or fewer parking spaces; the prior text allowed for one parking space per 400 sq. ft. of floor area with waiver available for up to 25 spaces; and

WHEREAS, however, since the 2001 Plans and the post-approval amendments were filed after May 2004, the

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ZR required one parking space per 500 sq. ft. of medical office space and a waiver provision for up to ten spaces, not 25; and

WHEREAS, the applicant was aware of all staircase non-compliance and offers no explanation for their non-complying condition; and

WHEREAS, as to the open space, the applicant acknowledges that it does not provide access to the open space on the roof of the first floor to all residential units so it cannot satisfy the open space requirement; and

WHEREAS, as to the side yard setback, the applicant acknowledges that it does not provide the required setback; and

WHEREAS, as to the distance between window and lot line, the applicant acknowledges that it does not provide the required distance; and

WHEREAS, the applicant alleges that a variance should be granted on the basis that: (1) there is a non-complying building on the site; (2) the building on the site is obsolete; (3) the potential use of the community facility space as a religious or educational institution warrants deference; and (4) the owner relied in good faith on DOB's approvals; and

WHEREAS, as set forth below, the Board is unconvinced by any of the applicant's arguments; and

WHEREAS, as to the first contention, the applicant alleges that the noted conditions are unique physical conditions that lead to practical difficulties and unnecessary hardship in developing the subject lot in full compliance with zoning district regulations; and

WHEREAS, the applicant asserts that the condition of a partially-built building that is approximately 65 percent complete and for which the owner currently has DOB's authorization to continue construction only to remove the sixth floor and not to complete pursuant to prior approvals is a unique hardship; and

WHEREAS, the applicant asserts that completion of the plans in full compliance with zoning would require significant changes to the building's occupancy and design that materially impact its utility and economic viability; and

WHEREAS, the applicant states that the conversion to a complying building would necessitate the removal of 993 sq. ft. of floor area and the conversion of 964 sq. ft. of community facility floor area on the first floor to mechanical space so it would be exempt from floor area calculations; and

WHEREAS, the applicant asserts that the partially-built building is obsolete in accordance with Board precedent to credit obsolescence of existing buildings in the variance context; and

WHEREAS, the applicant cites to prior Board cases including BSA Cal. No. 216-08-BZ (Shore Boulevard, Brooklyn) in which it states that the Board considered that the building previously inhabiting the site was "obsolete for living purposes" and BSA Cal. No. 272-04-BZ (31st Drive, Queens) in which the Board considered (1) whether existing buildings "may be used for their intended purpose," and (2) whether the residential building at issue "may still constitute

a viable residence" and "may be suitably used for residential purposes;" and

WHEREAS, the applicant asserts that the Existing Building, built pursuant to plans dated March and December 2004 is unusable as intended or as a residence because of the required loss of 22 percent of the total floor area, the inability to occupy the sixth floor with residential use, and the inability to use a portion of the first floor for community facility use; and

WHEREAS, the applicant states that the cellar, first, and second floors were designed for community facility use, but that the space could potentially be used by a Use Group 4 not-for-profit organization or house of worship and if such an institution were to occupy the space, the loss of 900 sq. ft. of floor area on the first floor to mechanical space and 1,897 sq. ft. of the second floor to residential use could have a negative impact on the institution's programmatic needs; and

WHEREAS, the applicant notes that the Board has followed New York State courts in cases such as Cornell University v. Bagnardi, 68 N.Y.2d 583 (1986) and Pine Knolls Alliance Church v. Zoning Board of Appeals of the Town of Moreau, 5 N.Y.3d 407 (2005), which presume that schools and religious institutions provide a benefit to the public's health, safety, and welfare and so should be afforded special deference under zoning; and

WHEREAS, the applicant notes that the Board has approved numerous variances for educational and religious institutions based on consideration of the programmatic needs of the institution; and

WHEREAS, the applicant states that because the cellar, first, and second floors were intended for community facility use that could potentially be occupied by a religious or educational institution, the presumption that the project will benefit the public's health, safety, and welfare applies and the proposal is entitled to special deference under zoning; and

WHEREAS, the applicant asserts that the Board must grant the subject application unless there is a showing of significant negative effects on traffic congestion, property values, or municipal services as described in the educational and religious institution case law; and

WHEREAS, the applicant asserts that the hardship associated with developing the site in full compliance with zoning also arises from the owner's good faith reliance on approvals from DOB commencing with construction in July 2003 and continuing until DOB issued the Stop Work Order in July 2005; and

WHEREAS, specifically, the applicant states that DOB accepted three sets of plans – the 2001 Plans, March 2004 Plans, and December 2004 Plans and conducted two audits of the plans (April 19, 2001 and January 26, 2005); and

WHEREAS, the applicant asserts that DOB had numerous opportunities to issue objections to the items that are the subject of this variance application during its review, but never issued the objections that are the subject of the requested waivers before the partial completion of the

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Existing Building; and

WHEREAS, the applicant asserts that the issue of the side yard setbacks (covered by the current objection to ZR § 24-511) was addressed in May 2001 through an objection to ZR § 23-631 and agreed that the plans were in compliance with the ZR with respect to the issue of side yard setbacks; DOB raised the same objection under ZR § 23-631 on January 26, 2004, which the project architect addressed by obtaining a reconsideration; the applicant asserts that DOB did not register another objection based on ZR § 24-551 until after the Stop Work Order; and

WHEREAS, the applicant cites to Pantelidis v. Board of Standards and Appeals, 10 N.Y.3d 846 (2008) in which the Court of Appeals determined that a property owner was entitled to a variance where the owner relied in good faith on a [building] permit, for the principle that an owner is entitled to a variance if “in erecting [a] disputed structure [he] acted in good faith reliance on the application, plans and permit approved by . . . New York City Department of Buildings;” and

WHEREAS, the applicant states that the Supreme Court in the earlier Pantelidis v. Board of Standards and Appeals, 10 Misc.3d 1077(A) 814 (N.Y. Sup. 2005) held that the property owner was entitled to the variance because he had relied in good faith on a valid construction permit and the property owner would be burdened by considerable expense and disruption if forced to remove the enlargement; the court found that the uniqueness finding required under ZR § 72-21(a) “may be satisfied under a broad range of circumstances . . . even absent unique circumstances, if the landowner was proceeding in good faith, the variance had minimal impact, and financial hardship was shown;” and

WHEREAS, the applicant states that the Court also found that good faith reliance on a permit valid at the time of construction precludes a finding of self-created hardship; and

WHEREAS, the applicant likens the subject facts to those in Pantelidis in that the owner proceeded in good faith reliance on DOB-approved plans and permits; and

WHEREAS, specifically, the applicant states that there were audits on April 19, 2001 and January 26, 2005, which provided DOB with opportunities to issue concerns with respect to the current objections; and

WHEREAS, the applicant states that DOB raised objections to the original plans submitted, then approved the plans and issued a building permit, and later approved amended plans, similar to the history in Pantelidis; and

WHEREAS, the applicant submitted an affidavit from the project architect which states that all construction work that is the subject of the variance application was performed only after the plans had been audited by either a DOB senior plan examiner or by the review and approval of senior technical staff; and

WHEREAS, the project architect states that, with respect to the four-story building, an audit of the plans initially filed in 2001 was performed by the Borough Commissioner and Chief Examiner, that five meetings took place in connection with the audit, and the plans were

amended in 2003 to reflect the results of the audit; and

WHEREAS, the project architect states, with respect to the five-story building, that its plans to add a fifth floor were audited by the Chief Plan Examiner, three meetings took place in connection with this audit, and the plans were amended to reflect the results of the audit; and

WHEREAS, with respect to the six-story building, the project architect states that the plans were audited by the Deputy Borough Commissioner, three meetings were held, but that the sixth floor was required to be removed; and

WHEREAS, the Board is not persuaded by any of the applicant’s contentions about a hardship at the site; and

WHEREAS, the Board finds no basis or precedent to accept that a new partially-constructed zoning non-compliant building satisfies the requirement for a hardship as required by ZR § 72-21(a); and

WHEREAS, the Board finds that the recent construction of a building that does not comply with zoning is easily distinguished from cases concerning historic pre-existing buildings constructed under prior zoning schemes and/or the advent of modern building requirements; and

WHEREAS, the Board notes that both of the cases the applicant cites for precedent are inapposite as one was a case in which the Board rejected a claim that an existing two-family home was obsolete for its intended residential use and denied the variance application (31st Drive) and another (Shore Boulevard) concerned a historic one-story bungalow, which was the subject of a home enlargement special permit pursuant to ZR § 73-622, which does not require a unique hardship finding; and

WHEREAS, the Board notes that a partially-constructed building would never be deemed suitable for its intended purpose and the applicant’s reference to traditional hardship is misplaced; and

WHEREAS, as to the applicant’s assertion that the inclusion of community facility space which could potentially be used for non-profit or religious use warrants deference under New York State case law, the Board strongly rejects the applicant’s broadening of the deference principle to hypothetical institutions; and

WHEREAS, the Board notes that in the body of variances it has granted to religious and educational institutions, it has required evidence of the institutions’ non-profit status and mission as well as a detailed description of programmatic needs and a clear nexus between the waivers sought and the programmatic goals, and that New York State case law does not support a finding that a hypothetical institution would warrant any deference; and

WHEREAS, as to the good faith reliance doctrine, the Board notes that New York state courts have identified the following requirements: (1) the property owner acted in good faith, (2) there was no reasonable basis with which to charge the property owner with constructive notice that it was building contrary to zoning, and (3) municipal officials charged with carrying out the ZR granted repeated assurances to the property owner; and

WHEREAS, as to whether the property owner acted in good faith, the Board has no reason to believe that the

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property owner did not act in good faith; and

WHEREAS, as to whether the property owner had constructive notice that the building did not comport to zoning, the Board finds that no party has made any assertion that the ZR sections which are the subject of the current objections were ambiguous or that there was any question to whether or not they applied; and

WHEREAS, therefore, the Board finds that the property owner had constructive notice that the building did not comply with the zoning in effect at the time of the permit's first issuance in 2003 and subsequent to the approvals that followed; and

WHEREAS, the Board notes that completed construction or omissions in review do not protect a property owner from subsequent review and requirements to correct errors that it is charged with knowing; the onus is not on DOB to identify all provisions that the architect has the burden of following and whose due diligence would have discovered; and

WHEREAS, further the Board notes that errors or omissions during review, such as DOB's failure to review the 2001 Plans after the Zoning Change and prior to the 2003 permit issuance are clearly distinguishable from cases like Pantelidis where there was a single zoning interpretation question at issue, which had clearly been analyzed and discussed by the architect and DOB officials until DOB explicitly approved the disputed condition; and

WHEREAS, although the subject case includes a multi-step review process, the Board identifies the following problems with the applicant's assertion that the burden be shifted to DOB: (1) the 2004 Plans/Permit were void on their face as they did not comply with existing zoning that was adopted prior to the permit's issuance; (2) the two sets of professionally-certified plans, and the 2001 and 2005 audits, and ultimate approvals do not rise to the level of multiple governmental assurances as set forth in the case law; (3) it is true that quantitatively there were multiple approvals, but that is a result of the applicant's multiple revisions to the plans and DOB review which missed and carried over existing non-complying conditions, and were not repeated assurances that the specific non-complying conditions which form the basis of the waiver requests were complying; (4) as the applicant notes, of the current objections, DOB only identified the staircase non-compliance and side setback in earlier reviews; (5) none of the case law regarding good faith reliance, which concern fact patterns involving specific zoning questions that the approving body explicitly addressed, suggests that the doctrine can be expanded so far as to apply to DOB omissions; and (6) public policy does not support such a conclusion that DOB cannot later identify oversights in prior reviews; and

WHEREAS, the Board notes that the record only contains proof of the following: (1) an April 2001 audit prior to the approval or at the time the approval was performed, but prior to the Zoning Change; (2) the architect's claim that there were several audits prior to the issuance of the June 2003 permit, but without any proof; (3) a January 2004 Stop

Work Order which raised zoning issues including zoning calculations; (4) a January 28, 2004 Reconsideration regarding only height and setback and the application of ZR § 24-50; (5) February 2, 2004 Stop Work Order which states inconsistencies and zoning non-compliance; (6) a March 29, 2004 Reconsideration from an examiner recognizing the fifth floor (but the record is unclear as to whether drawings were even reviewed); (7) March 29, 2004 professionally certified stamped plans; (8) December 2004 professionally certified stamped plans with a sixth story; and (9) a June 28, 2005 intent to revoke; and

WHEREAS, the Board finds that the architect's affidavit is vague and unsubstantiated on dates, reviews, and approvals by DOB and that the evidence with higher level DOB official review dates to a period after the sixth story was constructed (all after June 2005); and

WHEREAS, further, the Board notes that most correspondence and audits reflect that they occurred after the June 2005 Stop Work Order and the property owner's attempts to legalize the building; and

WHEREAS, the Board finds that the applicant cannot claim reliance on approvals or communication after the non-compliance it seeks to now remedy was already completed and that because DOB was communicating with the applicant to rectify illegal construction it does not reflect that the applicant has a hardship which arises from after the fact review and consideration; and

WHEREAS, the Board finds that submissions from the time after the 2005 Stop Work Order and the construction of the sixth floor do not contribute to a claim that there were repeated governmental assurances that led to the hardship; and

WHEREAS, in consideration of the good faith reliance factors, the applicant's case fails because (1) there was constructive notice as the ZR provisions related to the subject non-compliance is clear and unambiguous; (2) DOB's failure to identify zoning non-compliances that were not raised by the architect is not evidence of repeated implicit or explicit governmental assurances; and (3) the permit was void on its face – due diligence would have readily revealed that the permit, which was not based on governmental assurances, was invalid; subsequent professionally certified amendments to the plans reflect zoning non-compliance; and

WHEREAS, the Board deems that the need for the waivers results from the property owner's team's failure to perform due diligence; and

WHEREAS, as noted above, the Zoning Change was adopted by the City Planning Commission on July 26, 2001, nearly two years prior to the initial issuance of the permit; and

WHEREAS, after careful consideration of all submitted testimony and evidence in support of these contentions, the Board does not credit any aspect of applicant's good faith reliance argument; and

WHEREAS, the Board notes that an architect is charged with constructive notice of the zoning regulations applicable to the development and if a change in said

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regulations would have a substantive effect on the development proposal, especially where an architect uses the Professional Certification program, in which he or she is able to obtain a permit without a full DOB examination, which was employed at various points of the approval process; and

WHEREAS, moreover, the Board finds that information regarding the Zoning Change was readily available to the filing architect prior to issuance of the permits; and

WHEREAS, the Board concludes that there was no good faith reliance and no uniqueness leading to unnecessary hardship or practical difficulties; and

WHEREAS, instead, the need for waivers arises only because the subject building in particular was constructed contrary to zoning; and

WHEREAS, for the reasons set forth above, the Board finds that the applicant has failed to meet the finding set forth at ZR § 72-21(a); and

WHEREAS, the applicant asserts that the hardships due to the existence of a non-complying building on the site, an obsolete building, and the owner's good faith reliance on related approvals were not created by the owner as the obsolescence resulting from purely physical characteristics is not a self-created hardship; and

WHEREAS the applicant also notes that the Court in Pantelidis held that "good faith reliance precludes a finding of self-created hardship" and the owner constructed the partially-built building based upon good faith reliance on the repeated approvals from DOB and therefore a finding of self-created hardship is precluded; and

WHEREAS, the Board does not disagree with the applicant's statement that a finding of good faith reliance precludes a determination that the hardship was self-created, however, the Board does not find that the subject application warrants such consideration; and

WHEREAS, the Board looks to the sequence of approvals and work performed and finds that the applicant commenced construction in 2003 pursuant to plans which had, significantly, been approved prior to the Zoning Change, but whose permit was not issued until after; the Board notes that the project architect alone was charged with the duty to apply the zoning in effect at the time of the permit's issuance and that the non-compliance associated with the Zoning Change could have been readily discovered; and

WHEREAS, subsequent approvals readopted errors unrelated to the Zoning Change which were missed by the architect and DOB previously and do not relieve the applicant of the duty of confirming that all zoning was correct; and

WHEREAS, the Board finds that because the applicant ignored its constructive notice – the clear language of the ZR – it created its own hardship; and

WHEREAS, the Board notes that any financial hardship that the applicant claims would be incurred if demolition of the Building were required is a direct result of the applicant failing to perform due diligence to ascertain

the zoning prior to construction; it has nothing to do with any inherent condition of the site; and

WHEREAS, as stated above, the need to re-design the building now is not a hardship and the waivers arise only because the development was constructed contrary to zoning; and

WHEREAS, hardship that occurs only because of the actions of the property owner is best characterized as self-created, in the absence of any countervailing factors; and

WHEREAS, accordingly, the Board finds that the need for the waivers is a self-created hardship; and

WHEREAS, thus, the Board finds that the applicant has failed to meet the finding set forth at ZR § 72-21(d), which requires that the practical difficulties or unnecessary hardship claimed as the basis for a variance have not been created by the property owner; and

Conclusion

WHEREAS, as to good faith reliance, the Board finds the applicant interprets the case law too broadly, including Jayne Estates v. Raynor, 22 N.Y.2d 417, 239 N.Y.S.2d 75 (1968) and Ellentuck, et al. v. Joseph B. Klein, et al., 51 A.D.2d 964, 380 N.Y.S. 2d 327 (2d Dep't 1976), with regard to when a hardship incurred by the reliance on a permit which is later invalidated is relevant to a variance finding; and

WHEREAS, the Board clarifies that the courts do not extend the good faith reliance principle to all property owners who build pursuant to a permit, which is subsequently invalidated; the courts have limited the applicability of good faith reliance to situations where property owners performed work pursuant to a series of governmental reviews and approvals, addressing specific conditions, that were later reversed; and

WHEREAS, as noted above, the Board finds that the mere fact that the subject project was audited and the site visited during construction logically does not indicate that the owner relied on a series of governmental reviews and approvals, rather, the evidence reflects that the owner performed substantial construction based on permits obtained through the Professional Certification Program or after considerable time had passed between approval and permit issuance, and that such construction would have continued regardless of whether DOB visited the site or audited the project; and

WHEREAS, since the application fails to meet the findings set forth at ZR §§ 72-21 (a) and (d), it must be denied; and

WHEREAS, because the Board finds that the application fails to meet the findings set forth at ZR §§ 72-21(a) and (d), which all address the threshold issue of whether a unique hardship afflicts the site, the Board declines to address the other findings.

Therefore it is Resolved that the decision of the Brooklyn Borough Commissioner, March 31, 2011, acting on Department of Buildings Application No. 301146739, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, December 6, 2011.

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90-11-BZ

APPLICANT – Malcom Kaye, AIA, for Jian Guo, owner.
SUBJECT – Application June 23, 2011 – Variance (§72-21) to allow the legalization of two semi-detached homes, contrary to lot area and lot width (§23-32), rear yard (§23-47), parking (§25-141) and floor area (§23-141) regulations. R3-1 zoning district.

PREMISES AFFECTED – 23 Windom Avenue, east side of Windom Avenue, 210’ south of Cedar Avenue, Block 3120, Lot 19, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES – None.

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:0
Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner dated June 14, 2011, acting on Department of Buildings Application No. 520060567, reads in pertinent part:

The proposed subdivision of one zoning lot and one tax lot into two separate zoning lots and two separate tax lots is contrary to Sec. 23-32 (ZR) in that the min. lot area required is 3,135 sq. ft. and the min. lot width required is 33 feet for a semi-detached two-family in a R3-1 zoning district; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot in an R3-1 zoning district within a Lower Density Growth Management Area (“LDGMA”), the legalization of a semi-detached two-family home that does not comply with the zoning regulations for lot area and lot width, contrary to ZR § 23-32; and

WHEREAS, a companion variance application, filed under BSA Cal. No. 91-11-BZ, for 25 Windom Avenue (“25 Windom”), the adjacent site to the south, was heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on November 15, 2011 after due publication in *The City Record*, and then to decision on December 6, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

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

WHEREAS, the subject site is located on the east side of Windom Avenue, between Cedar Avenue and Robin Road, in an R3-1 zoning district within an LDGMA; and

WHEREAS, the subject zoning lot (Lot 18) consists of both 23 Windom (tentative lot 19) and 25 Windom (tentative lot 18) and has a width of 60 feet, a depth of 100 feet, and a total lot area of 6,000 sq. ft. (the “Zoning Lot”); and

WHEREAS, the subject site, 23 Windom (tentative lot 19), has a width of 30 feet, a depth of 100 feet, and a total lot area of 3,000 sq. ft.; and

WHEREAS, the lot to the rear of the Zoning Lot (Lot 49), located at 72 Ocean Avenue (“72 Ocean”) is occupied by a single-family home which encroaches into the rear of the 25 Windom (tentative lot 18); and

WHEREAS, specifically, the home at 72 Ocean occupies an approximately 16.2-ft. by 16.9-ft. portion at the rear of the Zoning Lot (the “Encroachment Area”), which was the subject of an adverse possession claim in Ling v. Lieneck (Index No. 103478/07) wherein, on August 14, 2008, the New York State Supreme Court ordered that the Encroachment Area be merged with tax lot 49 (72 Ocean) through adverse possession; and

WHEREAS, in a letter to the applicant dated January 12, 2011, Department of Buildings’ (“DOB”) Staten Island Borough Commissioner Marshall A. Kaminer noted that the court judgment did not create new zoning lots when it granted fee simple title of the Encroachment Area to the owner of 72 Ocean Avenue; thus, although the court judgment changed the dimensions of tentative tax lot 18, the dimensions of the Zoning Lot remain 60’-0” by 100’-0”; and

WHEREAS, the applicant provided evidence that it has submitted an application to subdivide the Zoning Lot in accordance with ZR § 12-10(c), in an effort to establish 25 Windom as a separate zoning lot that does not include the Encroachment Area in its dimensions (tentative lot 18); and

WHEREAS, the Board notes that the Encroachment Area is located entirely within the 25 Windom site (tentative lot 18), and has no effect on the dimensions of the proposed lot at 23 Windom (tentative lot 19); and

WHEREAS, the applicant represents that the Zoning Lot was formerly occupied by a legal non-complying two-story home; and

WHEREAS, the prior home was demolished in 2004 in anticipation of the construction of two two-family semi-detached homes; and

WHEREAS, the subject site is currently occupied by a semi-detached two-story two-family home which is connected to an identical two-family semi-detached home at 25 Windom; and

WHEREAS, the applicant notes that the current configuration of the two two-family semi-detached homes on the Zoning Lot is non-conforming because multi-family homes are prohibited in R3-1 zoning districts within an LDGMA; therefore the applicant seeks to subdivide the Zoning Lot, which results in the subject non-compliances; and

WHEREAS, the applicant proposes to legalize the subject home, which has the following non-complying parameters: a lot width of 30’-0” (the minimum required lot width is 33’-0”); and a lot area of 3,000 sq. ft. (the minimum required lot area is 3,135 sq. ft.); and

WHEREAS, the Board notes that on August 12, 2004, the City Planning Commission (“CPC”) adopted a text amendment which modified the minimum required lot area and lot width for two-family semi-detached homes in R3-1

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zoning districts within the LDGMA (the “Text Amendment”); and

WHEREAS, specifically, the text amendment increased the subject site’s minimum required lot area from 1,700 sq. ft. to 3,135 sq. ft. and increased the minimum required lot width from 18 feet to 33 feet; and

WHEREAS, the applicant states that the architect filed the application for a building permit on February 4, 2005, and DOB issued a permit for the subject home on June 13, 2005, and construction commenced thereafter; and

WHEREAS, the applicant states that the architect also filed a subdivision application with the Department of Finance (“DOF”) in 2005 for the purpose of subdividing the Zoning Lot into two 30’-0” by 100’-0” lots¹; and

WHEREAS, however, the applicant’s development proposal was based upon the assumption that the Zoning Lot could be subdivided into two complying lots; and

WHEREAS, thus, the architect, filing under DOB’s Professional Certification Program, assumed that the requirements for minimum lot area and lot width remained at 1,700 sq. ft. and 18 feet, respectively; and

WHEREAS, the Board notes that ZR § 23-32 provides that for two-family semi-detached homes in R3-1 zoning districts within LDGMAs, the minimum lot area is 3,135 sq. ft. and the minimum lot width is 33 feet; and

WHEREAS, the subdivision now proposed by the applicant would create two substandard lots: a 3,000 sq. ft. lot with a width of 30 feet at 23 Windom, and a 2,728 sq. ft. lot with a width of 30 feet at 25 Windom; and

WHEREAS, the Board notes that the August 12, 2004 text amendment had been in effect at least five months prior to the filing of the permit application and ten months prior to the permit issuance, and therefore the proposed subdivision of the Zoning Lot no longer met the requirements for minimum lot width or lot area; and

WHEREAS, the applicant notes that ZR § 23-33 provides an exemption to the minimum lot width and lot area requirements for existing small lots in R3-1 zoning districts within the LDGMA; however, the subject site is not eligible for the exemption because the owner cannot establish separate and individual ownership of the two lots both on December 8, 2005 and the date of the application for a building permit, as required by ZR § 23-33; and

WHEREAS, a DOB audit on September 28, 2006 revealed the encroachment of the neighbor’s house at the rear of the 25 Windom site (tentative lot 18), which was not reflected on the plans; and

WHEREAS, subsequently, on November 15, 2006, DOB revoked the permit for 25 Windom; and

WHEREAS, the applicant notes that the September 28, 2006 objection DOB issued for 25 Windom and its subsequent revocation of the permit did not affect the permit for 23 Windom, and on March 26, 2007 DOB issued Certificate of Occupancy #500749675F for the subject two-

family semi-detached home on the site; and

WHEREAS, subsequently, on April 12, 2007, the current owner purchased 23 Windom; and

WHEREAS, on March 2, 2010, the applicant states that it filed an application to subdivide the Zoning Lot with DOB; and

WHEREAS, in a letter to the applicant dated August 10, 2010, DOB Staten Island Borough Commissioner Marshall A. Kaminer stated that “the subdivision application was subsequently audited, and the Department noted that the proposed subdivision was contrary to ZR § 23-32 which requires a minimum lot width of 33 feet and a minimum lot area of 3,135 sq. ft. for a semi-detached two-family dwelling;” and

WHEREAS, consequently, the approval and permit that the architect obtained through the Professional Certification Program erroneously allowed for the subdivision of the Zoning Lot into two substandard-sized lots; and

WHEREAS, the applicant alleges that a variance should be granted on the basis that: (1) there are actual unique physical conditions on the site that lead to hardship; and (2) significant expenditures were made in good faith reliance on DOB’s permitting action; and

WHEREAS, as set forth below, the Board is unconvinced by either argument; and

WHEREAS, as to the first contention, the applicant alleges that the following is a unique physical conditions that leads to practical difficulties and unnecessary hardship in developing the subject lot in strict compliance with the underlying zoning requirements: the lot has an irregular shape and size; and

WHEREAS, as to the size of the lot, the applicant represents that the Zoning Lot has an irregularly large width of 60 feet, making it the widest lot on the subject block, which, combined with the Zoning Lot’s 6,000 sq. ft. area, could accommodate a significantly sized house if the Zoning Lot were not subdivided; and

WHEREAS, the applicant states that the width and area of the Zoning Lot are just barely too small to satisfy the requirements of ZR § 23-32, and alleges that the proposed development of two semi-detached two-family homes is more consistent with the surrounding neighborhood character than the construction of one large as-of-right home on the Zoning Lot; and

WHEREAS, alternatively, the applicant claims that tentative lot 19, as subdivided, is irregularly shaped based on its narrow width of 30’-0”;² and

WHEREAS, the Board notes that the 400-ft. radius diagram submitted by the applicant reflects that there are several other sites in the surrounding area with similar lot areas and widths as the Zoning Lot, and that even if this condition was unique to the site, the Board does not consider the fact that the Zoning Lot has a larger width and area than the average lot in the surrounding vicinity to be a hardship; and

WHEREAS, specifically, the Board notes that the applicant could have constructed an as-of-right home on the

¹ As discussed below, the architect failed to file a separate subdivision application with DOB at this time, as required by DOB’s Staten Island Borough Office.

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Zoning Lot rather than attempting to subdivide the lot and construct two two-family semi-detached homes, and the Board does not agree that construction of such an as-of-right home would be out of character with the surrounding area, since, unlike the proposed development, it would fully comply with the requirements of the Zoning Resolution; and

WHEREAS, the Board further notes that development of an as-of-right home on the Zoning Lot would not be burdened by the adverse possession determination that affects 25 Windom, as a home that fully complied with the underlying zoning requirements could easily be configured on the Zoning Lot despite the loss of the Encroachment Area; and

WHEREAS, as to the applicant's claim that the Zoning Lot is almost large enough to be subdivided into two lots that satisfy the minimum lot width and lot area requirements of ZR § 23-32, the Board notes that the applicant must satisfy the ZR § 72-21(a) finding regardless of the degree of the non-compliances at issue, and that in any event the Board notes that tentative lot 19 is substandard by approximately 135 sq. ft. in area and three feet in width, which the Board does not consider to be de minimis; and

WHEREAS, as to the applicant's claim that tentative lot 19 is a uniquely narrow lot, the Board disagrees and finds that, although it does not satisfy the minimum lot width and area requirements of ZR § 23-32, tentative lot 19 is a regularly shaped lot with a size that is consistent with the majority of lots in the surrounding area; and

WHEREAS, the Board notes that in its submissions to the Board the applicant specifically noted that the average lot width in the surrounding area is between 25 feet and 30 feet; and

WHEREAS, accordingly, the Board does not find any of the purported unique conditions to rise to the level of unnecessary hardship or practical difficulties; and

WHEREAS, the Board concludes that the need for the minimum lot area and lot width waivers result from the architect's lack of due diligence in identifying the August 12, 2004 text amendment, and the erroneous assumption that the Zoning Lot could be subdivided into two 30'-0" by 100'-0" lots; and

WHEREAS, for the above reasons, the Board concludes that the applicant has not shown that there are unique physical conditions present at the site that lead to unnecessary hardship or practical difficulties in complying with the applicable zoning requirements; and

WHEREAS, the applicant's secondary argument is that a variance is justified based upon good faith reliance on DOB's permitting action; and

WHEREAS, specifically, the applicant claims that at the time development commenced, there was no way for the filing architect to know about the text amendment which changed the minimum lot area and lot width requirements for the site; and

WHEREAS, the applicant claims that the Department of City Planning ("DCP") did not provide proper notice of the zoning change to the professional filing community before the application for the permit was made; and

WHEREAS, as noted above, the text amendment was adopted by the CPC on August 12, 2004, which is more than five months before the permit application was filed with DOB; and

WHEREAS, the applicant claims that CPC did not publish the relevant update to the Zoning Resolution reflecting the text change until October 12, 2005; and

WHEREAS, the applicant argues that the lack of knowledge of the zoning change was not its fault; and

WHEREAS, the applicant also alleges that DOB audited the project and conducted multiple site visits, and therefore it should have been alerted to the error prior to the completion of construction; and

WHEREAS, specifically, the applicant claims that by June 30, 2006 the exterior shell of the home was complete but significant work remained on the site, and that as of that date the site had been inspected by DOB four times and DOB had rescinded a previously issued stop work order, based on responses provided by the architect; and

WHEREAS, the applicant argues that despite DOB's numerous reviews of the project as of June 30, 2006, DOB had never identified the subject non-compliances related to the minimum lot width and lot area which are at issue in this application; and

WHEREAS, the applicant states, after construction of the subject home was complete, DOB inspected the site for a fifth time on October 2, 2006 and signed off on the final Certificate of Occupancy for the home; and

WHEREAS, as noted above a Certificate of Occupancy was issued for the home on March 26, 2007; and

WHEREAS, the applicant states that the non-compliances related to ZR § 23-32 were not identified by DOB until late 2010, more than three years after the Certificate of Occupancy was issued for 23 Windom and the home was sold to the current owner; and

WHEREAS, the applicant argues that if DOB had raised the subject non-compliances during the site visits that occurred prior to June 30, 2006, the applicant would not have incurred the additional costs associated with completing construction of the home, and therefore the owner relied in good faith on DOB's reviews and approvals when construction was partially completed; and

WHEREAS, after careful consideration of all submitted testimony and evidence in support of these contentions, the Board does not credit any aspect of applicant's good faith reliance argument; and

WHEREAS, the Board notes at the outset that it is the burden of the owner and his or her filing representative to properly ascertain the applicable zoning regulations when applying to DOB for a permit, especially where an architect uses the Professional Certification Program, in which he or she is able to obtain a permit without a full DOB examination; and

WHEREAS, the Board further notes that it is appropriate to charge an architect with constructive notice of the applicable zoning regulations, as a change in the zoning may have a substantive effect on a proposed development; and

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WHEREAS, moreover, the Board finds that information regarding the zoning change for the subject site was available to the architect prior to its filing the building application; and

WHEREAS, specifically, the Board notes that an application to amend the Zoning Resolution was filed by the Department of City Planning (“DCP”) on May 20, 2004, and that the notice provision in City Charter § 200(a)(1) requires the proposed text amendment to be referred to all community boards, borough boards, and borough presidents for a 60 day review period; and

WHEREAS, subsequently, on July 28, 2004, CPC adopted the text amendment, published a report which explained the purpose and details of the text amendment, and filed the adopted resolution with the Office of the Speaker, City Council, and the Borough President; and

WHEREAS, the Board observes that DCP also maintains a website which provides information on all upcoming and recently passed text amendments and zoning changes, and that the website made such information available as early as September 19, 1999; and

WHEREAS, the Board notes that the architect could have contacted DCP directly to confirm whether there were any upcoming or recent text amendments that could have a substantive effect on the proposed development; and

WHEREAS, accordingly, the Board finds that the owner and filing representative had constructive notice of the text amendment as of its adoption on August 12, 2004, and that the failure to complete its own due diligence in preparing its application before DOB does not cure the invalidity of the permit; and

WHEREAS, the Board concludes that any claim of good faith reliance upon DOB’s permitting action is negated by the lack of due diligence in consulting DCP directly or its website, where information about the zoning change that would have prevented the erroneous DOB filing could easily have been obtained; and

WHEREAS, the Board also rejects the argument that the architect’s lack of due diligence regarding the August 12, 2004 text amendment was negated by DOB’s subsequent review of the project; and

WHEREAS, the Board notes, and the applicant acknowledges, that when the original subdivision application was filed with DOF in 2005, the architect did not file a separate subdivision application with DOB based on the erroneous belief that DOB did not require a separate subdivision application when a New Building application was being filed; and

WHEREAS, the Board further notes that the applicant filed a subdivision application with DOB in 2010 to correct this mistake; and

WHEREAS, as noted above, DOB subsequently issued a letter on August 10, 2010 stating that the subdivision application was audited and DOB determined that it was contrary to ZR § 23-32; and

WHEREAS, accordingly, the Board observes that the architect did not provide DOB with the appropriate documentation, in the form of a separate subdivision

application, at the time it filed for a building permit, and that failure to do so likely hampered DOB’s ability to identify the subject non-compliances at an earlier date; and

WHEREAS, however, the Board finds that, notwithstanding the possibility that DOB could have identified the non-compliances earlier if the architect had followed proper DOB filing procedures, the architect is not absolved from its responsibility to perform due diligence in identifying the applicable zoning text, especially where the permit was obtained through the Professional Certification Program; and

WHEREAS, the Board notes that the mere fact that DOB visited the site prior to the completion of construction does not reflect that the owner detrimentally relied on DOB’s review; rather, the owner commenced construction in reliance on a permit that was obtained through the Professional Certification Program and would have completed the construction based on that permit even if DOB had not visited the site during construction; and

WHEREAS, the Board further notes that, although DOB issued a Certificate of Occupancy for the home at 23 Windom prior to determining that the site does not comply with ZR § 23-32, the home was completed prior to the issuance of the Certificate of Occupancy, and therefore the owner could not have relied upon it in making expenditures toward construction of the home; and

WHEREAS, the Board concludes that there was no good faith reliance and no uniqueness leading to unnecessary hardship or practical difficulties; and

WHEREAS, for the reasons set forth above, the Board finds that the applicant has failed to meet the finding set forth at ZR § 72-21(a); and

WHEREAS, as noted above, the applicant could have constructed a home on the Zoning Lot that fully complied with the underlying zoning regulations, and that any hardship that exists on the subject site is solely the result of the applicant’s attempt to subdivide the Zoning Lot to construct two two-family semi-detached homes; and

WHEREAS, the Board notes that hardship that occurs only because of the actions of the property owner is best characterized as self-created, in the absence of any countervailing factors; and

WHEREAS, accordingly, the Board finds that the need for the requested waivers constitute a self-created hardship; and

WHEREAS, thus, the Board finds that the applicant has failed to meet the finding set forth at ZR § 72-21(d), which requires that the practical difficulties or unnecessary hardship claimed as the basis for a variance have not been created by the property owner; and

WHEREAS, the applicant submitted case law in support of its arguments regarding good faith reliance, including Pantelidis v. BSA, 814 N.Y.S.2d 891 10 (N.Y. Sup. Ct. 2005), Jayne Estates v. Raynor, 22 N.Y.2d 417, 239 N.Y.S.2d 75 (1968) and Ellentuck, et al. v. Joseph B. Klein, et al., 51 A.D.2d 964, 380 N.Y.S. 2d 327 (2d Dep’t 1976), to establish when a hardship incurred by the reliance on a permit which is later invalidated is relevant to a variance

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finding; and

WHEREAS, the Board clarifies that the courts do not extend the good faith reliance principle to all property owners who build pursuant to a permit which is subsequently invalidated; the courts have limited the applicability of good faith reliance to situations where property owners performed work pursuant to a series of governmental review and approvals, which were later reversed; and

WHEREAS, the Board distinguishes the subject case which involves building plans approved through the Professional Certification Program, which allows owners to obtain a permit without a full DOB examination; and

WHEREAS, the Board notes, as described above, that any participant in the Professional Certification Program is open to have plans audited at any time; and

WHEREAS, finally, it is clear that the applicant simply did not perform due diligence with regard to the applicable zoning regulations, which had changed ten months prior to the commencement of construction, or with regard to the legal status of the Encroachment Area; and

WHEREAS, the Board is able to distinguish all of the cited case law and, thus, finds the applicant's reliance on it unavailing; and

WHEREAS, the applicant also discusses BK Corporation v. BSA, 210 NY Slip. Op. 3117U (Queens Sup. 2010), and claims that the facts in the subject case can be distinguished from those in BK Corporation, wherein the court upheld the Board's rejection of a good faith reliance claim where the owner failed to identify a change in the Zoning Resolution that occurred approximately two years prior to the commencement of construction and DOB did not audit the plans until after the project was complete; and

WHEREAS, the applicant argues that in contrast to BK Corporation, in the subject case the text amendment occurred ten prior to the commencement of construction and DOB visited the site while construction was still underway, and therefore contends that the site is more deserving of a finding of good faith reliance because the owner relied on DOB's review of the project while the home was only partially completed; and

WHEREAS, the Board is not persuaded that the distinctions between the facts of the subject case and those in BK Corporation warrant a finding of good faith reliance; and

WHEREAS, the Board notes that the failure to identify the text amendment in the subject case was similarly the result of a lack of due diligence, regardless of whether it was ten months or two years after the zoning change; and

WHEREAS, as noted above, the Board finds that the mere fact that the subject project was audited and the site visited during construction logically does not indicate that the owner relied on a series of governmental reviews and approvals, rather, the evidence reflects that the owner performed substantial construction based on a permit obtained through the Professional Certification Program, and that such construction would have continued regardless of whether DOB visited the site or audited the project; and

WHEREAS, since the application fails to meet the findings set forth at ZR §§ 72-21 (a) and (d), it must be denied; and

WHEREAS, because the Board finds that the application fails to meet the findings set forth at ZR §§ 72-21(a) and (d), which address the threshold issue of whether a unique hardship afflicts the site, the Board declines to address the other findings.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated June 14, 2011, acting on Department of Buildings Application No. 520060567, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, December 6, 2011.

91-11-BZ

CEQR #11-BSA-110K

APPLICANT – Malcom Kaye, AIA, for Jian Guo, owner.
SUBJECT – Application June 23, 2011 – Variance (§72-21) to allow the legalization of two semi-detached homes, contrary to lot area and lot width (§23-32), rear yard (§23-47), parking (§25-141) and floor area (§23-141) regulations.
R3-1 zoning district.

PREMISES AFFECTED – 25 Windom Avenue, east side of Windom Avenue, 210' south of Cedar Avenue, Block 3120, Lot 18, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES – None.

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner dated June 14, 2011, acting on Department of Buildings Application No. 500749684, reads in pertinent part:

1. The proposed minimum lot area and minimum lot width is contrary to Sec 23-32 (ZR)
2. The proposed rear yard is contrary to Sec 23-47 (ZR)
3. The proposed required parking for a two-family dwelling is contrary to Sec. 25-622 (ZR) in that no more than two parking spaces can be in tandem
4. The maximum floor area ratio...is contrary to Sec. 23-141, B (ZR); and

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot in an R3-1 zoning district within a Lower Density Growth Management Area ("LDGMA"), the legalization of a semi-detached two-family home that does not comply with the zoning regulations for lot area, lot width, floor area ratio ("FAR"), rear yard, and parking, contrary to ZR §§ 23-32, 23-141, 23-47, and 25-622; and

WHEREAS, a companion variance application, filed

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under BSA Cal. No. 90-11-BZ, for 23 Windom Avenue (“23 Windom”), the adjacent site to the north, was heard concurrently and decided on the same date; and

WHEREAS, a public hearing was held on this application on November 15, 2011 after due publication in *The City Record*, and then to decision on December 6, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Montanez; and

WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application; and

WHEREAS, the subject site is located on the east side of Windom Avenue, between Cedar Avenue and Robin Road, in an R3-1 zoning district within an LDGMA; and

WHEREAS, the subject zoning lot (Lot 18) consists of both 23 Windom (tentative lot 19) and 25 Windom (tentative lot 18) and has a width of 60 feet, a depth of 100 feet, and a total lot area of 6,000 sq. ft. (the “Zoning Lot”); and

WHEREAS, the subject site, 25 Windom (tentative lot 18), has a width of 30 feet, a depth ranging between approximately 84 feet and 100 feet, and a total lot area of 2,728 sq. ft.; and

WHEREAS, the adjacent lot to the rear of the site (Lot 49), located at 72 Ocean Avenue (“72 Ocean”) is occupied by a single-family home which encroaches into the rear of the Zoning Lot; and

WHEREAS, specifically, the home at 72 Ocean occupies an approximately 16.2-ft. by 16.9-ft. portion at the rear of the Zoning Lot (the “Encroachment Area”), which was the subject of an adverse possession claim in Ling v. Lieneck (Index No. 103478/07) wherein, on August 14, 2008, the New York State Supreme Court ordered that the Encroachment Area be merged with tax lot 49 (72 Ocean) through adverse possession; and

WHEREAS, in a letter to the applicant dated January 12, 2011, Department of Buildings’ (“DOB”) Staten Island Borough Commissioner Marshall A. Kaminer noted that the court judgment did not create new zoning lots when it granted fee simple title of the Encroachment Area to the owner of 72 Ocean Avenue; thus, although the court judgment changed the dimensions of tentative tax lot 18, the dimensions of the Zoning Lot remain 60’-0” by 100’-0”; and

WHEREAS, the applicant provided evidence that it has submitted an application to subdivide the Zoning Lot in accordance with ZR § 12-10(c), in an effort to establish 25 Windom as a separate zoning lot that does not include the Encroachment Area in its dimensions (tentative lot 18); and

WHEREAS, accordingly, the zoning non-compliances referenced herein are based on the dimensions of the proposed lot at 25 Windom (tentative lot 18), which does not include the Encroachment Area; and

WHEREAS, the applicant represents that the Zoning Lot was formerly occupied by a legal non-complying two-story home; and

WHEREAS, the prior home was demolished in 2004 in anticipation of the construction of two two-family semi-

detached homes; and

WHEREAS, the subject site is currently occupied by a semi-detached two-story two-family home which is connected to an identical two-family semi-detached home at 23 Windom; and

WHEREAS, the applicant notes that the current configuration of the two two-family semi-detached homes on the Zoning Lot is non-conforming because multi-family homes are prohibited in R3-1 zoning districts within an LDGMA; therefore the applicant seeks to subdivide the Zoning Lot, which results in the subject non-compliances; and

WHEREAS, the applicant proposes to legalize the subject home, which has the following non-complying parameters: a lot width of 30’-0” (the minimum required lot width is 33’-0”); a lot area of 2,728 sq. ft. (the minimum required lot area is 3,135 sq. ft.); a floor area of 1,910 sq. ft. (the maximum permitted floor area is 1,637 sq. ft., including a 20 percent bonus for a sloping roof); an FAR of 0.70 (the maximum permitted FAR is 0.60, including a 20 percent bonus for a sloping roof); a rear yard with a minimum depth of 18’-9 ½” (a rear yard with a minimum depth of 30’-0” is required); and three tandem parking spaces (a minimum of three parking spaces are required, but no more than two may be parked in tandem); and

WHEREAS, the Board notes that on August 12, 2004, the City Planning Commission (“CPC”) adopted a text amendment which modified the minimum required lot area and lot width for two-family semi-detached homes in R3-1 zoning districts within the LDGMA (the “Text Amendment”); and

WHEREAS, specifically, the text amendment increased the subject site’s minimum required lot area from 1,700 sq. ft. to 3,135 sq. ft. and increased the minimum required lot width from 18 feet to 33 feet; and

WHEREAS, the applicant states that the architect filed the application for a building permit on January 24, 2005, DOB issued a permit for the subject home on February 7, 2005, and construction commenced thereafter; and

WHEREAS, the applicant states that the architect also filed a subdivision application with the Department of Finance (“DOF”) in 2005 for the purpose of subdividing the Zoning Lot into two 30’-0” by 100’-0” lots¹; and

WHEREAS, however, the applicant’s development proposal was based upon the assumption that the Zoning Lot could be subdivided into two complying lots and that the Encroachment Area remained part of the subject site; and

WHEREAS, thus, the architect, filing under DOB’s Professional Certification Program, assumed that the requirements for minimum lot area and lot width remained at 1,700 sq. ft. and 18 feet, respectively, and that the owner of 72 Ocean was not entitled to adverse possession of the portion of the Zoning Lot which its home encroached upon; and

¹ As discussed below, the architect failed to file a separate subdivision application with DOB at this time, as required by DOB’s Staten Island Borough Office.

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WHEREAS, the Board notes that ZR § 23-32 provides that for two-family semi-detached homes in R3-1 zoning districts within LDGMAs, the minimum lot area is 3,135 sq. ft. and the minimum lot width is 33 feet; and

WHEREAS, the subdivision now proposed by the applicant would create two substandard lots: a 3,000 sq. ft. lot with a width of 30 feet at 23 Windom, and a 2,728 sq. ft. lot with a width of 30 feet at 25 Windom; and

WHEREAS, the Board notes that the August 12, 2004 text amendment had been in effect at least five months prior to the filing of the permit application or the permit issuance, and therefore the proposed subdivision of the Zoning Lot no longer met the requirements for minimum lot width or lot area; and

WHEREAS, the applicant notes that ZR § 23-33 provides an exemption to the minimum lot width and lot area requirements for existing small lots in R3-1 zoning districts within the LDGMA; however, the subject site is not eligible for the exemption because the owner cannot establish separate and individual ownership of the two lots both on December 8, 2005 and the date of the application for a building permit, as required by ZR § 23-33; and

WHEREAS, the Board notes that the plans filed by the architect with the initial permit application did not disclose that the home at 72 Ocean encroaches onto the Zoning Lot, and the architect based its zoning calculations for the subject site on a 3,000 sq. ft. lot and did not account for the Encroachment Area; and

WHEREAS, a DOB audit on September 28, 2006 revealed the encroachment of the neighbor's house at the rear of the site, which was not reflected on the plans; and

WHEREAS, subsequently, on November 15, 2006, DOB revoked the permit for the subject site; and

WHEREAS, the applicant represents that, by that point, the construction of the home was complete; and

WHEREAS, subsequently, the Encroachment Area was merged into tax lot 49 pursuant to the August 14, 2008 decision in Ling v. Lieneck; and

WHEREAS, the applicant states that as a result of the court order, tentative lot 18 does not comply with the underlying zoning requirements for FAR, rear yard, and parking; and

WHEREAS, consequently, the approval and permit that the architect obtained through the Professional Certification Program erroneously allowed for the subdivision of the Zoning Lot into two substandard-sized lots, and did not account for the rear yard encroachment in calculating the zoning requirements for the site; and

WHEREAS, the applicant alleges that a variance should be granted on the basis that: (1) there are actual unique physical conditions on the site that lead to hardship; and (2) significant expenditures were made in good faith reliance on DOB's permitting action; and

WHEREAS, as set forth below, the Board is unconvinced by either argument; and

WHEREAS, as to the first contention, the applicant alleges that the following are unique physical conditions that lead to practical difficulties and unnecessary hardship in

developing the subject lot in strict compliance with the underlying zoning requirements: (1) the lot has an irregular shape and size; and (2) the adverse possession determination was not foreseeable; and

WHEREAS, as to the size of the lot, the applicant represents that the Zoning Lot has an irregularly large width of 60 feet, making it the widest lot on the subject block, which, combined with the Zoning Lot's 6,000 sq. ft. area, could accommodate a significantly sized house if the Zoning Lot were not subdivided; and

WHEREAS, the applicant states that the width and area of the Zoning Lot are just barely too small to satisfy the requirements of ZR § 23-32, and alleges that the proposed development of two semi-detached two-family homes is more consistent with the surrounding neighborhood character than the construction of one large as-of-right home on the Zoning Lot; and

WHEREAS, alternatively, the applicant argues that tentative lot 18, as subdivided, is irregularly shaped because the Encroachment Area is carved out of the lot, making it extremely difficult to comply with the zoning requirements for the site; and

WHEREAS, as to the adverse possession claim, the applicant states that at the time the property was purchased there was a known encroachment consisting of a kitchen, concrete steps, and a wooden deck with a fence extending into the rear corner of the property from 72 Ocean; and

WHEREAS, the applicant further states that when the owner of the subject site requested that the encroachment be removed, the owner of 72 Ocean asserted a claim of adverse possession, which was ultimately granted by the court on August 14, 2008 in Ling v. Lieneck; and

WHEREAS, the applicant represents that at the time of purchasing the subject property, the owner had no reason to presume that the encroachment from 72 Ocean constituted adverse possession, and that until the date of the court's determination the owner had legal title to that portion of the lot; and

WHEREAS, the applicant claims that DOB issued certain violations against 72 Ocean for work without a permit relating to the portions of the home that encroach into the Zoning Lot, and therefore it was reasonable to believe that the owner would prevail in an action to have the encroaching structures removed; and

WHEREAS, the Board notes that the 400-ft. radius diagram submitted by the applicant reflects that there are several other sites in the surrounding area with similar lot areas and widths as the Zoning Lot, and that even if this condition was unique to the site, the Board does not consider the fact that the Zoning Lot has a larger width and area than the average lot in the surrounding vicinity to be a hardship; and

WHEREAS, specifically, the Board notes that the applicant could have constructed an as-of-right home on the Zoning Lot rather than attempting to subdivide the lot and construct two two-family semi-detached homes, and the Board does not agree that construction of such an as-of-right home would be out of character with the surrounding area,

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since, unlike the proposed development, it would fully comply with the requirements of the Zoning Resolution; and

WHEREAS, as to the applicant's claim that the Zoning Lot is almost large enough to be subdivided into two lots that satisfy the minimum lot width and lot area requirements of ZR § 23-32, the Board notes that the applicant must satisfy the ZR § 72-21(a) finding regardless of the degree of the non-compliances at issue, and that in any event the Board notes that tentative lot 18 is substandard by approximately 407 sq. ft. in area and three feet in width, which the Board does not consider to be de minimis; and

WHEREAS, the Board also disagrees with the applicant's argument that the adverse possession determination in Ling v. Lieneck could not have been foreseen, or that the loss of the Encroachment Area is a unique physical condition which creates a hardship in developing the site in compliance with the underlying zoning regulations; and

WHEREAS, the Board notes that the encroachment of the 72 Ocean home onto the rear of the Zoning Lot was not only in existence prior to the date the owner purchased the subject site, but the applicant submitted evidence indicating that at least a portion of the encroachment existed as early as 1926; and

WHEREAS, the Board further notes that the size of the Encroachment Area is significant at approximately 16.2-ft. by 16.9-ft., and is plainly visible on the survey, in the photographs submitted with the application, and based on the site visits conducted by individual Board members, and finds that the architect could have foreseen that the proposed home must either comply with the zoning regulations for minimum distance between buildings or required rear yard, and that the owner of 72 Ocean could make a claim of adverse possession for the Encroachment Area; and

WHEREAS, accordingly, the Board finds the applicant's failure to consider the possibility that the Encroachment Area would be merged with 72 Ocean (tax lot 49) via adverse possession was the result of a lack of due diligence; and

WHEREAS, further, the Board notes that development of an as-of-right home on the Zoning Lot would not be burdened by the adverse possession determination, as a home that fully complied with the underlying zoning requirements could easily be configured on the Zoning Lot despite the loss of the Encroachment Area, and therefore any hardship that results from the adverse possession determination is solely due to the applicant's attempt to subdivide the Zoning Lot; and

WHEREAS, even assuming, in arguendo, that the Board accepted the applicant's claim of a unique hardship based on the adverse possession determination and the resulting irregular shape of the lot, the site would still not comply with the minimum lot area and lot width requirements of ZR § 23-32, which have no relation to the encroachment of the 72 Ocean home at the rear of the site; and

WHEREAS, accordingly, the Board does not find any of the purported unique conditions to rise to the level of

unnecessary hardship or practical difficulties; and

WHEREAS, the Board concludes that the need for the minimum lot area and lot width waivers result from the architect's lack of due diligence in identifying the August 12, 2004 text amendment, and the erroneous assumption that the Zoning Lot could be subdivided into two 30'-0" by 100'-0" lots; and

WHEREAS, the Board further concludes that the need for the FAR, rear yard, and parking waivers similarly result from the architect's failure to perform due diligence as to the legal status of the Encroachment Area; and

WHEREAS, for the above reasons, the Board concludes that the applicant has not shown that there are unique physical conditions present at the site that lead to unnecessary hardship or practical difficulties in complying with the applicable zoning requirements; and

WHEREAS, the applicant's secondary argument is that a variance is justified based upon good faith reliance on DOB's permitting action; and

WHEREAS, specifically, the applicant claims that at the time development commenced, there was no way for the filing architect to know about the text amendment which changed the minimum lot area and lot width requirements for the site; and

WHEREAS, the applicant claims that the Department of City Planning ("DCP") did not provide proper notice of the zoning change to the professional filing community before the application for the permit was made; and

WHEREAS, as noted above, the text amendment was adopted by the CPC on August 12, 2004, which is more than five months before the permit application was filed with DOB; and

WHEREAS, the applicant claims that CPC did not publish the relevant update to the Zoning Resolution reflecting the text change until October 12, 2005; and

WHEREAS, the applicant argues that the lack of knowledge of the zoning change was not its fault; and

WHEREAS, the applicant also alleges that DOB audited the project and conducted multiple site visits, and therefore it should have been alerted to the error prior to the completion of construction; and

WHEREAS, specifically, the applicant claims that by June 30, 2006 the exterior shell of the home was complete but significant work remained on the site, and that as of that date the site had been visited by DOB four times, the project had been subject to an audit, and DOB had rescinded a previously issued stop work order and notice of intent to revoke the building permit, based on responses provided by the architect; and

WHEREAS, the applicant argues that despite DOB's numerous reviews of the project as of June 30, 2006, DOB had never identified any of the non-compliant conditions which are at issue in this application; and

WHEREAS, the applicant contends that the remaining work on the home was completed prior to the September 28, 2006 audit which revealed the encroachment of the neighbor's house at the rear of the site; and

WHEREAS, the applicant argues that if DOB had

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raised the subject non-compliances during its audit or the site visits that occurred prior to June 30, 2006, the applicant would not have incurred the additional costs associated with completing construction of the home, and therefore the owner relied in good faith on DOB's reviews and approvals when construction was partially completed; and

WHEREAS, after careful consideration of all submitted testimony and evidence in support of these contentions, the Board does not credit any aspect of applicant's good faith reliance argument; and

WHEREAS, the Board notes at the outset that it is the burden of the owner and his or her filing representative to properly ascertain the applicable zoning regulations when applying to DOB for a permit, especially where an architect uses the Professional Certification Program, in which he or she is able to obtain a permit without a full DOB examination; and

WHEREAS, the Board further notes that it is appropriate to charge an architect with constructive notice of the applicable zoning regulations, as a change in the zoning may have a substantive effect on a proposed development; and

WHEREAS, moreover, the Board finds that information regarding the zoning change for the subject site was available to the architect prior to its filing the building application; and

WHEREAS, specifically, the Board notes that an application to amend the Zoning Resolution was filed by the Department of City Planning ("DCP") on May 20, 2004, and that the notice provision in City Charter § 200(a)(1) requires the proposed text amendment to be referred to all community boards, borough boards, and borough presidents for a 60 day review period; and

WHEREAS, subsequently, on July 28, 2004, CPC adopted the text amendment, published a report which explained the purpose and details of the text amendment, and filed the adopted resolution with the Office of the Speaker, City Council, and the Borough President; and

WHEREAS, the Board observes that DCP also maintains a website which provides information on all upcoming and recently passed text amendments and zoning changes, and that the website made such information available as early as September 19, 1999; and

WHEREAS, the Board notes that the architect could have contacted DCP directly to confirm whether there were any upcoming or recent text amendments that could have a substantive effect on the proposed development; and

WHEREAS, accordingly, the Board finds that the owner and filing representative had constructive notice of the text amendment as of its adoption on August 12, 2004, and that the failure to complete its own due diligence in preparing its application before DOB does not cure the invalidity of the permit; and

WHEREAS, the Board concludes that any claim of good faith reliance upon DOB's permitting action is negated by the lack of due diligence in consulting DCP directly or its website, where information about the zoning change that would have prevented the erroneous DOB filing could easily

have been obtained; and

WHEREAS, the Board also rejects the argument that the architect's lack of due diligence regarding the August 12, 2004 text amendment or the encroachment at the rear of the site was negated by DOB's subsequent review of the project; and

WHEREAS, in a letter to the architect dated March 23, 2009, DOB Staten Island Borough Commissioner Marshall A. Kaminer stated that "[t]he plans upon which the Department's initial approval was based did not show 72 Ocean Avenue's deck and rear portion of the building. If your plans had disclosed the actual site conditions, these plans would not have been approved;" and

WHEREAS, the Board notes, and the applicant acknowledges, that when the original subdivision application was filed with DOB in 2005, the architect did not file a separate subdivision application with DOB based on the erroneous belief that DOB did not require a separate subdivision application when a New Building application was being filed; and

WHEREAS, the Board further notes that the applicant filed a subdivision application with DOB in 2010 to correct this mistake; and

WHEREAS, in a letter to the applicant dated August 10, 2010, DOB Staten Island Borough Commissioner Marshall A. Kaminer stated that "the subdivision application was subsequently audited, and the Department noted that the proposed subdivision was contrary to ZR § 23-32 which requires a minimum lot width of 33 feet and a minimum lot area of 3,135 sq. ft. for a semi-detached two-family dwelling;" and

WHEREAS, accordingly, the Board observes that the architect did not provide DOB with the appropriate documentation (in the form of plans that reflected the encroachment or a separate subdivision application) at the time it filed for a building permit, and that failure to do so likely hampered DOB's ability to identify the subject non-compliances at an earlier date; and

WHEREAS, however, the Board finds that, notwithstanding the possibility that DOB could have identified the non-compliances earlier if the architect had followed proper DOB filing procedures, the architect is not absolved from its responsibility to perform due diligence in identifying the applicable zoning text or in ascertaining the legal status of a longstanding encroachment on the site, especially where the permit was obtained through the Professional Certification Program; and

WHEREAS, the Board notes that the mere fact that DOB audited the project and visited the site before construction was completed does not reflect that the owner detrimentally relied on DOB's review; rather, the owner commenced construction in reliance on a permit that was obtained through the Professional Certification Program and would have completed the construction based on that permit even if DOB had not visited the site or audited the project during construction; and

WHEREAS, the Board concludes that there was no good faith reliance and no uniqueness leading to

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unnecessary hardship or practical difficulties; and

WHEREAS, for the reasons set forth above, the Board finds that the applicant has failed to meet the finding set forth at ZR § 72-21(a); and

WHEREAS, as noted above, the applicant could have constructed a home on the Zoning Lot that fully complied with the underlying zoning regulations, and that any hardship that exists on the subject site is solely the result of the applicant's attempt to subdivide the Zoning Lot to construct two two-family semi-detached homes; and

WHEREAS, the Board notes that hardship that occurs only because of the actions of the property owner is best characterized as self-created, in the absence of any countervailing factors; and

WHEREAS, accordingly, the Board finds that the need for the requested waivers constitute a self-created hardship; and

WHEREAS, thus, the Board finds that the applicant has failed to meet the finding set forth at ZR § 72-21(d), which requires that the practical difficulties or unnecessary hardship claimed as the basis for a variance have not been created by the property owner; and

WHEREAS, the applicant submitted case law in support of its arguments regarding good faith reliance, including Pantelidis v. BSA, 814 NYS.2d 891 10 (N.Y. Sup. Ct. 2005), Jayne Estates v. Raynor, 22 N.Y.2d 417, 239 N.Y.S.2d 75 (1968) and Ellentuck, et al. v. Joseph B. Klein, et al., 51 A.D.2d 964, 380 N.Y.S. 2d 327 (2d Dep't 1976), to establish when a hardship incurred by the reliance on a permit which is later invalidated is relevant to a variance finding; and

WHEREAS, the Board clarifies that the courts do not extend the good faith reliance principle to all property owners who build pursuant to a permit which is subsequently invalidated; the courts have limited the applicability of good faith reliance to situations where property owners performed work pursuant to a series of governmental review and approvals, which were later reversed; and

WHEREAS, the Board distinguishes the subject case which involves building plans approved through the Professional Certification Program, which allows owners to obtain a permit without a full DOB examination; and

WHEREAS, the Board notes, as described above, that any participant in the Professional Certification Program is open to have plans audited at any time; and

WHEREAS, finally, it is clear that the applicant simply did not perform due diligence with regard to the applicable zoning regulations, which had changed approximately six months prior to the commencement of construction, or with regard to the legal status of the Encroachment Area; and

WHEREAS, the Board is able to distinguish all of the cited case law and, thus, finds the applicant's reliance on it unavailing; and

WHEREAS, the applicant also discusses BK Corporation v. BSA, 210 NY Slip. Op. 3117U (Queens Sup. 2010), and claims that the facts in the subject case can be

distinguished from those in BK Corporation, wherein the court upheld the Board's rejection of a good faith reliance claim where the owner failed to identify a change in the Zoning Resolution that occurred approximately two years prior to the commencement of construction and DOB did not audit the plans until after the project was complete; and

WHEREAS, the applicant argues that in contrast to BK Corporation, in the subject case the text amendment occurred approximately six months prior to the commencement of construction and DOB audited the project and visited the site while construction was still underway, and therefore contends that the site is more deserving of a finding of good faith reliance because the owner relied on DOB's review of the project while the home was only partially completed; and

WHEREAS, the Board is not persuaded that the distinctions between the facts of the subject case and those in BK Corporation warrant a finding of good faith reliance; and

WHEREAS, the Board notes that the failure to identify the text amendment in the subject case was similarly the result of a lack of due diligence, regardless of whether it was six months or two years after the zoning change; and

WHEREAS, as noted above, the Board finds that the mere fact that the subject project was audited and the site visited during construction logically does not indicate that the owner relied on a series of governmental reviews and approvals, rather, the evidence reflects that the owner performed substantial construction based on a permit obtained through the Professional Certification Program, and that such construction would have continued regardless of whether DOB visited the site or audited the project; and

WHEREAS, since the application fails to meet the findings set forth at ZR §§ 72-21 (a) and (d), it must be denied; and

WHEREAS, because the Board finds that the application fails to meet the findings set forth at ZR §§ 72-21(a) and (d), which address the threshold issue of whether a unique hardship afflicts the site, the Board declines to address the other findings.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated June 14, 2011, acting on Department of Buildings Application No. 500749684, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, December 6, 2011.

94-11-BZ

CEQR #11-BSA-113Q

APPLICANT – Victor K. Han, RA, AIA, for 149 Northern Plaza, LLC & Seungho Kim, owners. New York Spa & Sauna Corp., lessee.

SUBJECT – Application June 27, 2011 – Special Permit (§73-36) to allow a physical culture establishment (*New York Spa & Sauna*). C2-2/R6A&R5 zoning district.

PREMISES AFFECTED – 149-06 Northern Boulevard, Southeast of Northern Boulevard, 0' Southeast of 149th.

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Block 5017, Lot 11, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated May 27, 2011, acting on Department of Buildings Application No. 410122184, reads in pertinent part:

As per Section 32-31 of the New York City Zoning Resolution, proposed use of a portion of the cellar, portion of the first floor and...portion of the second floor...as a physical culture establishment (Day Spa, Sauna & Fitness Center) is permitted only by special permit from the New York City Board of Standards and Appeals pursuant to Section 73-03 and 73-36 of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located partially within a C2-2 (R6A) zoning district and partially within an R5 zoning district, the operation of a physical culture establishment (PCE) in portions of the cellar, first floor and second floor of a six-story mixed-use commercial/residential/community facility building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 20, 2011, after due notice by publication in *The City Record*, with a continued hearing on November 15, 2011, and then to decision on December 6, 2011; and

WHEREAS, Community Board 7, Queens, recommends approval of this application, with the condition that no liquor license be sought for the proposed PCE; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the southeast corner of Northern Boulevard and 149th Street, partially within a C2-2 (R6A) zoning district and partially within an R5 zoning district; and

WHEREAS, the subject site has a total lot area of 19,548 sq. ft. and is occupied by a six-story mixed-use commercial/residential/community facility building which is currently under construction; and

WHEREAS, the proposed PCE will occupy 8,980 sq. ft. of floor area on portions of the first and second floors, with an additional 10,610 sq. ft. of floor space located in a portion of the cellar of the building; and

WHEREAS, the PCE will be operated by New York Spa & Sauna; and

WHEREAS, the proposed hours of operation for the

PCE are: 7:00 a.m. to 11:00 p.m., daily; and

WHEREAS, the applicant states that the services at the PCE will include facilities for the practice of massage by New York State licensed masseurs and masseuses; 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 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 617.2; 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. 11BSA113Q, dated June 24, 2011; and

WHEREAS, the EAS documents 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, 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 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, on a site located partially within a C2-2 (R6A) zoning district and partially within an R5 zoning district, the operation of a physical culture establishment in portions of the cellar, first floor and second floor of a six-story mixed-use commercial/residential/community facility

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building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received September 9, 2011” - (2) sheets, “Received November 1, 2011” - (4) sheets and “Received November 4, 2011” - (1) sheet and *on further condition*:

THAT the term of this grant shall expire on December 6, 2021;

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 all massages shall be performed by New York State licensed massage therapists;

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

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT substantial construction shall be completed in accordance with ZR §73-70;

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

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 6, 2011.

101-11-BZ

CEQR #12-BSA-002K

APPLICANT – Dennis D. Dell’Angelo, for Edward Stern, owner.

SUBJECT – Application July 12, 2011 – Special Permit (§73-622) for the enlargement of an existing two-family home, to be converted to a single-family home, contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1152 East 24th Street, west side of East 234th Street, 400’ south of Avenue K, Block 623, Lot 67, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Dennis D. Dell’Angelo.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 6, 2011, acting on Department of Buildings Application No. 320308797, reads in pertinent part:

1. Proposed FAR and OSR 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 yard contrary to Sec. 23-46 ZR and less than the required rear yard contrary to Sec. 23-47 ZR; 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 home and its conversion into a single-family home, which does not comply with the zoning requirements for 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 25, 2011, after due notice by publication in *The City Record*, with a continued hearing on November 15, 2011, and then to decision on December 6, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 24th Street, between Avenue K and Avenue L, within an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 3,750 sq. ft., and is occupied by a two-family home with a floor area of 3,080 sq. ft. (0.82 FAR); 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 sq. ft. (0.82 FAR) to 3,740 sq. ft. (0.99 FAR); the maximum permitted floor area is 1,875 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 51 percent (150 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain the existing side yard along the northern lot line with a width of 3’-9”, and to maintain the existing side yard along the southern lot line with a width of 8’-8” (two side yards with minimum widths of 5’-0” each are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-0” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant represents that the proposed building will not alter the essential character of the neighborhood, and will not impair the future use or development of the surrounding area; and

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WHEREAS, at hearing, the Board questioned whether the proposed front yard complied with the planting requirements of ZR § 23-451; and

WHEREAS, in response, the applicant submitted revised plans which reflect compliance with ZR § 23-451; and

WHEREAS, based upon its review of the record, 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, within an R2 zoning district, the enlargement of a two-family home and its conversion into a single-family home, which does not comply with the zoning requirements for 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 July 12, 2011"-(6) sheets, "October 11, 2011"-(5) sheets, and "November 22, 2011"-(5) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,740 sq. ft. (0.99 FAR); a minimum open space ratio of 51 percent; a side yard with a minimum width of 3'-9" along the northern lot line; a side yard with a minimum width of 8'-8" along the southern lot line; and a rear yard with a minimum depth of 20'-0", 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;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 6, 2011.

42-11-BZ

APPLICANT – Eric Palatnik, P.C., for Winden LLC, owner.

SUBJECT – Application April 12, 2011 – Special Permit (§73-44) to permit the reduction in required parking for an ambulatory or diagnostic treatment facility and for office uses. C4-2 zoning district.

PREMISES AFFECTED – 135-11 40th Road, between Prince and Main Streets, Block 5036, Lot 55, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Vice Chair Collin.....1

ACTION OF THE BOARD – Laid over to January 10, 2012, at 1:30 P.M., for decision, hearing closed.

47-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for USA Outreach Corp., by Shaya Cohen, owner.

SUBJECT – Application April 13, 2011 – Variance (§72-21) to allow a three-story yeshiva (*Yeshiva Zichron Aryeh*) with dormitories, contrary to use (§22-13), floor area (§§23-141 and 24-111), side setback (§24-551) and parking regulations (§25-31). R2 zoning district.

PREMISES AFFECTED – 1213 Bay 25th Street, west side of Bay 25th Street, between Bayswater Avenue and Healy Avenue. Block 15720, Lot 67, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Lyra J. Altman, David Shteierman, Shlomo Cohen, Yaakov Shadimo, David Levy, Moshe Miller, H. Adelman, Suzanne Burger, Elchanon Kvaitsky, Chaim Stober, Chaim Goldenberg, Laurence Brodsky and others.

For Opposition: Enid Glabman, Eugene Falik, Phyllis Rudnick, Marcia Gluck, Gloria Jaeger, Valerie Kelly, Stephan A. Cooper, Donald Richards, Ruth Goros, Helene Greene, Lettie DeWitt, Steve Cromity and others.

ACTION OF THE BOARD – Laid over to January 24, 2012, at 1:30 P.M., for continued hearing.

73-11-BZ

APPLICANT – Rampulla Associates Architects, for Tora Development, LLC, owners.

SUBJECT – Application May 26, 2011 – Variance (§72-21) to allow a three-story, 87-unit residential building, contrary

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to use regulations of (§32-11), height (§23-631) and parking (§25-23) regulations. C3A/SRD zoning district.

PREMISES AFFECTED – 70 Tennyson Drive, north side Tennyson Drive, between Nelson Avenue and Cleveland Avenue, Block 5212, Lot 70, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip Rampulla.

For Opposition: Christine Collella.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Vice Chair Collin.....1

ACTION OF THE BOARD – Laid over to January 24, 2012, at 1:30 P.M., for decision, hearing closed.

74-11-BZ

APPLICANT – James Chin & Associates, LLC, for 1058 Forest Avenue Associates, owners.

SUBJECT – Application May 25, 2011 – Variance (§72-21) to allow the conversion of a community facility building for office use, contrary to use regulations. R3-2 & R-2 zoning district.

PREMISES AFFECTED – 1058 Forest Avenue, southeast intersection of Forest Avenue and Manor Road in West Brighton, Block 315, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Mindy Chin and James Chin.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Vice Chair Collin.....1

ACTION OF THE BOARD – Laid over to January 10, 2012, at 1:30 P.M., for decision, hearing closed.

89-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Annie and Kfir Ribak, owners.

SUBJECT – Application June 23, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461) and perimeter wall height (§23-631). R3-2 zoning district.

PREMISES AFFECTED – 2224 Avenue S, south west corner of Avenue S and East 23rd Street, Block 7301, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Vice Chair Collin.....1

ACTION OF THE BOARD – Laid over to December 13, 2011 at 1:30 P.M., for decision, hearing closed.

96-11-BZ

APPLICANT – Law Office of Marvin B. Mitzner, for 514-516 East 6th Street, owners.

SUBJECT – Application June 30, 2011 – Variance (§72-21) to legalize enlargements to an existing residential building, contrary to floor area (§23-145) and dwelling units (§23-22). R7B zoning district.

PREMISES AFFECTED – 514-516 East 6th Street, south side of east 6th Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin Mitzner.

For Opposition: Rosie Mendez and Andito Lloyd.

ACTION OF THE BOARD – Laid over to February 14, 2012, at 1:30 P.M., for continued hearing.

105-11-BZ

APPLICANT – Slater & Beckerman, LLP, for 147 Remsen Street Associates, LLC, owner; Team Wellness Corp., lessee.

SUBJECT – Application July 27, 2011 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*Massage Spa Envy*). C5-2A (Special Downtown Brooklyn District) zoning district.

PREMISES AFFECTED – 147 Remsen Street, north side of Remsen Street, between Clinton Street and Court Street, block 250, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Stefanie Marazzi.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Vice Chair Collin.....1

ACTION OF THE BOARD – Laid over to January 10, 2012, at 1:30 P.M., for decision, hearing closed.

115-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Thomas Schick, owner.

SUBJECT – Application August 15, 2011 – Special Permit (§73-622) for the enlargement of an existing single family residence contrary to floor area and open space (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1110 East 22nd Street, between Avenue J and Avenue K, Block 7603, Lot 62, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin,

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Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to January
24, 2012, at 1:30 P.M., for adjourned hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

*CORRECTION

This resolution adopted on November 1, 2011, under
Calendar No. 235-10-BZ and printed in Volume 96, Bulletin
No. 45, is hereby corrected to read as follows:

235-10-BZ

CEQR #11-BSA-047K

APPLICANT – Paul J. Proulx, Esq., c/o Cozen O’Connor,
for Avenue K Corporation, owner; TD Bank c/o Facilities
Department, lessees.

SUBJECT – Application December 30, 2010 – Variance
 (§72-21) to allow a commercial use in a residential zone,
contrary to use regulations (§22-00). R3-2 zoning district.
PREMISES AFFECTED – 2363 Ralph Avenue, corner of
Ralph Avenue and Avenue K, Block 8339, Lot 1, Borough
of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Howard Hornstein.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins,
Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough
Commissioner, dated December 3, 2010, acting on Department
of Buildings Application No. 320238694, reads in pertinent
part:

“Proposed bank, Use Group 6, not permitted in R3-2
district. Refer to Board of Standards and Appeals;”
and

WHEREAS, this is an application under ZR § 72-21, to
permit, in an R3-2 zoning district, the construction of a one-
story bank (Use Group 6) with 20 accessory parking spaces,
which does not conform to district use regulations, contrary to
ZR § 22-10; and

WHEREAS, a public hearing was held on this
application on August 23, 2011 after due notice by publication
in *The City Record*, with a continued hearing on September 27,
2011, and then to decision on November 1, 2011; and

WHEREAS, the site and surrounding area had site and
neighborhood examinations by Chair Srinivasan,
Commissioner Hinkson, Commissioner Montanez, and
Commissioner Ottley-Brown; and

WHEREAS, Community Board 18, Brooklyn,
recommends approval of this application; and

WHEREAS, the subject site is located on a triangular-
shaped lot bounded by Ralph Avenue to the west and Avenue
K to the east, within an R3-2 zoning district; and

WHEREAS, the site has approximately 190’-6” of
frontage on Ralph Avenue and 223’-5” of frontage on Avenue
K, with a total lot area of 18,899 sq. ft.; and

WHEREAS, the site is currently occupied by a gasoline

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service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1960 when, under BSA Cal. No. 546-59-BZ, the Board granted a variance to permit the construction of a gasoline service station with accessory uses on the site; and

WHEREAS, on July 11, 1967, under BSA Cal. No. 135-67-BZ, the Board granted an enlargement in the lot area of the site and the rearrangement of the gasoline service station, for a term of ten years; and

WHEREAS, subsequently, the grant was amended and the term extended on various occasions; and

WHEREAS, on December 22, 1998, the Board granted an extension of term, which expired on October 11, 2007; and

WHEREAS, the applicant now proposes to construct a one-story commercial building on the site, to be occupied by a bank (Use Group 6), with a total floor area of 2,560 sq. ft. (0.14 FAR), and with 20 accessory parking spaces; and

WHEREAS, because the prior variance has expired and commercial use is not permitted in the subject R3-2 zoning district, the applicant seeks a use variance to permit the proposed Use Group 6 use; 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 development: (1) the irregular shape of the subject lot; (2) the impact of a sewer easement on the site; and (3) the contamination of the soil on the site; and

WHEREAS, as to the site's irregular shape, the applicant states that due to the irregularity of the street grid, the subject site is an irregular, triangularly-shaped lot which is unsuitable for complying residential use; and

WHEREAS, the applicant states that the site is further constrained by the presence of a permanent sewer easement for the benefit of the Department of Environmental Protection ("DEP" and the "DEP Easement") on a portion of the site; and

WHEREAS, the applicant further states that, to protect DEP infrastructure that sits below grade, DEP has instituted an absolute prohibition on new building structures within the easement area; and

WHEREAS, the applicant submitted a survey reflecting that the DEP Easement is adjacent to Ralph Avenue between Avenue K and Bergen Avenue, and that it comprises the first 60 feet of the site's Ralph Avenue frontage; and

WHEREAS, the applicant notes that the DEP Easement occupies approximately 9,965 sq. ft. of the site's total lot area of 18,899 sq. ft., such that more than half (53 percent) of the total lot area on the site is prohibited from being developed; and

WHEREAS, the applicant represents that, together with the yards required under the R3-2 zoning district regulations, the DEP Easement reduces the developable area for a complying development on the subject site to 6,370 sq. ft.; and

WHEREAS, the applicant further represents that, although the next two easterly block fronts north of the site also have irregular angles along the Ralph Avenue frontage and are burdened by the DEP Easement, the subject site is uniquely burdened by the combination of its irregular shape and the DEP Easement on the site; and

WHEREAS, specifically, the applicant states that both of the blocks to the north of the site are comprised of single zoning lots that encompass the balance of the block, and are therefore much larger than the subject site,

and both of the zoning lots have already been improved with large residential developments fronting the side streets, such that the easement area provides yards and open space for the residential developments; and

WHEREAS, the applicant further states that unlike the nearby zoning lots, the unique shape of the subject site and the DEP Easement combine to artificially limit the amount of developable square footage that the lot can be used for, such that it is impossible to fit all of the permitted floor area into a zoning compliant building; and

WHEREAS, specifically, the applicant states that although the subject R3-2 zoning district allows for a community facility FAR of 1.0 to be combined with a residential FAR of 0.6 to create an as-of-right mixed-use building with an FAR of 1.6, the maximum FAR that can be utilized on the subject site is 0.75 because the awkward shape of the zoning lot restricts the number of required parking spaces that can be provided; and

WHEREAS, the applicant also states that the site is subject to unique clean up obligations to address the type of soil remediation necessary for redevelopment; and

WHEREAS, specifically, the applicant states that the site has been occupied by a gasoline service station since 1960, and that a Phase II Site Investigation identified gasoline-related VOC contamination and select SVOC constituents at concentrations exceeding Department of Environmental Conservation standards; and

WHEREAS, the applicant submitted a report from an environmental consultant which estimates that the costs related to the management of the impacted soil and remedial oversight is approximately \$253,000; and

WHEREAS, the applicant notes that aside from the specific non-hazardous petroleum contamination on the site, the cost estimate also addresses the cost of dealing with the other municipal solid waste landfill, which may be contaminated; and

WHEREAS, the applicant represents that before 1960 the site was undeveloped and was used to deposit municipal solid waste landfill; and

WHEREAS, as evidence of the site's former landfill use, the applicant submitted a landfill report which notes that sites in close proximity to large surface-water bodies, such as the subject site, are prone to lateral transport of leachate; and

WHEREAS, the applicant states that, since it is impossible to select out the fill that is contaminated from the fill that is not, the whole site must be out-loaded, characterized, transported, disposed of, and then replaced with clean fill; 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 submitted a feasibility study which analyzed: (1) a conforming scenario consisting of a

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three-story mixed-use residential/community facility building with a 4,700 sq. ft. medical facility use on the first floor and two 4,700 sq. ft. stories of residential above; (2) an alternative conforming scenario consisting of a three-story 11,200 sq. ft. residential building; and (3) the proposed one-story commercial building occupied by a bank (Use Group 6); and

WHEREAS, the study concluded that the conforming scenarios would not result in a reasonable return, but that the proposed building would realize 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 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 represents that the surrounding area is occupied by a mix of residential, commercial, and community facility uses; and

WHEREAS, the applicant states that the subject site shares the block with a 25,000 sq. ft. medical facility which fronts three sides of the triangular-shaped block; and

WHEREAS, the applicant submitted a 400-ft. radius diagram and photographs of surrounding uses, reflecting that the area immediately surrounding the site consists of a significant commercial presence; and

WHEREAS, the applicant states that the subject site is located on the northeast corner of the intersection of Ralph Avenue and Avenue K, and both southerly corners of the intersection are occupied by commercial uses, including a bank on the southwest corner; and

WHEREAS, the applicant notes that there are commercial overlays to the south and southwest of the site, which permit a range of retail options, including a plaza on the west side of Ralph Avenue and the Georgetown mall directly south of the site on the east side of Ralph Avenue; and

WHEREAS, the applicant notes a commercial overlay and manufacturing and commercial uses are also located a block north of the site, which permit a range of commercial uses as well; and

WHEREAS, the applicant further notes that the proposed variance would allow a bank (Use Group 6) to replace an existing gasoline service station (Use Group 16), and would therefore serve to bring the site closer to conformity with the subject R3-2 zoning district; and

WHEREAS, the applicant represents that a bank is a relatively benign use, as its hours would be during the day with shortened hours on the weekend, the site would be landscaped and well maintained, and it would aesthetically be a significant improvement over the uses which have existed at the site for more than 50 years; and

WHEREAS, as to bulk, the applicant states that he proposed one-story building has a floor area of 2,560 sq. ft. (0.14 FAR), which is considerably below the maximum density for the subject zoning lot, and will

comply with all commercial bulk regulations; and

WHEREAS, the applicant further states that the proposed bank will comply with C1 district signage regulations and will provide 20 parking spaces, which is significantly more than the required ten spaces; 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 site's unique physical conditions; and

WHEREAS, 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 6 NYCRR, Part 617.2; 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. 11-BSA-047K dated September 2010; 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, DEP's Bureau of Environmental Planning and Analysis has reviewed the project for potential hazardous materials; and

WHEREAS, DEP accepts the June 2011 Remedial Action Plan and the May 2011 Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; 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 R3-2 zoning district, the construction of a one-story bank (Use Group 6) with 20 accessory parking spaces, which does not conform to district

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use regulations, contrary to ZR § 22-10; *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 13, 2011” – seven (7) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 2,560 sq. ft. (0.14 FAR); and 20 accessory parking spaces, as indicated on the BSA-approved plans;

THAT signage on the site shall comply with C1 district regulations;

THAT DOB shall not issue a Certificate of Occupancy until the applicant has provided it with documentation of DEP’s approval of the Remedial Closure Report;

THAT construction shall proceed in accordance with ZR § 72-23;

THAT 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 1, 2011.

***The resolution has been revised. Corrected in Bulletin Nos. 49-50, Vol. 96, dated December 15, 2011.**

BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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Volume 96, No. 51

December 21, 2011

DIRECTORY

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Tuesday, December 13, 2011**

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231-09-BZ 412/414 Greenwich Street, Manhattan

DOCKET

New Case Filed Up to December 13, 2011

185-11-BZ

2538 85th Street, north intersection of 86th Street and Stilwell Avenue., Block 6860, Lot(s) 21, Borough of **Brooklyn, Community Board: 11**. Variance (§72-21) to allow for the use of the premises as voluntary accessory parking for the adjacent as for right retail development (Walgreens), contrary to use regulations ZR §22-00. R5 zoning district. R-5 district.

186-11-A

170 Broadway, southeast corner of Broadway and Maiden Lane., Block 64, Lot(s) 16, Borough of **Manhattan, Community Board: 1**. Application pursuant to Multiple Dwelling Law ("MDL") Section 310(2)(a) for a variance of the court and yard requirements of MDL Section 26 to facilitate the conversion of the building presently located on the subject property to a transient hotel. C5-5(LM) district.

187-11-BZ

118 Sandford Street, Sandford Street between Park Avenue and Myrtle Avenue., Block 1736, Lot(s) 32, Borough of **Brooklyn, Community Board: 3**. Application made pursuant to Zoning Resolution Section 72-21 to authorize enlargement and conversion of existing manufacturing building to mixed-use residential and commercial building in M1-1 zoning district. M1-1 district.

188-11-BZ

286 Spring Street, southeast corner of Spring Street and Hudson Street., Block 579, Lot(s) 5, Borough of **Manhattan, Community Board: 2**. Variance of the use regulations of Zoning Resolution Section 42-10 to allow the conversion of floors 2-6 from commercial use to residential use in an M1-6 zoning district. M1-6 district.

189-11-BZ

32-21 46th Street, East side of 46th Street, 200' south to the corner of Broadway., Block 722, Lot(s) 30, Borough of **Queens, Community Board: 1**. Convert existing three (3) story two(2) family house into a four (4) three (3) family house. R-5 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

JANUARY 24, 2012, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 24, 2012, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

141-66-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Rising Wolf Garage LLC, owner.

SUBJECT – Application June 29, 2011 – Extension of Term of a previously granted Variance (72-21) for the continued operation of a UG 8 motor vehicle storage facility (*Rising Wolf Motorcycle Parking Garage*) which expired on July 1, 2010 and Waiver of the Rules. R7-2 zoning district.

PREMISES AFFECTED – 338 East 9th Street, Block 450, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #3M

188-78-BZ

APPLICANT – Eric Palatnik, P.C., for Anthony Berardi, owner.

SUBJECT – Application August 4, 2011 – Pursuant to (§11-413) for an Amendment to a previously granted Variance (§72-21) for the added (UG16) uses of automobile body with spray painting booth and automobile sales to an existing (UG16) automobile repair and auto laundry. R-5 zoning district.

PREMISES AFFECTED – 8102 New Utrecht Avenue, southwest corner of New Utrecht Avenue and 81st Street, Block 6313, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #11BK

11-01-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for P.J. Christy, Inc., owner.

SUBJECT – Application August 8, 2011 – Extension of Term for the continued operation of a Gasoline Service Station (*BP British Petroleum*) which expired on August 7, 2011 and Extension of Time to obtain a Certificate of Occupancy which expired on July 26, 2006. C1-2/R5 zoning district.

PREMISES AFFECTED – 586/606 Conduit Boulevard, Pitkin Avenue and Autumn Avenue on the west, Block 4219, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #5BK

58-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Eckford II Realty Corp., owner; Quick Fitness, lessee.

SUBJECT – Application November 30, 2011 – Extension of Time to obtain a Certificate of Occupancy of a previously granted Special Permit (73-36) for the operation of a Physical Culture Establishment (Quick Fitness) which expired on August 3, 2011. M1-2/R6A zoning district.

PREMISES AFFECTED – 16 Eckford Street, east side of Eckford Street, between Engert Avenue and Newton Street, Block 2714, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEALS CALENDAR

206-10-A thru 210-10-A

APPLICANT – Philip L. Rampulla, for Island Realty Associate, LLC, owner.

SUBJECT – Application November 1, 2010 – Proposed construction of a single family home located within the bed of a mapped street contrary to General City Law Section 35. R1-2 zoning district.

PREMISES AFFECTED – 3399, 3403, Richmond Road and 14, 15, 17 Tupelo Court, Block 2260, Lot 24, 26, 64, 66, 68, Borough of Staten Island.

COMMUNITY BOARD #2SI

118-11-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Jean Scanlon, lessee.

SUBJECT – Application August 18, 2011 – Proposed site and building not fronting a mapped street contrary to Art. 3 Sect. 36 GCL and Sect. 27-291 Admin. Code of the City of New York. The Building is in the bed of a mapped street contrary to Art 3 Sect 35 of the General City Law, private disposal in the bed of a mapped street contrary to Department of Buildings' policy.

PREMISES AFFECTED – 811 Liberty Lane, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

JANUARY 24, 2012, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 24, 2012, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

129-11-BZ

APPLICANT – Jeffrey Chester, Esq. GSHLLP, for Carroll Street One LLC, owner.

SUBJECT – Application September 2, 2011 – Variance (§72-21) to allow for the construction of a residential building contrary to use regulations. M1-2 zoning district.

PREMISES AFFECTED – 465 Carroll Street, north side of Carroll Street, 100' from the corner of 3rd Avenue. Block 447, Lot 43. Borough of Brooklyn.

COMMUNITY BOARD #6BK

142-11-BZ

APPLICANT – Goldman Harris LLC, for The Phillippe at W75st NY, LLC, owner.

SUBJECT – Application September 9, 2011 – Variance (§72-21) to allow for a new residential building contrary to height and setback, rear setback and lot coverage requirements. C4-6A zoning district.

PREMISES AFFECTED – 207 West 75th Street, north side of West 75th Street, between Broadway and Amsterdam Avenue, Block 1167, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #7M

159-11-BZ

APPLICANT – Eric Palatnik, P.C., for Cord Meyer Development, LLC, owner; JWSTKD II, lessee.

SUBJECT – Application October 21, 2011 – Special Permit (§73-36) to permit the legalization of an existing Physical Culture Establishment. C4-1 zoning district.

PREMISES AFFECTED – 212-01 26th Avenue, 26th Avenue between Bell Boulevard and Corporal Kennedy Street, Block 5900, Lot 2, Borough of Queens.

COMMUNITY BOARD #7Q

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, DECEMBER 13, 2011
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

SPECIAL ORDER CALENDAR

335-59-BZ

APPLICANT – Alfonso Duarte P.E., for 3485 Atlantic Avenue Realty Corp., owner; Royal Motor Mart Inc., lessee. SUBJECT – Application July 11, 2011 – Extension of Term (§11-411) of a variance permitting the storage and sales of used cars with accessory office (UG 16B) which expired on December 7, 2009; Waiver of the Rules. R5 zoning district. PREMISES AFFECTED – 3485/95 Atlantic Avenue, North-East corner Nichols Avenue. Block 4151, Lot 1. Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Alfonso Duarte.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
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 previously granted variance to permit the use of the lot for the storage and sale of used cars, with an accessory office building, which expired on December 7, 2009; and

WHEREAS, a public hearing was held on this application on October 18, 2011, after due notice by publication in *The City Record*, with a continued hearing on November 22, 2011, and then to decision on December 13, 2011; and

WHEREAS, Community Board 5, Brooklyn, recommends approval of this application; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the northeast corner of Atlantic Avenue and Nichols Avenue, within an R5 zoning district; and

WHEREAS, the site consists of a lot used for the storage and sale of used cars, with an accessory office building; and

WHEREAS, on November 10, 1959, under the subject calendar number, the Board granted a variance to permit the use of the site for the storage and sale of used cars, with an

accessory office building, for a term of five years; and

WHEREAS, the variance was subsequently amended and extended at various times; and

WHEREAS, most recently, on October 17, 2000, the Board granted a ten-year extension of term, which expired on December 7, 2009; 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; and

WHEREAS, at hearing, the Board directed the applicant to remove the graffiti from the fencing and to clarify the site’s hours of operation; and

WHEREAS, in response, the applicant submitted photographs reflecting that the graffiti has been removed, and states that the hours of operation for the site are Monday through Friday, from 8:30 a.m. to 6:30 p.m., Saturdays, from 8:30 a.m. to 4:00 p.m., and Sundays, from 10:00 a.m. to 3:00 p.m.; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain 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 having been adopted on November 10, 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 years from December 7, 2009, to expire on December 7, 2019; *on condition* that all use and operations shall substantially conform to plans filed with this application marked “Received July 11, 2011”-(1) sheet; and *on further condition*:

THAT this term shall expire on December 7, 2019;

THAT the hours of operation for the site shall be limited to Monday through Friday, from 8:30 a.m. to 6:30 p.m., Saturdays, from 8:30 a.m. to 4:00 p.m., and Sundays, from 10:00 a.m. to 3:00 p.m.;

THAT the above conditions 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; and

THAT the Department of Buildings must ensure compliance 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 NB. 640/59)

Adopted by the Board of Standards and Appeals, December 13, 2011.

390-61-BZ

APPLICANT – Peter Hirshman, for Rapid Park Industries, owner.

SUBJECT – Application February 22, 2011 – Amendment (§11-413) of a variance for a UG8 parking garage (*Rapid Park Industries*) to permit the addition of an auto rental

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establishment (UG8) in the cellar level; extension of time to obtain a certificate of occupancy which expired on June 29, 2008. R8B zoning district.

PREMISES AFFECTED – 148-150 East 33rd Street, south side of East 33rd Street, 151.9' east of East 33rd Street and Lexington Avenue. Block 888, Lot 51. 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening, an amendment to legalize a change in use at the cellar level from a parking garage (Use Group 8) to an auto rental establishment (Use Group 8) pursuant to ZR §11-413, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on October 25, 2011, after due notice by publication in *The City Record*, with a continued hearing on November 22, 2011, and then to decision on December 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Manhattan, states that it has no objection to this application; and

WHEREAS, the site is located on the south side of East 33rd Street, approximately 151 feet east of Lexington Avenue; and

WHEREAS, the site is located in an R8B zoning district and is occupied with a four-story and cellar parking garage for not more than 149 cars; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 18, 1961, when, under the subject calendar number, the Board granted a variance for the construction of the parking garage for a term of 20 years; and

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

WHEREAS, most recently, on January 29, 2008, the Board granted an extension of the term of the variance for an additional ten years, to expire on March 3, 2018; a condition of the grant was that a new certificate of occupancy be obtained by June 28, 2008; and

WHEREAS, the applicant states that a new certificate of occupancy was not obtained, and therefore requests an extension of time to obtain a certificate of occupancy; and

WHEREAS, additionally, the applicant now seeks an amendment to legalize a change in use at the cellar level from a parking garage (UG 8) to an auto rental establishment (UG 8); and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a request for a change in use; and

WHEREAS, the applicant states that the proposed auto rental establishment will operate with only 20 spaces; five fewer spaces than the previously-approved use of the cellar as a parking garage; and

WHEREAS, the applicant further states that the remaining five spaces will be relocated to the first floor of the site; therefore the total number of parking spaces at the subject site will remain at 149, as previously approved; and

WHEREAS, the applicant notes that while the parking garage operates 24 hours per day, seven days a week, the proposed hours of operation for the auto rental establishment will be Monday through Friday, from 7:30 a.m. to 7:30 p.m., Saturdays, from 7:30 a.m. to 3:00 p.m., and Sundays, from 8:00 a.m. to 3:00 p.m.; and

WHEREAS, the applicant submitted a traffic analysis which reflects that the auto rental establishment generates fewer car trips on an hourly basis than the previously approved parking garage, and therefore the proposed amendment will decrease the number of cars travelling to and from the site; and

WHEREAS, at hearing, the Board directed the applicant to remove the car stackers from the roof of the subject building; and

WHEREAS, in response, the applicant submitted photographs reflecting that the car stackers have been removed; and

WHEREAS, the Board finds that the proposed use will not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment and extension of time 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 18, 1961, and as subsequently extended and amended, to permit the change in use at the cellar level from a parking garage (UG 8) to an auto rental establishment (UG 8) pursuant to ZR § 11-413, and to grant an extension of time to obtain a certificate of occupancy, to expire on December 13, 2012; *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 22, 2011”- (4) sheets; and *on further condition*:

THAT the term of the grant shall expire on March 3, 2018;

THAT the hours of operation for the auto rental establishment use shall be limited to Monday through Friday, from 7:30 a.m. to 7:30 p.m., Saturdays, from 7:30 a.m. to 3:00 p.m., and Sundays, from 8:00 a.m. to 3:00 p.m.;

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

THAT a new certificate of occupancy shall be obtained by December 13, 2012;

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

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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.” (N.B. 46-61)

Adopted by the Board of Standards and Appeals, December 13, 2011.

252-71-BZ

APPLICANT – Alfonso Duarte, for Alan Pearlstein, owner.
SUBJECT – Application June 23, 2011 – Extension of Term of a variance (§72-21) for the continued sale and installation of automobile seat covers and convertible tops (UG 7), furniture sales (UG 6C), and automotive repairs (UG 16B) which expired on July 13, 2011. R3-2 zoning district.

PREMISES AFFECTED – 190-18 Northern Boulevard, Southside Northern Boulevard between 189th and 192nd Streets. Block 5513, Lot 22. Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Alfonso Duarte.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of term for the continued use of the site partially as an automotive accessory store with installation and repairs and partially as a furniture store, which expired on July 13, 2011; and

WHEREAS, a public hearing was held on this application on October 18, 2011, after due notice by publication in *The City Record*, with a continued hearing on November 22, 2011, and then to decision on December 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 11, Queens, recommends approval of this application, with the following conditions: (1) the site be kept clean of debris and graffiti; (2) all lighting be pointed away from residences; (3) there shall be no parking on the sidewalks; (4) there shall be no outside storage; (5) there shall be no outdoor automobile repairs or body work; (6) all signs shall be maintained in accordance with the BSA-approved plans; (7) no 24-hour operations; and (8) the site not be operated as a pet shop, drug rehabilitation center, physical culture establishment, or fast food establishment; and

WHEREAS, a representative of the Auburndale Improvement Association provided testimony in support of this application, subject to the additional condition that the site not

be operated as a billiard parlor, amusement arcade, or discotheque; and

WHEREAS, the site is located on the south side of Northern Boulevard between 189th Street and 192nd Street, within an R3-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 13, 1971 when, under the subject calendar number, the Board granted a variance to permit the construction of a one-story front and rear enlargement to an existing automobile accessory store with installation and repairs, for a term of ten years; 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, 2002, the Board granted an extension of term for ten years from the expiration of the prior grant, to expire on July 13, 2011, and granted an amendment to permit a change of use on a portion of the lot from automobile supply store (Use Group 6C) to a furniture store (Use Group 6C); and

WHEREAS, the applicant now requests an additional ten-year extension of term; and

WHEREAS, at hearing, the Board questioned whether the site was in compliance with the previously-approved signage and directed the applicant to clarify which parking spaces were reserved for the automotive use and which spaces were reserved for the furniture store use; and

WHEREAS, in response, the applicant submitted photographs and revised plans reflecting the removal of excess signage, and the addition of new signage indicating parking for the automotive use and parking for the furniture furniture use; and

WHEREAS, as to the conditions requested by the Community Board and the Auburndale Improvement Association, the applicant states that it will maintain the site in compliance with all requested conditions; 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 *reopens* and *amends* the resolution, dated July 13, 1971, so that as amended this portion of the resolution shall read: “to extend the term for ten years from the expiration of the prior grant, to expire on July 13, 2021; *on condition* that all use and operations shall substantially conform to plans filed with this application marked Received ‘June 23, 2011- (1) sheet and ‘November 9, 2011’-(2) sheets; and *on further condition*:

THAT the term of the grant shall expire on July 13, 2021;

THAT the site shall be maintained clean of debris and graffiti;

THAT all lighting be directed downward and away from adjacent residences;

THAT there shall be no parking on the sidewalks;

THAT there shall be no outside storage, automobile repairs or body work;

THAT all signage shall be maintained in accordance with the BSA-approved plans;

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THAT there shall be no 24-hour operation of the site;

THAT the use and occupancy of the site shall not include: pet shops, drug rehabilitation centers, physical culture establishments, fast food establishments, billiard parlors, amusement arcades, and discotheques; and

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

THAT all conditions from the prior resolution 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. 401276490)

Adopted by the Board of Standards and Appeals December 13, 2011.

608-85-BZ

APPLICANT – Sheldon Lobel, P.C., for J.C. Organization, LLC, owner.

SUBJECT – Application July 18, 2011 – Extension of Term of a variance (§72-21) which permitted a custom Woodworking Shop (UG 16) which expired on June 17, 2011; Amendment to permit a change of use to a (UG16) General Contractors Establishment and to allow the expansion of two existing mezzanines to create a full second floor. R5 zoning district.

PREMISES AFFECTED – 33-56 11th Street, located on the west side of 11th Street, 235’ south of 33rd Street, Block 319, Lot 36, Borough of Queens.

COMMUNITY BOARD #1Q

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a re-opening, an extension of term of a previously granted variance to permit, within an R5 zoning district, the construction of a woodworking building (UG 16), and an amendment to permit certain modifications to the previously-approved plans and the operation of the site; and

WHEREAS, a public hearing was held on this application on October 25, 2011, after due notice by publication in *The City Record*, with a continued hearing on November 22, 2011, and then to decision on December 13, 2011; and

WHEREAS, the premises and surrounding area had site

and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 1, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of 11th Street between 33rd Road and 34th Avenue, within an R5 zoning district; and

WHEREAS, the site has 50 feet of frontage on 11th Street and a total lot area of 4,258 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story plus mezzanine building containing a general contractor’s establishment (UG 16) and accessory offices, with a total floor area of 3,792 sq. ft. (0.89 FAR); and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 17, 1986 when, under the subject calendar number, the Board granted a variance under ZR § 72-21 to permit the construction of a one-story and mezzanine building for use as a commercial woodworking and cabinetry shop (UG 16) with accessory offices, for a term of fifteen years; and

WHEREAS, most recently, on October 28, 2003, the Board granted a ten-year extension of term and an amendment to legalize the construction of a second mezzanine at the rear of the subject building, which expired on June 17, 2011; and

WHEREAS, the applicant now requests an additional ten-year extension of term; and

WHEREAS, the applicant also seeks an amendment to permit the following modifications to the site: (1) the legalization of a change in use from a woodworking shop (UG 16) to a contractor’s establishment (UG 16) which includes woodworking; (2) the expansion and connection of the two existing mezzanines, to create a full second floor; (3) a change in the hours of operation; and (4) minor deviations from the previously-approved plans, including the removal of the stair enclosure, the installation of a ladder to the roof, the relocation of acetylene tanks (used for welding) to an enclosure at the rear of the property, and the modification of the landscaping approved on the site; and

WHEREAS, as to the change in use, the applicant states that subsequent to the Board’s 2003 grant, the owner has operated the building as a general contractor’s establishment (UG 16) rather than as a custom woodworking shop (UG 16) because the company performs other carpentry work in addition to woodworking, and stores materials for ongoing contracting jobs within the building; and

WHEREAS, as to the second floor, the applicant proposes to connect the two existing mezzanines, currently occupied by offices, to create a full second floor within the building; and

WHEREAS, the applicant states that the expansion of the second floor will add an additional 534 sq. ft. of floor area to the existing building, for a total floor area of approximately 4,327 sq. ft. (1.02 FAR), which is less than the permitted floor area for both residential and community facility use; and

WHEREAS, the applicant further states that the additional floor area created at the second floor will be occupied by an additional accessory office; and

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WHEREAS, as to the hours of operation, the applicant proposes to change the hours of operation from Monday through Friday, from 8:00 a.m. to 5:30 p.m. to Monday through Friday, from 7:30 a.m. to 3:30 p.m.; the applicant proposes to maintain the approved Saturday hours, from 9:00 a.m. to 1:00 p.m.; and

WHEREAS, as to the modifications to the landscaping, the applicant states that the evergreen plantings at the rear of the site were not provided because a stucco wall with a height of eight feet provides screening and negates the need for such plantings, which would not be visible to the adjacent neighbor to the rear; and

WHEREAS, the applicant further states that the evergreen plantings along the south side of the site were not planted because the existing fruit trees provide adequate buffering for the adjacent residential neighborhood, and therefore make it both difficult and unnecessary to plant evergreens; and

WHEREAS, at hearing, the Board directed the applicant to clean up the stored materials in the side yard and to provide an area for storage at the rear of the site; and

WHEREAS, in response, the applicant submitted photographs and revised plans reflecting that the side yard has been cleared and a storage area will be provided at the rear corner of the site; and

WHEREAS, based upon the above, 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 *reopens* and *amends* the resolution, as adopted on June 17, 1986, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from June 17, 2011, to expire on June 17, 2021, and to permit the noted modifications to the previous grant; *on condition* that all use and operations shall substantially conform to plans filed with this application marked Received ‘July 18, 2011’-(6) sheets and ‘November 28, 2011’-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on June 17, 2021;

THAT the hours of operation shall be: Monday through Friday, from 7:30 a.m. to 3:30 p.m., Saturday, from 9:00 a.m. to 1:00 p.m., and closed on Sunday;

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 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. 401390990)

Adopted by the Board of Standards and Appeals,

December 13, 2011.

185-05-BZ

APPLICANT – John C. Chen for 62-02 Roosevelt Avenue Corporation, owner; Lapchi, Incorporated, lessee.

SUBJECT – Application April 20, 2011 – Extension of Term of a Variance (§72-21) for an eating and drinking establishment with dancing (UG12A) which expired on January 10, 2008; Amendment to permit the enlargement of the dance floor and kitchen; Extension of Time to complete construction which expired on January 10, 2009; waiver of the rules. C1-2/R6 zoning district.

PREMISES AFFECTED – 62-02 Roosevelt Avenue, south side of Roosevelt Avenue 192.59' west side of intersection of 63rd Street/Roosevelt Avenue. Block 1294, Lot 58. Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: John C. Chen.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

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 previously granted variance to permit the 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), an amendment to permit modifications to the previously-approved plans, and an extension of time to complete construction; and

WHEREAS, a public hearing was held on this application on August 16, 2011, after due notice by publication in *The City Record*, with a continued hearing on November 15, 2011, and then to decision on December 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Queens, recommends disapproval of this application; and

WHEREAS, at hearing, a representative of the Community Board provided testimony regarding inconsistencies between the applicant’s proposal before the Board and the proposal it provided to the State Liquor Authority (“SLA”) in seeking an extension of their liquor license, specifically related to the proposed hours and operations; and

WHEREAS, the subject site is located on the south side of Roosevelt Avenue, between the Long Island Railroad and 63rd Street, within a C1-2 (R6) zoning district; and

WHEREAS, the site has 22’-8” of frontage on Roosevelt

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Avenue and a total lot area of 7,435 sq. ft.; and

WHEREAS, the site is currently occupied by a two-story building with an eating and drinking establishment (UG 6) at the first floor; the second floor is currently vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 10, 2006, when, under the subject calendar number, the Board granted a variance under ZR § 72-21 to permit the conversion of the first floor from an eating and drinking establishment (UG 6) to an eating and drinking establishment with entertainment and dancing (UG12), for a term of two years; and

WHEREAS, the applicant states that, due to financing difficulties, the work permitted under the variance was never completed and the first floor continues to operate as a UG 6 eating and drinking establishment; and

WHEREAS, the applicant now requests an extension of term for the variance and an extension of time to complete construction; and

WHEREAS, the applicant also seeks an amendment to legalize certain modifications to the site which do not comport with the previously-approved plans; and

WHEREAS, specifically, the applicant requests to legalize the following changes to the previously-approved plans: the enlargement of the existing kitchen, the construction of a bar within the designated waiting area, the enlargement of the dance floor and an increase in the maximum occupancy of the dance floor from 50 persons to 65 persons, and a modification to the seating layout; and

WHEREAS, the applicant states that the previously-approved waiting area will also be enlarged to compensate for the floor area occupied by the bar; and

WHEREAS, the applicant states that although the first floor has continued to operate as a UG 6 eating and drinking establishment since the Board's grant, the subject alterations to the UG 6 eating and drinking establishment, for which the applicant now seeks an amendment, were undertaken by an interim lessee who has since abandoned the site due to financing difficulties; and

WHEREAS, the applicant represents that the current lessee now seeks to operate the site in accordance with the Board's grant, while incorporating the subject alterations made by the interim lessee; and

WHEREAS, the applicant states that, despite the proposed amendments, the site will comply with the following conditions from the previous grant: (1) a maximum total occupancy of 269 persons; (2) a maximum floor area at the first floor of 5,960 sq. ft., including a waiting area of 1,076 sq. ft.; (3) a minimum of one security guard from 8:00 p.m. until closing on Thursday through Sunday, to ensure patrons do not congregate on the sidewalk near the entrance; and (4) hours of operation of Monday through Wednesday, from 8:00 a.m. to 2:00 a.m., and Thursday through Sunday, from 8:00 a.m. to 4:00 a.m.; and

WHEREAS, at hearing, the Board directed the applicant to remove graffiti from the façade and side walls of the building, and to provide a partition to separate the bar area from the waiting area; and

WHEREAS, in response, the applicant submitted

photographs reflecting that the graffiti has been removed, and submitted revised plans reflecting that a glass partition will be installed to separate the bar area from the waiting area; and

WHEREAS, as to the testimony provided by the Community Board representative, the applicant states that it previously filed a liquor license renewal application with the SLA to extend the hours of operation for the current UG 6 eating and drinking establishment use; and

WHEREAS, the Board notes that the SLA renewal application is not relevant to the subject application, but that the applicant states that it will revise the application at the SLA to reflect the proposed hours of operation after obtaining the Board's approval; and

WHEREAS, based upon the above, the Board finds the requested extension of term, extension of time, 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, *reopens*, and *amends* the resolution, as adopted on January 10, 2006, so that as amended this portion of the resolution shall read: "to extend the term for a period of three years from the date of this grant, to expire on December 13, 2014, to permit the noted modifications to the previously approved plans, and to grant a two-year extension of time to complete construction, to expire on December 13, 2013; *on condition* that all use and operations shall substantially conform to plans filed with this application marked Received 'October 31, 2011-(9) sheets; and *on further condition*:

THAT the term of this grant shall expire on December 13, 2014;

THAT the hours of operation shall be: Monday through Wednesday, from 8:00 a.m. to 2:00 a.m., and Thursday through Sunday, from 8:00 a.m. to 4:00 a.m.;

THAT the maximum total occupancy of the first floor shall be 269 persons;

THAT there shall be a maximum of 65 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);

THAT from 8:00 p.m. 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 condition shall be listed on the certificate of occupancy;

THAT construction shall be completed and a certificate of occupancy obtained by December 13, 2013;

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

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laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB Application No. 420178202)

Adopted by the Board of Standards and Appeals, December 13, 2011.

789-45-BZ

APPLICANT – Walter T. Gorman, P.E., for Woodside 56 LLC, owner; Getty Properties Corp., lessee.

SUBJECT – Application July 6, 2011 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a (UG16) gasoline service station (*Getty*) which expired on July 13, 2006; Extension of Time to Obtain a Certificate of Occupancy which expired February 4, 2005; Waiver of the Rules. M1-1/R5 zoning district.

PREMISES AFFECTED – 56-02/56-20 Broadway, south east corner of 56th Street, Block 1195, Lot 44, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: John Ronan.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 10, 2012, at 10 A.M., for decision, hearing closed.

248-75-BZ

APPLICANT – Alfonso Duarte, P.E., for 444 East 86th Street Owners Corp., owner; Quick Park, lessee.

SUBJECT – Application August 8, 2011 – Extension of Term permitting the use of a maximum of 50 transient parking spaces within an accessory garage granted by the Board pursuant to §60 (3) of the Multiple Dwelling Law, which expired on October 14, 2010; Waiver of the Rules. R8B, R10 and C1-5 zoning districts.

PREMISES AFFECTED – 1621 York Avenue aka 436 East 86th Street, west side of York Avenue, Block 1565, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Alfonso Duarte.

ACTION OF THE BOARD – Laid over to January 24, 2012, at 10 A.M., for continued hearing.

11-93-BZ

APPLICANT – Sheldon Lobel, P.C., for Jovkiss Management, LLC, owner; East Manor Restaurant, lessee.

SUBJECT – Application November 1, 2011 – Extension of Time to obtain a Certificate of Occupancy for a UG6 Eating and Drinking Establishment (*Eastern Pavilion Chinese Restaurant*) which expired on October 5, 2011. C2-2/R3-2 zoning district.

Extension of Time to obtain a Certificate of Occupancy for a UG6 Eating and Drinking Establishment (*Eastern Pavilion Chinese Restaurant*) which expired on October 5, 2011. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 46-45 Kissena Boulevard, northeast corner of the intersection formed by Kissena Boulevard and Laburnum Avenue, Block 5208, Lot 32, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to January 24, 2012, at 10 A.M., for continued hearing.

188-96-BZ

APPLICANT – Mitchell S. Ross, Esq., for 444 Soundview Services Stations, Incorporated c/o William McCombs, owner; Scott Greco, lessee.

SUBJECT – Application June 22, 2010 – Extension of Term (§11-411) of a variance for the continued operation of a Gasoline Service Station (*Gulf*) with accessory convenience store which expired January 6, 2008; Waiver of the rules. R5 zoning district.

PREMISES AFFECTED – 444 Soundview Avenue, north side of Soundview Avenue and west of Underhill Avenue, Block 3498, Lot 51, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Laid over to January 10, 2012, at 10 A.M., for continued hearing.

280-98-BZ

APPLICANT – Rampulla Associates Architects, LLP, for MARS Holding, LLC, owner.

SUBJECT – Application November 1, 2011 – Extension of Time to obtain a Certificate of Occupancy for a Variance (§72-21) for the continued operation of a UG4 dental office which expired on June 15, 2011. R2 zoning district.

PREMISES AFFECTED – 2936 Hylan Boulevard, east side of Hylan Boulevard, 100’ north of Isabella Avenue, Block 4015, Lot 14, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phillip L. Rampulla.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 10, 2012, at 10 A.M., for decision, hearing closed.

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18-09-BZ

APPLICANT – Stuart A. Klein, for Ascot Properties Ltd., owner; Gold’s Gym, lessee.

SUBJECT – Application October 6, 2011 – Extension of Term of a special permit (§73-36) for the continued operation of a physical culture establishment (*Gold’s Gym*) which expired on November 1, 2011. C6-5 zoning district. PREMISES AFFECTED – 250 West 54th Street, between Broadway and 8th Avenue, Block 1025, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Jay Goldstein.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 24, 2012, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

138-11-A

APPLICANT – Sheldon Lobel, P.C., for 64-01 Woodside Realty, Inc., owner.

SUBJECT – Application September 7, 2011 – Appeal seeking a common law vested right to complete construction under the prior R6 zoning district regulations. R5D zoning district.

PREMISES AFFECTED – 64-01 Woodside Avenue, between 64th and 65th Street, Block 1295, Lot 75, Borough of Queens.

COMMUNITY BOARD #2Q

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, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of a seven-story mixed-use residential/community facility building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on October 25, 2011, after due notice by publication in *The City Record*, with a continued hearing on November 22, 2011, and then to decision on December 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan,

Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Queens, recommends disapproval of this application; and

WHEREAS, Council Member Jimmy Van Bramer recommends disapproval of this application; and

WHEREAS, the site is located on the north side of Woodside Avenue, between 64th Street and 65th Street, and has a lot area of 6,563 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with a seven-story mixed-use residential/community facility building with a floor area of 24,022 sq. ft. (3.66 FAR), and 27 dwelling units (the “Building”); and

WHEREAS, the subject site is currently located within an R5D zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Building complies with the former R6 zoning district parameters; specifically with respect to floor area and density; and

WHEREAS, however, on July 28, 2011 (the “Enactment Date”), the City Council voted to adopt the Sunnyside-Woodside Rezoning, which rezoned the site to R5D, as noted above; and

WHEREAS, the Building does not comply with the R5D zoning district parameters as to floor area and density; 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 applicant states that Permit No. 420251355-01-FO (the “Foundation Permit”), permitting construction of the subject building’s foundation was issued to the owner by the Department of Buildings (“DOB”) on June 24, 2011; and

WHEREAS, the applicant states that the Foundation Permit was based on complete plans and specifications examined and approved by DOB and was filed in conjunction with New Building Application No. 420251355; and

WHEREAS, the Foundation Permit lapsed by operation of law on the Enactment Date because the plans did not comply with the new R5D zoning district regulations and DOB determined that the Building’s foundation was not complete; and

WHEREAS, by letter dated November 22, 2011, DOB stated that the Foundation Permit was lawfully issued, authorizing construction of the foundation prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the Foundation Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date; and

WHEREAS, the applicant cites to Glenel Realty Corp. V. Worthington (4 A.D.2d 7002, 703 (2d Dep’t 1957), for the proposition that a vested right in the foundation of a structure “must connote a vested right to the erection and use of the specific superstructure for which the foundation was designed;” and

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (1) the

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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

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 prior to the Enactment Date, the owner had completed the following work on: the excavation of 800 cubic yards of total fill, or 100 percent of the required excavation work; the installation of 1.67 tons of rebar, or six percent of the required rebar; and the pouring of 100 percent of the concrete required for the underpinning and elevator pit, 31 percent of the concrete required for the footing work, and 16 percent of the concrete required for the strap beams, constituting a total of 102 cubic yards of concrete, or 28 percent of the total required concrete for the foundation; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: a construction log, construction contracts, an affidavit from the project engineer, concrete pour tickets, an excavation and foundation diagram, and photographs of the site showing the amount of work completed prior to the Enactment Date; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the Enactment Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; 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 and accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that prior to the Enactment Date, the owner expended \$400,939, including hard and soft costs and irrevocable commitments, out of \$5,038,355

budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, copies of cancelled checks, invoices, and accounting tables; and

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the owner had paid or contractually incurred \$287,275 for the work performed at the site as of the Enactment Date, representing 32 percent of the foundation-related hard costs; and

WHEREAS, the applicant further states that the owner paid an additional \$63,664 in soft costs related to the work performed at the site as of the Enactment Date, representing 56 percent of the total soft costs; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately eight percent of the projected total cost; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with 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 serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that if the owner is not permitted to vest under the former R6 zoning, the floor area would decrease from the proposed 24,022 sq. ft. (3.66 FAR) to 13,127 sq. ft. (2.0 FAR); and

WHEREAS, the applicant further states that complying with the R5D zoning would result in a reduction of units from 27 to 17; and

WHEREAS, the applicant represents that the 10,895 sq. ft. loss in floor area and the loss of ten units would reduce the annual rental income from approximately \$713,000 to \$316,000; and

WHEREAS, the applicant states that the existing foundation and related underpinning are built to the property's lot lines, and the proposed R6 building will rise from the perimeter foundation walls along three sides, with the exception of the Woodside Avenue frontage where there is a front yard setback; and

WHEREAS, however, the applicant states that, due to the front and side yard regulations in the R5D district, it cannot re-use the existing foundation and related underpinning for an R5D building without undertaking costly and burdensome design solutions to correct misalignments between the cellar foundations and the first floor walls; and

WHEREAS, the Board agrees that the reduction in floor area of the Building, coupled with the loss of actual expenditures and outstanding fees that could not be recouped and the need to redesign, constitutes a serious

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economic loss, and that the evidence 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.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of Permit No. 420251355, 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 two years from the date of this grant.

Adopted by the Board of Standards and Appeals, December 13, 2011.

140-11-A & 141-11-A

APPLICANT – Sheldon Lobel, P.C., for BQM Management, LLC, owner.

SUBJECT – Application September 8, 2011 – Appeal seeking a common law vested right to complete construction under the prior R6 zoning district regulations. R5D zoning district.

PREMISES AFFECTED – 69-17 & 69-19 38th Avenue, between the BQE and 69th Street, Block 1282, Lot 64 & 65, Borough of Queens.

COMMUNITY BOARD #2Q

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, Commissioner Hinkson and Commissioner Montanez

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of two four-story residential buildings under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on October 25, 2011, after due notice by publication in *The City Record*, with a continued hearing on November 22, 2011, and then to decision on December 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Council Member Jimmy Van Bramer recommends disapproval of this application; and

WHEREAS, the site is located on the north side of 38th Avenue between the Brooklyn-Queens Expressway and 69th Street; and

WHEREAS, the site consists of Lot 64 (tentative lots 64 and 65), a triangular-shaped parcel with 50 feet of frontage on 38th Avenue and a total lot area of 6,950 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with two four-story residential buildings with four units each (the “Buildings”); and

WHEREAS, the subject site is currently located within an R5D zoning district, but was formerly located within an R6 zoning district; and

WHEREAS, the Buildings comply with the former R6 zoning district parameters, specifically with respect to floor area; and

WHEREAS, however, on July 28, 2011 (the “Enactment Date”), the City Council voted to adopt the Sunnyside-Woodside Rezoning, which rezoned the site to R5D, as noted above; and

WHEREAS, the Buildings do not comply with the R5D zoning district parameters; and

WHEREAS, as a threshold matter in determining this appeal, the Board must find that the construction was conducted pursuant to valid permits; and

WHEREAS, the applicant states that New Building Permit Nos. 420370217-01-NB and 420370208-01-NB were issued on July 26, 2011 (the “New Building Permits”), authorizing the development of two four-story residential buildings pursuant to R6 zoning district regulations; and

WHEREAS, the New Building Permits lapsed by operation of law on the Enactment Date because the plans did not comply with the new R5D zoning district regulations and DOB determined that the Building’s foundation was not complete; and

WHEREAS, by letter dated November 9, 2011, DOB stated that the New Building Permits were lawfully issued, authorizing construction of the Buildings prior to the Enactment Date; 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

WHEREAS, the Board notes that when work proceeds under a valid permit, a common law vested right to continue construction after a change in zoning generally exists if: (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

WHEREAS, however, notwithstanding this general framework, as discussed by the court in Kadin v. Bennett, 163

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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 prior to the Enactment Date, the owner had completed the following work related to the proposed building at 69-17 38th Avenue (tentative lot 65): excavation of 430 cubic yards of total fill, or 100 percent of the required excavation work; installation of 100 percent of the soldier piles, shoring, and rebar; and the pouring of 29.6 cubic yards of concrete out of the approximately 62.7 cubic yards of concrete required for the foundation, or 47 percent of the total concrete; and

WHEREAS, the applicant further states that the owner had completed the following work related to the proposed building at 69-19 38th Avenue (tentative lot 64) prior to the Enactment Date: excavation of 400 cubic yards of total fill, or 100 percent of the required excavation work; installation of 100 percent of the soldier piles, shoring, and rebar; installation of 64 linear feet, or 40 percent, of the forms; and the pouring of approximately seven cubic yards of concrete out of the approximately 55.6 cubic yards of concrete required for the foundation, or 11 percent of the total concrete; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: a construction log, construction contracts, an affidavit from the general contractor, concrete pour tickets, an excavation and foundation diagram, and photographs of the site showing the amount of work completed prior to the Enactment Date; and

WHEREAS, the applicant states that certain work continued on the site until DOB’s issuance of a stop work order on July 29, 2011, including the pouring of 30 cubic yards of concrete on the Enactment Date; and

WHEREAS, the Board notes that all of the work performed on or after the Enactment Date, including the pouring of 30 cubic yards of concrete, has been discounted from the substantial construction analysis; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed before the Enactment Date and the documentation submitted in support of these representations, and agrees that it establishes that substantial work was performed; and

WHEREAS, the Board concludes that, given the size of the site, and based upon a comparison of the type and amount of work completed in this case with the type and amount of work discussed by New York State courts, a significant amount of work was performed at the site during the relevant period; 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 and accordingly, these costs are appropriately included in the applicant’s analysis; and

WHEREAS, the applicant states that prior to the

Enactment Date, the owner expended \$237,379, including hard and soft costs and irrevocable commitments, out of \$1,689,189 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, copies of cancelled checks, invoices, and accounting tables; and

WHEREAS, in relation to actual construction costs, the applicant specifically notes that the owner had paid or contractually incurred \$85,000 for the work performed at the site as of the Enactment Date, representing 64 percent of the foundation-related hard costs; and

WHEREAS, the applicant further states that the owner paid an additional \$116,879 in soft costs related to the work performed at the site as of the Enactment Date, representing 47 percent of the total soft costs; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately 14 percent of the projected total cost; and

WHEREAS, the Board considers the amount of expenditures significant, both for a project of this size, and when compared with 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 serious loss, the Board considers not only whether certain improvements and expenditures could not be recouped under the new zoning, but also considerations such as the diminution in income that would occur if the new zoning were imposed and the reduction in value between the proposed building and the building permitted under the new zoning; and

WHEREAS, the applicant states that if the owner is not permitted to vest under the former R6 zoning, the floor area would decrease from the proposed 9,476 sq. ft. (2.58 FAR) to a maximum realizable floor area, given the constraints and limitations on the site, of 5,399 sq. ft. (1.47 FAR); and

WHEREAS, the applicant further states that complying with the R5D zoning would result in a reduction of units from eight to six; and

WHEREAS, the applicant represents that the 4,077 sq. ft. loss in floor area and the resultant loss in unit count would reduce the annual rental income from approximately \$147,600 to \$93,600; and

WHEREAS, the applicant submitted a foundation diagram reflecting that the zoning change from R6 to R5D would also preclude the use of virtually all of the installed foundation elements, thus requiring the foundations to be redesigned and rebuilt; and

WHEREAS, the Board agrees that the reduction in floor area of the Buildings, coupled with the loss of expenditures and outstanding fees that could not be recouped and the need to redesign, constitutes a serious economic loss, and that the evidence submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures

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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 Buildings had accrued to the owner of the premises as of the Enactment Date.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of New Building Permit Nos. 420370217-01-NB and 420370208-01-NB, 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 two years from the date of this grant.

Adopted by the Board of Standards and Appeals, December 13, 2011.

233-10-A

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Alco Builders Incorporated, owners.

SUBJECT – Application December 23, 2010 – Appeal seeking a common law vested right to continue development commenced under the prior R6 Zoning District. R4-1 zoning district.

PREMISES AFFECTED – 90-22 176th Street, between Jamaica and 90th Avenues, Block 9811, Lot 61(tent), Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to January 31, 2012, at 10 A.M., for continued hearing.

86-11-A

APPLICANT – Cozen O’Connor, for Perl binder Holdings, LLC, owner.

SUBJECT – Application June 10, 2011 – Appeal of the Department of Buildings’ revocation of an approval to permit a non-conforming sign. C1-9 zoning district.

PREMISES AFFECTED – 663-673 2nd Avenue, northwest corner of East 36th Street and 2nd Avenue, Block 917, Lot 21, 24-31, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Howard Hornstein.

For Opposition: Lisa M. Orrentia, Department of Buildings.

ACTION OF THE BOARD – Laid over to February 7, 2012, at 10 A.M., for continued hearing.

170-11-A & 171-11-A

APPLICANT – Randy M. Mastro of Gibson, Dunn & Crutcher, LLP, for Win Restaurant Equipment and Supply Corporation, owner; Fuel Outdoor, LLC, lessee.

SUBJECT – Application October 28, 2011– Appeal seeking a common law vested right for a sign under the prior zoning regulations, which were amended on February 27, 2001. M1-5B

PREMISES AFFECTED – 318 Lafayette Street, north west corner of Houston and Lafayette Streets, Block 522, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Trevis D. Lenkner.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 24, 2012, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, DECEMBER 13, 2011
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

ZONING CALENDAR

31-11-BZ

CEQR #11-BSA-070X

APPLICANT – Goldman Harris LLC, for Bronx Sheperds Restoration Corporation, owner.

SUBJECT – Application March 28, 2011 – Variance (§72-21) to allow a mixed use community facility and commercial building, contrary to use (§32-12), floor area (§33-123), rear yard (§33-292), and height and setback (§33-432) regulations. C8-3 zoning district.

PREMISES AFFECTED – 1665 Jerome Avenue, west side of Jerome Avenue between Featherbed Lane and Clifford Lane, Block 2861, Lot 35, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Nadia Alexis.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated March 3, 2011, acting on Department of Buildings Application No. 220105449, reads, in pertinent part:

ZR 32-15 Proposed use of Use Group 3 is not permissible in C8-3 district.

ZR 33-123 Proposed total building FAR...is greater than maximum allowed FAR of 6.50 (65,000 sq. ft.) for a community facility in a C8-3 district.

ZR 33-432 Proposed building setback of 10'-0" is less than 15'-0" minimum required front setback.

ZR 33-432 Provide sky exposure plane (slope). Proposed project does not comply with the required sky exposure plane (slope); and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C8-3 zoning district, the proposed construction of a 13-story mixed-use community facility (including a portion with sleeping accommodations)/commercial building which does not comply with the underlying zoning regulations for use, floor area ratio ("FAR"), front setback, and sky exposure plane, contrary to ZR §§ 32-15, 33-123 and 33-432; and

WHEREAS, a public hearing was held on this

application on July 12, 2011 after due notice by publication in *The City Record*, with a continued hearing on November 15, 2011, and then to decision on December 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Bronx, submitted a resolution stating that it waived its hearing for this application, but noted that it previously issued a letter in support of the subject project; and

WHEREAS, this application is brought on behalf of the Bronx Shepherds Restoration Corp. (the "Bronx Shepherds"), a not-for-profit entity organized to provide affordable housing, community programs and other social services to the Bronx community; and

WHEREAS, the applicant submitted letters in support of the project from the following elected officials: Bronx Borough President Ruben Diaz, Jr., City Council Member Helen Diane Foster, City Council Member G. Oliver Koppel, New York State Assembly Member Vanessa L. Gibson, New York State Senator Ruben Diaz, Sr., and Congressman Jose E. Serrano; and

WHEREAS, the site is located on the west side of Jerome Avenue, between Featherbed Lane and West Clifford Place, within a C8-3 zoning district; and

WHEREAS, the subject site has a width of 100 feet, a depth of 100 feet, and a total lot area of 10,000 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a 13-story mixed-use community facility (including a portion with sleeping accommodations)/commercial building on the subject site; and

WHEREAS, the proposed building will have the following uses: (1) Use Group 6 retail use on the ground floor; (2) a Use Group 4 job training center on the second floor and a portion of the third floor; and (3) a Use Group 3 non-profit institution with sleeping accommodations on floors three through 13, consisting of 71 dwelling units (57 units of affordable housing for low-income families and 14 special needs units for young adults aging out of foster care); and

WHEREAS, the proposed Use Group 3 non-profit institution with sleeping accommodations is not permitted in the subject C8-3 zoning district; therefore a use variance is required; and

WHEREAS, in addition, the proposed building has the following non-complying parameters: a total floor area of 75,221 sq. ft. (7.52 FAR) (the maximum permitted total floor area is 65,000 sq. ft. (6.5 FAR)), including 70,598 sq. ft. of community facility floor area (7.06 FAR) and 4,623 sq. ft. of ground floor retail floor area (0.46 FAR); a setback of 10'-0" above a height of 36'-0" (a minimum setback of 15'-0" is required above a height of 60'-0"); and encroachment into the sky exposure plane; and

WHEREAS, the applicant originally proposed to construct a 13-story building with a total floor area of 80,200 sq. ft. (8.02 FAR) and a rear yard with a minimum depth of only 10'-0", which resulted in an additional non-compliance

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with the minimum buffer requirement of 30'-0" under ZR § 33-292; and

WHEREAS, in response to concerns raised by the Board, the applicant submitted revised plans reflecting the current proposal, with a total floor area of 75,221 sq. ft. (7.52 FAR) and a complying rear yard with a minimum depth of 30'-0"; and

WHEREAS, because the proposed Use Group 3 use is not permitted in the subject C8-3 zoning district and relief from the bulk requirements of the underlying zoning district is necessary, the applicant seeks a variance to permit construction of the proposed building; 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 site's shallow bedrock condition; (2) the presence of a 60-ft. high rock outcropping at the rear of the site; and (3) the adjacency of an elevated subway line; and

WHEREAS, as to the subsurface conditions, the applicant states that the presence of bedrock just five feet below grade impedes construction on the subject site; and

WHEREAS, the applicant submitted a report from a geotechnical and environmental consultant stating that, after analyzing boring samples from the bedrock, it determined that the bedrock is in "good" to "excellent" condition, and therefore the ability of standard excavation equipment to excavate the bedrock will be very limited; and

WHEREAS, the applicant represents that constructing a foundation with a conventional depth would require blasting the bedrock, which is cost prohibitive; and

WHEREAS, the applicant states that the depth of the bedrock also prevents the developer from constructing a typical concrete slab on footings foundation; and

WHEREAS, specifically, the applicant states that a typical concrete slab foundation would be on footings that would sit on bearable soil three to five feet below ground, and that due to the location of the bedrock at the site, this construction is not possible and the applicant will instead need to drill piles and caissons into the bedrock and place a concrete slab on top of these piles and caissons; and

WHEREAS, the applicant states that drilling piles and installing caissons is significantly more expensive than a typical concrete slab foundation, and therefore it will add substantial additional costs to the project; and

WHEREAS, in addition to the added costs associated with presence of the bedrock, the applicant states that the inability to excavate the shallow bedrock also prevents the applicant from constructing a cellar to locate some of its program space below grade, which would have enabled it to reduce the FAR of the subject building; and

WHEREAS, specifically, the applicant represents that if not for the location of the bedrock, it could relocate approximately 8,000 sq. ft. of space associated with the proposed retail market, job training facility and/or mechanical equipment for the building into the cellar, which would not count towards the FAR calculations; and

WHEREAS, as to the presence of the rock outcropping,

the applicant states that a 60-ft. high rock outcropping at the rear of the site juts out ten feet from the rear lot line into the site; and

WHEREAS, the applicant submitted a letter from its architect stating that the rock outcropping, in combination with the bedrock underlying the site, creates significant soil and runoff issues; and

WHEREAS, the letter from the architect further states that rainwater will be expressed from the face of the rock outcropping, which will combine with the infiltration of rainfall reaching the site and penetrating the overlying soil, and that extraordinary stormwater management controls will be required to prevent water from entering the lowest level of the building due to the site specific topography, proximity of bedrock to the surface, and shallow depth of the soils; and

WHEREAS, specifically, the stormwater management controls will be comprised of a two-part system: (1) a retention tank placed in the back yard of the building to minimize the runoff into the sewage system, and (2) a sewage pipe running from the retention tank to the stormwater system located in the bed of Jerome Avenue; and

WHEREAS, as to the site's location adjacent to an elevated subway line, the applicant states that it will need to take several measures to mitigate the impact of the development on the subway line; and

WHEREAS, the applicant states that it will drill the piles and caissons needed for the foundation into the bedrock, which will reduce the vibration impact to the elevated subway by more than 20 percent as compared to the typical method of driving the piles; and

WHEREAS, the applicant represents that, although driving the piles would be less expensive, the vibration from driving the piles could disturb the foundation and piers of the adjacent elevated subway line; and

WHEREAS, the applicant states the owner will also provide shoring for the Jerome Avenue side of the subject site, which will protect the foundations and piers of the adjacent elevated subway line from vibrations caused by the drilling of piles and other construction work; and

WHEREAS, the applicant further states that it will take several measures to mitigate the impact of the elevated subway line on the proposed building; and

WHEREAS, specifically, the applicant states that in order to mitigate noise issues emanating from the elevated tracks and impacting the tenants of the building, it will install double hung aluminum windows that will protect residents against noise levels as high as 35 dBA; and

WHEREAS, the applicant represents that any as-of-right development at the site would be burdened by the shallow bedrock, the presence of a 60-ft. high rock outcropping at the rear of the site, and the need to protect the elevated subway structure; and

WHEREAS, the Board agrees that these unique physical conditions create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulations; and

WHEREAS, the applicant also states that a variance is requested based on Bronx Shepherds' programmatic need to

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provide 71 units of affordable housing, including 14 units for young adults aging out of foster care; and

WHEREAS, the applicant states that Bronx Shepherds is seeking financing for the proposal from City, State, and Federal programs including the New York City Department of Housing, Preservation and Development (“HPD”), the New York City Housing Development Corporation’s LAMP program, Resolution A Funds allocated by the Bronx Borough President and City Council that subsidize affordable housing developments throughout the Bronx, the New York State Department of Homes and Community Renewal (“HCR”), the New York State Weatherization Assistance Program, and Federal Low Income Housing Tax Credits; and

WHEREAS, a letter dated September 23, 2011 from the HPD Assistant Commissioner confirms that financing of the proposed development is contemplated by the agency; and

WHEREAS, a letter dated December 1, 2011 from the HCR Vice President of Multifamily Finance confirms that financing of the proposed project is contemplated by the agency; and

WHEREAS, the applicant also submitted a letter from Bronx Borough President Ruben Diaz, Jr., confirming that financing of the proposed project is contemplated by his office; and

WHEREAS, the applicant represents that the financing sources for the housing component of the project require a minimum of 50 units for an affordable housing project, and they require such projects to be able to support themselves without a deficit, using the rent subsidy programs that are available; and

WHEREAS, however, the applicant states that the Bronx Shepherds have a programmatic need to provide 14 special needs units for young adults aging out of foster care; and

WHEREAS, the applicant submitted a letter from the Executive Director of the Bronx Shepherds stating that after the age of 18, many of the services available to foster children through various service providers are terminated, and that by providing 14 special needs units in the building where these young adults will be encouraged to live for one to two years before identifying their own apartment, the Bronx Shepherds will extend these services to young adults between the ages of 18 to 21 and prepare them for independent living; and

WHEREAS, the letter from the Bronx Shepherds further states that there is a significant need for this program, as more than 1,100 children age out of the foster care system in the Bronx annually, and that in order to facilitate these young adults’ transition to independent living the proposed building will provide services customary for foster children below the age of 18, including GED training, emotional and spiritual support, life skills, and medical services, as well as providing job training services and home economics training; and

WHEREAS, the applicant states that the occupants of the 14 special needs units will be in the lowest income bracket of the proposal’s population and will not be able to carry the cost of their units; therefore the rents paid by the 14 special needs units will be lower than the rents paid by the occupants of the other affordable housing units, and the minimum number of affordable non-special needs units that the proposal must

provide to be financially viable is 57; and

WHEREAS, accordingly, the applicant states that the Bronx Shepherds have a programmatic need to provide a total of 71 affordable housing units in the subject building; and

WHEREAS, the applicant states that the requested setback and sky exposure plane waivers are required in order to provide adequately sized floor plates to accommodate the 71 units, as a complying building would require a building with smaller floor plates and a height above the proposed 13 stories in order to satisfy Bronx Shepherds’ programmatic need of providing 71 units of affordable housing; and

WHEREAS, the applicant states that there is also a programmatic need to provide the proposed job training center at the site, as job training is a crucial part of the Bronx Shepherds’ mission; and

WHEREAS, the applicant states that \$500,000 has been allocated by Assembly Member Gibson to fund programmatic needs for the job training center, which will occupy 10,398 sq. ft. of floor area on the second and third floors, and will provide the following job training programs: GED preparatory program; a commercial drivers license course; a computer training program; training for the New York State weatherization program; and training in food preparation; and

WHEREAS, the applicant represents that the programmatic need for the job training center, combined with the inability to construct a cellar and provide a portion of the job training space below grade, contributes to the requested FAR waiver; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in conjunction with the programmatic need of the applicant, 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, however, the applicant analyzed an as-of-right alternative consisting of a three-story commercial building with 20,000 sq. ft. of floor area; and

WHEREAS, the financial analysis indicates that the as-of-right scenario is not financially viable due to the premium costs associated with the unique conditions of the site, while an as-of-right commercial building without the associated premium costs would be financially viable; 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 characterized by a mix of residential, commercial and community facility uses; and

WHEREAS, the applicant states that the ground floor retail space and the job training center on the second and a portion of the third floor are permitted as-of-right in the subject zoning district, and are consistent with other retail and Use Group 4 community facility uses along Jerome Avenue; and

WHEREAS, the applicant further states that the use of

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the remainder of the building for Use Group 3 non-profit institution with sleeping accommodations will not negatively affect the adjacent uses in the area, which includes a significant amount of Use Group 2 residential use; and

WHEREAS, as to bulk, the applicant states that the proposed building complies with the underlying zoning regulations for street wall height, total height, yards, and parking, and that the waivers requested for FAR, setback and encroachment into the sky exposure plane are minimal; and

WHEREAS, the applicant submitted a map and a corresponding chart identifying buildings within a one-quarter mile radius of the site with heights equal to or greater than 175 feet above mean sea level, which is the height of the proposed building; and

WHEREAS, the map submitted by the applicant reflects that there are 29 buildings within the study area which have a greater height above mean sea level than the subject site; and

WHEREAS, the Board notes that, due to the 60-ft. high rock outcropping at the rear of the site, the six-story buildings located along Davidson Street, which are situated atop the rock outcropping at the rear of the site, appear similar in height to the subject building when viewed from the street; and

WHEREAS, as to the FAR, the Board notes that the proposed retail and UG 4 community facility space, which represents approximately 15,000 sq. ft. of floor area in the subject building, are permitted as-of-right in the subject C8-3 zoning district; and

WHEREAS, the Board further notes that the requested FAR waiver is largely necessitated by the inability to construct a cellar, as certain uses that could normally be located below grade must be located above grade in the subject building, where they count towards the floor area calculations; 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, the applicant submitted an analysis of an as-of-right alternative and determined that it could not be supported financially; and

WHEREAS, as discussed above, the applicant initially proposed a building with a total floor area of 80,200 sq. ft. (8.02 FAR) and a rear yard with a minimum depth of only 10'-0", which was non-compliant with the buffer requirement under ZR § 33-292 and which the Board was not persuaded was required as a result of the site's unique physical conditions or programmatic needs; and

WHEREAS, in response to concerns raised by the Board, the applicant submitted revised plans reflecting the current proposal, with a total floor area of 75,221 sq. ft. (7.52 FAR) and a complying rear yard with a minimum depth of 30'-0"; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief and allow Bronx Shepherds to carry out 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, Part 617.2; and

WHEREAS, the Board conducted an environmental review of the proposed action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") 11BBSA070X, dated November 22, 2011; 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 Department of Environmental Protection's ("DEP") Bureau of Environmental Planning and Analysis reviewed the project for potential hazardous materials, air quality, and noise impacts; and

WHEREAS, DEP reviewed and accepted the October 2011 Remedial Action Plan and Construction Health and Safety Plan; and

WHEREAS, DEP requested that a Remedial Closure Report be submitted to DEP for review and approval upon completion of the proposed project; and

WHEREAS, DEP reviewed the applicant's stationary source air quality screening analysis and determined that the proposed project is not anticipated to result in significant stationary source air quality impacts; and

WHEREAS, DEP reviewed the results of noise monitoring, which determined that a window-wall noise attenuation rating of 36.8 dBA OITC) and an alternate means of ventilation (central air conditioning or air conditioning sleeves containing air conditioners) should be provided on the proposed building's north, south and east facades; 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, within a C8-3 zoning district, the proposed construction of a 13-story mixed-use community facility (including a portion with sleeping accommodations)/commercial building which does not comply with the underlying zoning regulations for use, FAR, front setback, and sky exposure plane, contrary

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to ZR §§ 32-15, 33-123 and 33-432, *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 9, 2011"- sixteen (16) 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 75,221 sq. ft. (7.52 FAR); a community facility floor area of 70,598 sq. ft. (7.06 FAR); a commercial floor area of 4,623 sq. ft. (0.46 FAR); a total height of 136'-0"; a setback of 10'-0" above a height of 36'-0"; and encroachment into the sky exposure plane, as illustrated 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 DOB shall not issue a Certificate of Occupancy until the applicant has provided it with documentation of DEP's approval of the Remedial Closure Report;

THAT the proposed windows shall have a noise attenuation rating of 36.8 dBA OITC on the proposed building's north, south and east facades, and an alternate means of ventilation (central air conditioning or air conditioning sleeves containing air conditioners) shall be provided 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;

THAT construction shall proceed in accordance with ZR § 72-23; and

THAT the Department of Buildings must ensure compliance 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 13, 2011.

82-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Mr. Livaho Choueka, owner.

SUBJECT – Application June 8, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area (§23-141); side yard (§23-461); rear yard (§23-47) regulations. R5 zoning district.

PREMISES AFFECTED – 2020 Homecrest Avenue, west side of Homecrest Avenue, 165' south of Avenue T, Block 7316, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Nora Martins.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 7, 2011, acting on Department of Buildings Application No. 3197918, reads:

ZR 23-141 – Proposed floor area exceeds permitted.

ZR 23-461 – Proposed side yard is less than required minimum.

ZR 23-47 – Proposed rear yard is less than required minimum; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R5 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, 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 September 13, 2011, after due notice by publication in *The City Record*, with continued hearings on October 25, 2011 and November 22, 2011, and then to decision on December 13, 2011 and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Montanez, and Commissioner Ottley-Brown; and

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

WHEREAS, the subject site is located on the west side of Homecrest Avenue, south of Avenue T within an R5 zoning district; and

WHEREAS, the subject site has a lot area of 3,414 sq. ft. and is occupied by a single-family home with 1,761 sq. ft. of floor area (0.52 FAR); 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 1,761 sq. ft. (0.52 FAR) to 4,484 sq. ft. (1.34 FAR); the maximum permitted floor area is 4,268 sq. ft. (1.25 FAR); and

WHEREAS, the applicant proposes to provide one side yard with a width of 5'-0" and to maintain the pre-existing non-complying side yard with a width of 4'-5" (side yards with a total width of 13'-0" and a minimum width of 5'-0" each are required); and

WHEREAS, the applicant proposes to provide a rear yard with a depth of 20'-0" (a rear yard with a minimum depth of 30'-0" is required); and

WHEREAS, the Board initially asked the applicant to provide a side yard with a width of 8'-0", rather than 5'-0" so that the proposal could more closely comply with the requirement for a total width of 13'-0" for both side yards; and

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WHEREAS, in response, the applicant asserted that the text of ZR § 73-622 permits the proposed side yards; and

WHEREAS, specifically, the relevant text at ZR § 73-622(1) states that

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 applicant asserts that its proposal to maintain one pre-existing non-complying side yard and to provide one complying side yard with a width of 5'-0" is consistent with the special permit text as it would not decrease the minimum width within the non-complying side yard; and

WHEREAS, further, the applicant considers the unique conditions of the subject site, which include a lot depth of 85 feet (opposed to the standard 100 feet) and adjacency to a non-complying multi-family building which does not provide a front yard, but does provide a side yard with a width of 10'-0" along the shared lot line; and

WHEREAS, the applicant also asserts that a side yard with a width of 5'-0" is consistent with the character of the neighborhood; and

WHEREAS, the Board considered the applicant's request to provide a side yard with a width of 5'-0" as its complying yard and agrees that it is appropriate in the subject case; and

WHEREAS, the Board finds that it has jurisdiction, pursuant to ZR § 73-622 to approve the reduction of a complying side yard to a width of 5'-0"; and

WHEREAS, the Board notes that its conclusion is compatible with other side yard provisions in the Zoning Resolution such as ZR § 23-49 which allows property owners in certain residential zoning districts and under certain circumstances to build directly along one side lot line as long as a side yard with a width of at least 8'-0" is provided along the other side lot line, resulting in a failure to meet the total required width of 13'-0"; and

WHEREAS, generally, in consideration of the side yard requirements, including those set forth at ZR § 23-49, the Board finds a complying side yard with a width of 8'-0" to be the required complying side yard when the second side yard has a non-complying width less than 5'-0"; and

WHEREAS, however, the Board notes that a side yard with a width of 5'-0" is, on its own, a complying side yard condition; and

WHEREAS, the Board also notes that other side yard provisions, such as ZR § 23-49, already allow for the reduction of the side yard total to a width less than 13'-0"; and

WHEREAS, the Board notes that the reduction of the complying side yard from 8'-0" to 5'-0" may be warranted in certain cases and when there is compliance with all of the special permit findings; and

WHEREAS, the Board is persuaded that the site and surrounding conditions in the subject case are

distinguishable from other cases with standard lot depths of 100 feet, which allow for a larger building footprint, and thus finds that the special permit findings, including that the proposal is compatible with the character of the neighborhood, are met; and

WHEREAS, in conclusion, the Board finds that when one side yard has a non-complying width of less than 5'-0", it would require that the second side yard have a width of at least 8'-0" except in certain instances when a second side yard with a width of less than 8'-0" but at least 5'-0" would be appropriate; and

WHEREAS, based upon its review of the record, 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, within an R5 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, 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 13, 2011"-(9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,484 sq. ft. (1.34 FAR); side yards with minimum widths of 4'-5" and 5'-0", and a rear yard with a minimum depth of 20'-0" as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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;

THAT substantial construction be completed in accordance with ZR § 73-70; 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 13, 2011.

89-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Annie and Kfir Ribak, owners.

SUBJECT – Application June 23, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to floor area, open space and lot coverage (§23-141); side yards (§23-461) and perimeter wall height (§23-631). R3-2 zoning district.

PREMISES AFFECTED – 2224 Avenue S, south west corner of Avenue S and East 23rd Street, Block 7301, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 25, 2011, acting on Department of Buildings Application No. 320269669, reads:

1. Contrary to ZR 23-141 in that the proposed floor area exceeds the maximum permitted.
2. Contrary to ZR 23-141 in that the proposed open space ratio is less than the minimum required.
3. Contrary to ZR 23-141 in that the proposed lot coverage exceeds the maximum permitted.
4. Contrary to ZR 23-631 in that the perimeter wall height exceeds the maximum permitted.
5. Contrary to ZR 23-461 in that the proposed side yards are less than the minimum required; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, open space ratio, perimeter wall height, and side yards contrary to ZR §§ 23-141, 23-631, and 23-461; and

WHEREAS, a public hearing was held on this application on November 1, 2011, after due notice by publication in *The City Record*, with continued hearings on November 22, 2011 and December 6, 2011, and then to decision on December 13, 2011 and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson, Commissioner Montanez, and Commissioner

Ottley-Brown; and

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

WHEREAS, the subject site is located on the southwest corner of Avenue S and East 23rd Street within an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 3,000 sq. ft. and is occupied by a single-family home with 1,946 sq. ft. of floor area (0.65 FAR); 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 1,946 sq. ft. (0.65 FAR) to 3,027 sq. ft. (1.01 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of 42 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide an open space ratio of 58 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to maintain a perimeter wall with a height of 22'-0", which is a pre-existing non-compliance; and

WHEREAS, the applicant proposes to provide one side yard with a width of 20'-0" and to maintain the pre-existing non-complying side yard with a width of 1'-6"; and

WHEREAS, the Board raised concerns about whether the proposed height and setback comply with zoning district regulations and are confined to the permitted building envelope; and

WHEREAS, in response, the applicant provided axonometric drawings to confirm that the proposal (other than the pre-existing non-complying perimeter wall height) did not exceed the permitted building envelope; and

WHEREAS, the Board determined that the axonometric drawings were not conclusive and stated that DOB should confirm full compliance; and

WHEREAS, based upon its review of the record, 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)

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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, within an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, open space ratio, perimeter wall height, and side yards contrary to ZR §§ 23-141, 23-631, 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 November 9, 2011”-(8) sheets and “November 30, 2011”-(4) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,027 sq. ft. (1.01 FAR); a lot coverage of 42 percent; an open space ratio of 58 percent; a maximum perimeter wall height of 22 feet; and side yards with widths of 20’-0” and 1’-6”, as illustrated on the BSA-approved plans;

THAT DOB shall review that the height and setback comply with all regulations related to the permitted building envelope;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

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;

THAT substantial construction be completed in accordance with ZR § 73-70; and

THAT the Department of Buildings must 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 13, 2011.

123-11-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr LLP, for Harrison Retail Associates LLC, owner, SoulCycle 350 Amsterdam, LLC, lessee.

SUBJECT – Application August 24, 2011 – Special Permit (ZR §73-36) to allow the operation of a physical culture establishment (*SoulCycle*). C2-7A & C4-6A zoning districts. PREMISES AFFECTED – 350 Amsterdam Avenue, west side Amsterdam Avenue between West 76th Street and West 77th Street. Block 1168, Lots 1001/7501, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Ellen Hay

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated August 19, 2011, acting on Department of Buildings Application No. 120750277, reads in pertinent part:

Proposed ‘physical culture establishment’ at zoning C2-7A, C4-6A district is not permitted contrary to section ZR 32-10 and a special permit by the Board of Standards and Appeals is required; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site partially within a C2-7A zoning district and partially within a C4-6A zoning district, the establishment of a physical culture establishment (PCE) on a portion of the first floor of a mixed-use commercial/residential building with a 13-story and an 18-story tower, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 15, 2011, after due notice by publication in *The City Record*, and then to decision on December 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Amsterdam Avenue, between West 76th Street and West 77th Street; and

WHEREAS, the site is occupied by a mixed-use commercial/residential building with a 13-story and 18-story tower; and

WHEREAS, the applicant notes that there is an existing PCE at the subject site, granted pursuant to BSA Cal. No. 272-07-BZ; and

WHEREAS, the applicant states that the proposed PCE will occupy approximately 2,052 sq. ft. of floor area on the first floor of the building, and will be located in a different location than the existing PCE at the site; and

WHEREAS, the PCE will be operated as Soul Cycle; and

WHEREAS, the applicant represents that the services at the PCE will include facilities for instruction and programs for physical improvement; and

WHEREAS, the hours of operation for the proposed PCE will be 5:30 a.m. to 10:00 p.m., 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

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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 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 Type II action pursuant to 6 NYCRR Part 617.12 and 617.5; 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 II determination prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and 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, on a site partially within a C2-7A zoning district and partially within a C4-6A zoning district, the establishment of a physical culture establishment (PCE) on a portion of the first floor of a mixed-use commercial/residential building with a 13-story and an 18-story tower, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 26, 2011"- (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on December 13, 2021;

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 all massages shall be performed by New York State licensed massage therapists;

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 substantial construction shall be completed in accordance with ZR §73-70;

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

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 13, 2011.

124-11-BZ

CEQR #12-BSA-016X

APPLICANT – Sheldon Lobel, P.C., for Wagner Associates LLC, owner, 2480 Grand Concourse Fitness Group, LLC, lessee.

SUBJECT – Application August 24, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). C4-4 zoning district.

PREMISES AFFECTED – 2488 Grand Concourse, located on the east side of Grand Concourse between East 188th Street and Fordham Road. Block 3153, Lot 9, Borough of Bronx.

COMMUNITY BOARD #5BX

APPEARANCES –

For Applicant: Nora Martins.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated July 25, 2011, acting on Department of Buildings Application No. 200971706, reads in pertinent part:

Proposed physical culture establishment is not permitted as-of-right in C4-4 zoning district pursuant to ZR section 32-10 and therefore requires a special permit from the Board of Standards and Appeals per ZR section 73-36;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site located in a C4-4 zoning district, the operation of a physical culture establishment (PCE) at portions of the cellar, first floor and second floor of a five-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 15, 2011, after due notice by publication in *The City Record*, and then to decision on December 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson and Commissioner Ottley-Brown; and

WHEREAS, the subject site is an irregular-shaped lot located on the southeast corner of the intersection of Grand Concourse and East Fordham Road, within a C4-4 zoning district; and

WHEREAS, the site has 222.8 feet of frontage on Grand Concourse, 108.8 feet of frontage on East Fordham Road, and a total lot area of 24,186 sq. ft.; and

WHEREAS, the subject site is occupied by a five-

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story commercial building; and

WHEREAS, the proposed PCE will occupy 8,949 sq. ft. of floor area on portions of the first and second floor, with an additional 6,199 sq. ft. of floor space located in a portion of the cellar; and

WHEREAS, the PCE will be operated as Planet Fitness; and

WHEREAS, the proposed PCE will be open 24 hours per day, seven days per week; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; 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 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 617.2; 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. 12BSA016X, dated August 24, 2011; and

WHEREAS, the EAS documents 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, 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 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, on a site located in a C4-4 zoning district, the operation of a physical culture establishment at portions of the cellar, first floor and second floor of a five-story commercial building, contrary to ZR § 32-10; on condition that all work shall substantially conform to drawings filed with this application marked "Received October 24, 2011" - (5) sheets, and on further condition:

THAT the term of this grant shall expire on December 13, 2021;

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 all massages shall be performed by New York State licensed massage therapists;

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 substantial construction shall be completed in accordance with ZR §73-70;

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

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 13, 2011.

152-11-BZ

CEQR #12-BSA-026M

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 240 East 38th Street Condominium on behalf of New York University, owner.

SUBJECT – Application September 19, 2011 – Variance (§72-21) to allow modifications to the existing plazas and arcades associated with the partial re-use of an existing building for a community facility (*NYU Langone Medical Center*), contrary to §37-625. C1-9 zoning district.

PREMISES AFFECTED – 240 East 38th Street, East 37th Street, Second Avenue, East 38th Street and Tunnel Exit Street, Block 918, Lot 1001-1026, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Elise Wagner.

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, Commissioner Hinkson and
Commissioner Montanez5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough
Commissioner, dated September 16, 2011, acting on
Department of Buildings Application No. 120803746, reads, in
pertinent part:

1. Certain changes to existing plazas are not in greater accordance with the standards set forth in ZR 37-70, and therefore certification by the Chair of the City Planning Commission cannot be obtained, contrary to the requirements of ZR 37-625.
2. Proposed passenger drop-off and a driveway are located within and within 10 feet of arcade, contrary to ZR 37-80.
3. Proposed planters and seating are located within arcades beneath a height of 12 feet, contrary to ZR 37-80; and

WHEREAS, this is an application under ZR § 72-21, by NYU Langone Medical Center to permit, on a site in a C1-9/C1-9 Transit Land Use District (TA) zoning district, the modification to existing plazas and arcades including the introduction of a driveway and other obstructions, contrary to ZR §§ 37-625 and 37-80; and

WHEREAS, a public hearing was held on this application on November 22, 2011, after due notice by publication in the *City Record*, and then to decision on December 13, 2011; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 6, Manhattan, recommends approval of the application with the recommendation that the Medical Center post signage and paint curbs and the drop-off driveway to make it clear that there is no parking or standing and that the Medical Center employ a concierge to help direct vehicles; and

WHEREAS, this application is brought on behalf of the NYU Langone Medical Center (the “Medical Center”); and

WHEREAS, the site is located on a through lot with frontage on East 38th Street and East 37th Street, between Third Avenue and Second Avenue within a C1-9/C1-9 (TA) zoning district; and

WHEREAS, the site is part of a single zoning lot with the adjacent site at 221 East 37th Street (Block 918, Lot 14) (the “Zoning Lot”); and

WHEREAS, the adjacent site is owned by Verizon New York and is occupied with a nine-story building constructed in 1912 and subsequently enlarged pursuant to a bulk variance (BSA Cal. No. 304-38-BZ), because it exceeds floor area and height regulations; and

WHEREAS, the adjacent building is not proposed to be changed and is not part of the subject application except that it shares the subject Zoning Lot; and

WHEREAS, the Building has a plaza and arcade on East 37th Street (the “South Plaza” and “South Arcade”) and a plaza and arcade on East 38th Street (the “North Plaza” and “North Arcade”); and

WHEREAS, NYU owns a condominium interest in the building (the “Building”) for the benefit of the Medical Center, which will occupy 13 of the 24 non-mechanical floors of the Building for use as an Ambulatory Care Center; and

WHEREAS, Verizon owns a condominium interest in the Building and occupies the portions that are not occupied by the Medical Center; the current certificate of occupancy lists all floors above the first floor as offices and/or mechanical equipment (Use Group 6); and

WHEREAS, the Building was developed in the mid-1960s pursuant to the 1961 Zoning Resolution’s plaza regulations, which allowed bonusable plazas with broad standards about dimensions and openness to the sky; arcades were subject to standards similar to those in effect today, including minimum dimensions and that they be open along their entire length; and

WHEREAS, pursuant to ZR § 37-625, design changes to existing plazas may be made only upon certification by the Chair of the City Planning Commission that such changes would result in a plaza that is in greater accordance with the public plaza standards set forth in ZR § 37-70; and

WHEREAS, the subject variance is required because some of the proposed design changes to the plazas, including the driveway, canopy, and baffle wall, would result in new non-compliances or increased degrees of non-compliance with the public plaza standards and therefore require a waiver of the ZR § 37-625 certification requirement and because the proposed driveway, planters, and movable seating do not comply with the arcade standards of ZR § 37-80 and also require waivers; and

WHEREAS, the Department of City Planning (DCP) has reviewed the changes and supports the plan submitted with this application as Drawings A-02.00 through A-026.00 and L-001.00 through L-520.00; and

WHEREAS, by letter dated September 14, 2001, DCP Counsel stated that a certification under ZR § 37-625 is unavailable for the proposed changes and that it would be appropriate to seek a variance from the Board to waive the requirement that the design changes must be in greater accordance with the public plaza standards and that a certification be obtained; and

WHEREAS, the applicant has acknowledged that the proposed passenger drop-off and driveway located within, and within ten feet of, the North Arcade is the Medical Center’s primary need which triggers the remainder of the non-compliances (ZR § 37-80); and

WHEREAS, the applicant has identified the following specific non-compliances which necessitate the variance for the North Plaza: (1) the proposed driveway and passenger drop-off are not permitted obstructions (ZR § 37-726(d)); (2) the proposed canopy exceeds the area, projection, and height limitations for permitted obstructions (ZR § 37-726(c)); (3) more than 50 percent of the sidewalk frontage area is obstructed, and no portion of the unobstructed area has a width

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of at least eight feet (ZR § 37-721(a)); (4) the circulation paths at their narrowest points are five feet in width, less than the minimum eight feet required (ZR § 37-723); and (5) there are fewer than four trees (ZR § 37-742); and

WHEREAS, the applicant has identified the following specific non-compliances which necessitate the variance for the South Plaza: (1) the proposed baffle wall within the South Plaza is not a permitted obstruction and obstructs the visibility of the major portion of the plaza (ZR §§ 37-726 and 37-715); (2) less than 50 percent of the trees are planted flush at grade (ZR § 37-742); (3) the lawns at the west end exceed a height of six inches above the plaza surface (ZR § 37-742); and (4) permitted obstructions including planting beds and walls and expanded seating exceed 40 percent of the plaza area (ZR § 37-726(b)); and

WHEREAS, the Board agrees with DCP that this case, involving the modification of plaza and arcade conditions for a non-profit institution is a rare example of when a variance is an appropriate means of modifying a site under CPC's jurisdiction and there is limited applicability of such practice; and

WHEREAS, further, the Board notes that the proposed modifications are within the spirit of the plaza and arcade text; and

WHEREAS, the Medical Center proposes to occupy the building with its Ambulatory Care programs including the following: (1) the first floor and mezzanine will be occupied primarily by registration and pre-admission testing; (2) the 11th and 12th floors will be occupied by Dermatology; (3) the 13th floor will be occupied by Dialysis, Nephrology, and Hyperbaric services; (4) the 15th through 17th floors will be occupied by Rusk Home, a rehabilitation program; the 18th and 19th floors will be occupied primarily by the Cancer Center and Infusion; (5) the 20th floor will be occupied by Clinical Services; (6) the 22nd floor will be occupied by Clinical Labs; (7) the 23rd floor will be occupied by Endoscopy; and (8) the 2nd and 24th floors will be occupied by Infrastructure; and

WHEREAS, the applicant states that the following are the programmatic needs of the Medical Center: (1) to provide reasonable access to the building for Ambulatory Care Center patients who are visit the building for out-patient services but who may be frail and have mobility impairment; and (2) to enhance the open space environment for patients and the community; and

WHEREAS, the applicant states the following existing conditions limit the ability of the building to satisfy the Medical Center's programmatic needs: (1) the existing plazas and arcades designed nearly 50 years ago provide minimal amenities and landscaping; (2) both plazas have significant change in grade which impede access (the South Plaza is approximately four feet above the sidewalk, requiring a flight of stairs and a portion of the North Plaza is located 2'-6" below the sidewalk, requiring steps); (3) critical components of the Building's infrastructure and Verizon's facilities are located within the cellar, which precludes a re-grading of the South Plaza; (4) there is a distance of 56 feet between the North Plaza and the main entrance at East 38th Street; and (5) an existing exhaust vent faces the South Plaza and discharges large volumes of hot air from Verizon's generators, negatively

affecting its habitability; and

WHEREAS, additionally, the applicant notes that there are unique vehicular traffic conditions adjacent to the site including that a portion of East 38th Street is a heavily used access route to the Queens-Midtown Tunnel and that MTA buses use the lane in front of the buildings; and

WHEREAS, the applicant states that the noted physical constraints preclude the Medical Center from occupying the site in compliance with applicable zoning regulations in a way that would satisfy its primary programmatic needs of providing the Ambulatory Care Center's patients with appropriate and reasonable access to the building and enhancing the plazas and arcades to provide an improved environment for patients and community members; and

WHEREAS, in order to meet its programmatic needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant identifies the following insufficiencies of a design that is fully compliant with zoning regulations: (1) the requirement to climb stairs and travel a distance of 56 feet between the main entrance and the East 38th Street curb; (2) the use of the East 38th Street curb lane for patient drop-off/pick-up would exacerbate existing traffic congestion, increase waiting times, and conflict with MTA bus use; and (3) the existing minimal amenities and landscaping is barren and uninviting; and

WHEREAS, the applicant asserts that, in contrast, the proposal will improve the site conditions and allow it to accommodate the Medical Center's programmatic needs; and

WHEREAS, the applicant proposes the following improvements to the plazas and arcades: (1) the North Plaza will include a driveway and canopy to create a convenient all-weather drop-off/pick-up area providing frail, elderly, and/or mobility-impaired patients with appropriate access; (2) an accessible pedestrian ramp in the North Plaza will provide access from the sidewalk to the entrance and an ADA-lift will be installed within the South Plaza to provide access; (3) varied landscaping and seating will be introduced to the plazas to create a more inviting environment for patients and community members, a landscape buffer will separate pedestrians from traffic; (4) the South Plaza will have broad seating terraces and benches and a shaded tree-lined area; (5) a green-screen baffle wall within the South Plaza will protect the adjacent plaza from hot air emitted by the building's exhaust vent, which would improve the environment for landscaping; (6) the plazas will include improved lighting, public information signage, and bicycle racks; (7) the plazas will be resurfaced; and (8) a trellis will be installed in the South Arcade to provide shade and planters and seating will be added; and

WHEREAS, the applicant states that the following conditions which create non-compliances or increase the degree of existing non-compliance are necessitated by the Medical Center's programmatic needs; and

WHEREAS, specifically, the applicant states that the proposed driveway, passenger drop-off, and canopy, which are not permitted plaza obstructions, are needed to provide the Ambulatory Care Center's frail and mobility-impaired patients

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with immediate, protected access to the building from ambulances and other vehicles; and

WHEREAS, the applicant states that the configuration of the driveway, though designed with the minimum dimensions necessary to accommodate patient vehicles, constrains circulation paths within the plaza to widths of approximately five feet (at least one circulation with a width of eight feet is required) and the presence of the driveway contributes to the obstruction of the plaza's sidewalk frontage, and it limits the width of the access areas along this frontage to less than eight feet (the sidewalk obstruction is required to be limited to 50 percent of the sidewalk frontage and at least one unobstructed portion is to have a width of at least eight feet); and

WHEREAS, the applicant states that other modifications are necessitated by the goal of providing an appropriate and welcoming entry and departure for patients and of improving the open space experience for the community; and

WHEREAS, towards those goals, the applicant proposes the following: (1) the North Plaza will be planted with low greenery instead of trees to allow maximum access to sunlight (the text requires trees within the plaza); (2) the baffle wall will block hot air emitted from generators (the text prohibits such obstructions and requires visibility of the major portion of the plaza); (3) less than 50 percent of the trees within the South Plaza will be planted flush at grade because of existing below-grade conditions and the lawns would exceed a height of six inches above the plaza to allow a planting berm for trees; (4) new seating and landscape features within the South Plaza, which along with existing permitted obstructions exceed 40 percent of the plaza area, will significantly improve the plaza environment; and (5) the planters and movable seating in the South Arcade will make the area more inviting (the text requires that an arcade be unobstructed to a height of 12 feet); and

WHEREAS, the Board acknowledges that the Medical Center, as an educational institution, is entitled to significant deference under the 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, specifically, as held in Cornell Univ. v. Bagnardi, 68 N.Y.2d 583 (1986), an educational institution's application is to be permitted unless it can be shown to have an adverse effect upon the health, safety, or welfare of the community, and general concerns about traffic, and disruption of the residential character of a neighborhood are insufficient grounds for the denial of an application; and

WHEREAS, the Board finds that the Medical Center's programmatic needs are legitimate, and agrees that the proposed modifications are necessary to address its needs, given the site's 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 Medical Center, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Medical Center is a nonprofit 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 represents that the land uses surrounding the site are characterized by a mix of mid- and high-rise residential and mixed-use buildings, with commercial buildings to the north and medical and other institutional uses to the south and east; and

WHEREAS, the applicant asserts that the proposal will not alter the scale or envelope of the Building; and

WHEREAS, the applicant asserts that the proposal will enhance the open space to the benefit of the community by introducing landscaping, comfortable seating, and art to the plazas and arcades; and

WHEREAS, the applicant asserts that the design changes would transform the plazas and arcades from their current inaccessible and uninviting appearance to lush and diverse public spaces which are comfortable and aesthetically pleasing; and

WHEREAS, the applicant notes that the proposal has been reviewed by DCP to ensure that the plazas and arcades are as consistent as possible with the public policies served by the ZR's current design standards; and

WHEREAS, the applicant states that the proposed driveway within the North Plaza would reduce vehicular traffic congestion in the area around the Zoning Lot by replacing on-street patient drop-off/pick-up and reducing lane-changing maneuvers; and

WHEREAS, the applicant asserts that the driveway will have little effect on pedestrians as pedestrian volumes on the block are relatively low for the area; and

WHEREAS, the applicant has agreed to comply with all of the Community Board's requests including that it will post signage and paint curbs and the drop-off driveway to make it clear that there is no parking or standing and employ a concierge to help direct vehicles; and

WHEREAS, the applicant has also agreed to keep the site well-lit; and

WHEREAS, the applicant asserts that the proposal will serve the goals of the 197-a Plan for the Eastern Section of Community District 6, including increasing the amount of useful public open space in the district; maintaining the character of the neighborhood while accommodating "specialized non-residential uses such as Bellevue/NYU Hospitals;" 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 proposal that would meet the programmatic needs of the Medical Center could occur

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given the existing conditions; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, as to the minimum variance, the applicant states that it designed the driveway with the minimum dimensions necessary to satisfy the Medical Center's programmatic need for a patient drop-off area and that the curb cuts are of the minimum width to accommodate the turning radii of ambulances and other large medical transport vehicles, and the 22-ft. width of the internal driveway area is the minimum needed for two vehicle lanes – one for patient drop-offs/pick-ups and one for passing; and

WHEREAS, further, the applicant asserts that the dimensions of the canopy relate to those of the driveway and the existing arcade and were calculated to provide an adequate amount of weather protection for patients; and

WHEREAS, the applicant states that the other non-complying modifications to the plazas and arcades are the minimum necessary to enhance the open space environment for patients and community members within the design constraints created by the existing building; and

WHEREAS, the Board finds that the requested relief is the minimum necessary to allow the Medical Center 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 an Unlisted 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. 12BSA026M, dated September 15, 2011; 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 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 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 in a C1-9/C1-9 Transit Land Use District (TA) zoning district, the modification to existing plazas and arcades including the introduction of a driveway and other obstructions, contrary to ZR §§ 37-625 and 37-80, *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 18, 2011" – eighteen (18) sheets; and *on further condition*:

THAT any change in control or ownership of the Medical Center's condominium interest be reviewed and approved by the Board;

THAT the Medical Center post signage and paint curbs and the driveway to make it clear that there is no parking or standing and that the Medical Center provide a concierge to help direct vehicles;

THAT the above-noted conditions be noted 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);

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

THAT construction shall proceed in accordance with ZR § 72-23; and

THAT the Department of Buildings must ensure compliance 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 13, 2011.

31-10-BZ

APPLICANT – Eric Palatnik, P.C., for 85-15 Queens Realty, LLC, owner.

SUBJECT – Application March 16, 2010 – Variance (§72-21) to allow for a commercial building, contrary to use (§22-00), lot coverage (§23-141), front yard (§23-45), side yard (§23-464), rear yard (§33-283), height (§23-631) and location of uses within a building (§32-431) regulations. C1-2/R6, C2-3/R6, C1-2/R7A, R5 zoning districts.

PREMISES AFFECTED – 85-15 Queens Boulevard, aka 51-35 Reeder Street, north side of Queens Boulevard, between Broadway and Reeder Street, Block 1549, Lot 28, 41, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 24, 2012, at 1:30 P.M., for decision, hearing closed.

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231-10-BZ

APPLICANT – Eric Palatnik, PC, for WIEDC (Williamsburg Infant & Early Childhood Development Center), owners.

SUBJECT – Application December 17, 2010 – Variance (§72-21) to permit the development of a six-story school (*Williamsburg Infant and Early Childhood Development center*), contrary to use regulations (§42-11); floor area (§43-122), rear yard (§43-26), and wall height, total height, number of stories, setback, and sky exposure plane (§43-43). M1-1 zoning district.

PREMISES AFFECTED – 430-440 Park Avenue, Between Kent Avenue and Franklin Avenue. Block 1898, Tent. Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik and Gilly Youner.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 31, 2012, at 1:30 P.M., for decision, hearing closed.

35-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Congregation Othel, owners.

SUBJECT – Application March 31, 2011 – Variance (§72-21) to allow for the enlargement of an existing synagogue (*Congregation Othel*), contrary to floor area, lot coverage (§24-11), front yard (§24-34), side yard (§24-35), rear yard (§24-36) and parking (§25-31). R2A zoning district.

PREMISES AFFECTED – 226-10 Francis Lewis Boulevard, 1,105' west of Francis Lewis Boulevard, Block 12825, Lot 149, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Fredrick A. Becker, Sholem Lipsker, A. Refson and David Schtierman.

For Opposition: Council Member Leroy Comrie, Assembly Member Barbara M. Clark, Lawrence McClellin, Community Board 13, Steven Taylor, Edgar Moore, Doris Bodine and Kelli M. Singleton.

ACTION OF THE BOARD – Laid over to February 28, 2012, at 1:30 P.M., for continued hearing.

66-11-BZ

APPLICANT – Jesse Masyr, Wachtel & Masyr LLP, for Whole Foods Market Group, owner.

SUBJECT – Application May 13, 2011 – Variance (§72-21) to permit a UG6 food store (*Whole Foods*) larger than 10,000 square feet, contrary to use regulations (§42-12). M2-1 zoning district.

PREMISES AFFECTED – 172-220 Third Street, block bounded by 3rd Street, 3rd Avenue, 4th Street Basin and

Gowanus Canal, Block 978, Lot 1, 7, 16, 19, 23, 30, 32, Borough of Brooklyn.

APPEARANCES –

For Applicant: Jerry Johnson, Craig Hammerman, Community Board 6, Bill Appel, Carl Hum and Zenab El-Kady.

For Opposition: A. K. Kelly, Claire Michaels, Ariel Krasnow, Victoria Hagman, Jessica Fain, Abraham Adams, Martin Bisi, Mark Elijah Rosenberg, Mike Cocknell, Marlene Donnelly, Patrick Fenton, Syrie Moskowitz, Christine Bamford Vasan, Rosemarie Padovano, Cassandra Weston and others.

ACTION OF THE BOARD – Laid over to January 24, 2012, at 1:30 P.M., for continued hearing.

92-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Eugene and Margaret Loevinger, owners.

SUBJECT – Application June 24, 2011 – Special Permit (§73-622) for the enlargement of an existing single-family home contrary to floor area and open space (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1349 East 26th Street, east side of East 26th Street, 390' south of Avenue M, block 7662, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Nora Martins.

ACTION OF THE BOARD – Laid over to January 24, 2012, at 1:30 P.M., for continued hearing.

106-11-BZ

APPLICANT – Sheldon Lobel, P.C., for Tag Court Square, LLC, owner; Long Island City Fitness Group, LLC, owner.

SUBJECT – Application August 2, 2011 – Special Permit (§73-36) to allow the operation of a physical culture establishment (*Planet Fitness*). M1-5/R7-3/Long Island City zoning district.

PREMISES AFFECTED – 27-28 Thomson Avenue, triangular zoning lot with frontages on Thomson Street and Court Square, adjacent to Sunnyside Yards. Block 82, Lots 7501 (1001), Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Nora Martins.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 24, 2012, at 1:30 P.M., for decision, hearing closed.

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121-11-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Convent Avenue Baptist Church, owners.

SUBJECT – Application August 22, 2011 – Variance to legalize a two story and basement rear yard enlargement to a church (*Convent Avenue Baptist Church*), contrary to permitted rear yard regulations (§24-33), and lot coverage (§24-11). R7-2 zoning district.

PREMISES AFFECTED – 351 Convent Avenue, aka 420 West 145th Street and 418 West 145th Street, southeast corner of Convent Avenue and West 145th Street, Block 2050, Lot 42 & 47, Borough of Manhattan.

COMMUNITY BOARD #9M

APPEARANCES –

For Applicant: Fredrick A. Becker, Joseph Hand and Tony Taylor.

For Opposition: Sarah Martin, Andrew Romeo, William Nance and Jessica Martinez.

ACTION OF THE BOARD – Laid over to January 24, 2012, at 1:30 P.M., for continued hearing.

128-11-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Levana Pinhas and David Pinhas, owners.

SUBJECT – Application August 31, 2011 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (§23-141); side yard (§23-461) and less than the required rear yard (23-47). R3-2 zoning district.

PREMISES AFFECTED – 1860 East 23rd Street, west side of East 23rd Street, between Avenue R and Avenue S, Block 6828m Kit 31, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 24, 2012, at 1:30 P.M., for decision, hearing closed.

134-11-BZ

APPLICANT – Eric Palatnik, P.C., for 335 Madison Avenue LLC, owner, Madison Spa Castle, Inc., lessee.

SUBJECT – Application September 7, 2011 – Special Permit (ZR §73-36) to allow the operation of a physical culture establishment (*Spa Castle*). C5-3 zoning district.

PREMISES AFFECTED – 335 Madison Avenue, corner of Madison Avenue and East 43rd Street. Block 1278, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice Chair Collin, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 10, 2012, at 1:30 P.M., for decision, hearing closed.

158-11-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for C and A Capital, LLC, owner; Blink Nostrand, Inc., lessee.

SUBJECT – Application October 11, 2011 – Special Permit (§73-36) to allow a physical culture establishment (*Blink*). C4-4A zoning district.

PREMISES AFFECTED – 2166 Nostrand Avenue, east side of Nostrand Avenue, 180.76’ south of intersection of Nostrand Avenue and Flatbush Avenue, Block 7557, Lot 124, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to January 24, 2012, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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*CORRECTION

This resolution adopted on January 12, 2010, under Calendar No. 231-09-BZ and printed in Volume 95, Bulletin Nos. 1-3, is hereby corrected to read as follows:

231-09-BZ

CEQR #10-BSA-131M

APPLICANT – Valerie G. Campbell, Esq. c/o Kramer Levin Naftalis & Frankel LLP for 71 Laight Street, LLC, owner.

SUBJECT – Application July 21, 2009 – Variance (§72-21) to allow for the construction of a six-story mixed use building, contrary to use and parking regulations (ZR §42-10, §13-10). M1-5/TMU Special District.

PREMISES AFFECTED – 412-414 Greenwich Street, Southwest corner of Laight and Greenwich Streets, on the block bounded by Greenwich, Laight, Washington and Hubert Streets. Block 217, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Michael Sillerman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, decision of the Manhattan Borough Commissioner, dated July 6, 2009, acting on Department of Buildings Application No. 120081614, reads:

“Proposed Use Group 2 (residential) in M1-5 (TMU) zoning district is contrary to ZR 42-10. Refer to Board of Standards and Appeals . . .

Proposed 12 accessory parking spaces in M1-5 (TMU) zoning district is contrary to ZR 13-10. Refer to Board of Standards and Appeals.

Proposed FAR is contrary to ZR 43-12 in that it exceeds the maximum of 5.0 FAR in M1-5 (TMU-Area B2) zoning district;” and

WHEREAS, to permit, within an M1-5 zoning district, within the Special Tribeca Mixed Use District (Area B2) and the Tribeca North Historic District, the construction of a six-story and penthouse residential building with limited ground floor retail use and 12 accessory parking spaces, which is contrary to ZR §§ 42-10 and 13-10; and

WHEREAS, a public hearing was held on this application on November 10, 2009, after due notice by publication in the *City Record*, with a continued hearing on December 8, 2009, and then to decision on January 12, 2010; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, and Commissioner Montanez; and

WHEREAS, Community Board 1, Manhattan,

recommends approval of this application; and

WHEREAS, the site is located on the southwest corner of Greenwich Street and Laight Street, within an M1-5 zoning district, within the Special Tribeca Mixed Use District (Area B2) and the Tribeca North Historic District; and

WHEREAS, the site has 125 feet of frontage on Greenwich Street, 80 feet of frontage on Laight Street, and a lot area of approximately 9,968 sq. ft.; and

WHEREAS, the site is occupied by a one-story (1.0 FAR) freight loading building currently used for parking, which will be demolished in anticipation of construction (the “Existing Building”); and

WHEREAS, the applicant initially proposed to construct a six-story and penthouse building with 55,055 sq. ft. of floor area (5.52 FAR), 18 residential units (UG 2), unrestricted ground floor retail (UG 6), and 12 accessory parking spaces in the cellar (six parking spaces is the maximum number permitted within the subject zoning district); and

WHEREAS, during the hearing process, the applicant revised the application to reflect 54,824 sq. ft. of floor area (5.5 FAR) and limited retail use on the ground floor; the other parameters remained as initially proposed; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in complying with applicable zoning district regulations: (1) the Existing Building is small and obsolete for modern commercial or manufacturing use; and (2) there are poor subsurface conditions, including loose to medium-dense soil, shallow groundwater level, and pockets of compressible material; and

WHEREAS, the applicant represents that the Existing Building, which was built in 1956 as an adjunct to the historic six-story warehouse building located at 401 Washington Street is functionally obsolete; and

WHEREAS, specifically, the applicant represents that the one-story, non-fireproof Existing Building, with an FAR of 1.0 significantly underutilizes the site in terms of use and floor area; a maximum FAR of 5.0 is permitted for a conforming use in the subject zoning district; and

WHEREAS, the applicant represents that the one-story Existing Building cannot structurally sustain any vertical enlargement without a complete reworking of the foundation system, including adding new columns and a new foundation; and

WHEREAS, the applicant submitted letters from an architect and an engineer that support the assertions about the Existing Building’s inability to feasibly support an enlargement; and

WHEREAS, the applicant represents that there are only three other potential development sites within a 400-ft. radius of the site, which are occupied by similarly small buildings or are otherwise built out to a significant amount below the available bulk of 5.0 FAR as the

subject site; these include a total of eight tax lots within three assemblage parcels on blocks 223 and 224; there is only one vacant lot within the 400-ft. radius; and

WHEREAS, specifically, the applicant distinguishes the three other sites for either (1) not being wholly within the

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historic district, (2) being within the C6-2A zoning district, or (3) being partially vacant; and

WHEREAS, the applicant represents that the majority of the sites within a 400-ft. radius of the site are occupied by buildings with greater FAR and more stories than the Existing Building and are eligible for conversion to Loft Dwellings or Joint Living-Work Quarters for Artists pursuant to ZR § 111-02; and

WHEREAS, the applicant notes that the current use of the site for parking is a pre-existing non-conforming use which is not permitted as of right in the Special Tribeca Mixed Use District (Area B2); and

WHEREAS, the applicant represents that there are poor subsurface conditions at the site, including loose to medium-dense soil, shallow groundwater level, a portion of the site's location within the 100-year flood plain, and pockets of compressible material, which result in premium construction costs; and

WHEREAS, in support of this assertion, the applicant submitted an engineering report that details the subsurface conditions and distinguishes it from nearby sites; and

WHEREAS, the applicant attributes the subsurface conditions to the site's location at and beyond Manhattan's old shoreline, which is a condition affecting approximately 20 percent of the total Tribeca North Historic District; and

WHEREAS, the applicant represents that a shallow foundation system is not feasible as it would require a site-wide dewatering system and underpinning of adjacent building and the over-excavation of compressible materials; and

WHEREAS, accordingly, the applicant represents that a deep foundation system is required, which will include drilled piles; and

WHEREAS, the applicant represents that a portion of the site is located within the 100-year flood plain and the remainder is located within the 500-year flood plain; the applicant represents that less than 15 percent of the sites within the Tribeca Historic District are within the 500-year flood plain and less than 10 percent of the district is within the 100-year flood plain; and

WHEREAS, specifically, the applicant represents that, within a 400-ft. radius of the site, 23 lots are within the 100-year flood plain, of which six are underdeveloped to a similar degree as the site and of those six, only three are also located within the historic district; and

WHEREAS, the applicant represents that the location within the flood plain requires an additional pressure slab and additional foundation wall strength and that foundation waterproofing would be required up to ground surface, which is normally only required halfway up the cellar wall; and

WHEREAS, the applicant represents that a cellar must be provided for the mechanicals and that there are not any additional costs associated with constructing a full cellar that can also accommodate the parking, which is required to offset the premium construction costs; and

WHEREAS, the applicant submitted an engineering report of the subsurface conditions, which reflects the noted conditions; 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 provided an initial feasibility study analyzing five scenarios: (1) a new as of right commercial building with a courtyard; (2) a new as of right commercial building with a rectangular layout; (3) a residential/commercial building without a penthouse and with an FAR of 5.1; (4) a residential/commercial building with a courtyard and an FAR of 5.0; and (5) the original proposal for a residential/commercial building with an FAR of 5.52; and

WHEREAS, the applicant's financial analysis reflected that only the initial proposal would realize a reasonable rate of return; and

WHEREAS, the Board directed the applicant to review alternate proposals including (1) a residential/commercial building without a cellar and with the mechanicals relocated, (2) the elimination of the parking waiver, and (3) a residential/commercial building with an FAR of 5.5 to reflect the FAR of the adjacent C6-2A zoning district and that is expected to be adopted with the proposed Tribeca rezoning, and to limit the retail use as permitted as of right under the current Special Tribeca Mixed-Use District (Area B2) regulations; and

WHEREAS, the revised financial analysis reflects that the current proposal provides the applicant with a reasonable rate of return; and

WHEREAS, based upon its review of the applicant's financial analysis, the Board has determined that because of the subject site's unique physical conditions, there is no reasonable possibility that use 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 industrial and warehouse uses; and

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other such uses, some of which are proposed to occupy the adjacent site at 401 Washington Street; and

WHEREAS, additionally, the applicant notes that there is a five-story store and loft building at 70 Laight Street, a ten-story warehouse with residential uses at 74 Laight Street, a seven-story residential building at 78 Laight Street, and other similarly-sized buildings are under construction and conversion in the area; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of 18 dwelling units is compatible with the neighborhood character; and

WHEREAS, the Board notes that there are no bulk

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regulations for a residential building in an M1-5 zoning district, but that the proposed FAR of 5.5 and all other bulk parameters would be permitted in the adjacent C6-2A zoning district and under the provisions of the proposed Tribeca rezoning; and

WHEREAS, the applicant notes that the proposed building is designed to replicate the massing and design of the historic six-story warehouse building, located immediately to the west at 401 Washington Street with details that echo those of the historic building; and

WHEREAS, the Board notes that the floor heights, fenestration, and building height, among other parameters, are aligned with and closely match the 401 Washington Street building; and

WHEREAS, the applicant received a Certificate of Appropriateness from the Landmarks Preservation Commission (LPC), dated March 17, 2008; and

WHEREAS, the applicant states that the majority of the mechanicals will be located in the cellar, in accordance with LPC's direction to maintain them out of view; and

WHEREAS, the applicant asserts that the inclusion of six more parking spaces than are permitted by the zoning district regulations is compatible with the neighborhood character and that the site is currently occupied with a building used exclusively for parking, which is a legal pre-existing use that would not be permitted under the current zoning; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, photographs, and building information reflecting the uses in the immediate vicinity of 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 Board finds that the hardship herein was not created by the owner or a predecessor in title but is rather due to the inherent conditions of the site; and

WHEREAS, the applicant represents that the proposed use and bulk, which matches the envelope of the 401 Washington Street Building, reflect the minimum waivers necessary to compensate for the additional construction costs associated with the uniqueness of the site; and

WHEREAS, at hearing, the Board directed the applicant to eliminate the request for unlimited retail use and to reduce the FAR request to 5.5 as is contemplated by the C6-2A zoning district regulations and the proposed Tribeca rezoning; and

WHEREAS, in response, the applicant eliminated the request for unlimited retail use on the first floor and reduced the FAR to 5.5; 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 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) 10BSA131M, dated October 28, 2009; 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 Department of Environmental Protection's (DEP) Bureau of Environmental Planning and Assessment has reviewed the project for potential hazardous materials impacts; and

WHEREAS, DEP approved the Remedial Action Plan and Construction Health and Safety Plan on December 2, 2009; and

WHEREAS, DEP has concluded that the proposed project will not result in a significant adverse hazardous materials impact provided that a Remedial Closure Report certified by a professional engineer is submitted to DEP for approval; and

WHEREAS, the applicant proposes to fuel the fossil fuel-fired HVAC equipment with natural gas and to locate the equipment's exhaust(s) at least 41 feet from the southern lot line of the subject site to avoid any potential for significant air quality impacts at adjacent sites; and

WHEREAS, the applicant proposes 31 dBA of window-wall noise attenuation on the north facade (Laight Street) and 31 dBA of window-wall noise attenuation on the east facade (Greenwich Street) of the proposed building with central air-conditioning as an alternate means of ventilation in order to achieve an interior noise level of 45 dBA in each residential unit; 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 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 each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-5 zoning district, within the Special Tribeca Mixed Use District (Area B2) and the Tribeca North Historic District, the construction of a six-story and penthouse residential building with limited ground floor retail and 12 accessory parking spaces, which is contrary to ZR §§ 42-10 and 13-10; *on condition* that any and all work shall

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substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received January 6, 2010”– four (4) sheets and “Received January 11, 2010”– seven (7) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: six stories; 18 residential units; a total floor area of 54,824 sq. ft. (5.5 FAR); a streetwall height of 74’-1””; and a total height of 85’-1””;

THAT 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 review and confirm compliance for egress, light and air, and all other relevant sections of the Multiple Dwelling Law and Building Code;

THAT all construction shall be performed in conformance with the plans approved by the LPC and associated with the Certificate of Appropriateness, dated March 17, 2008;

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 Notice of Satisfaction;

THAT the fossil fuel-fired HVAC equipment shall be fueled by natural gas and the equipment’s exhaust(s) shall be located at least 41 feet from the southern lot line of the subject site;

THAT 31 dBA of window-wall noise attenuation shall be provided on the north facade (Laight Street) and 31 dBA of window-wall noise attenuation shall be provided on the east façade (Greenwich Street) of the proposed building with central air-conditioning as an alternate means of ventilation;

THAT substantial construction shall be completed pursuant to ZR § 72-23;

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 12, 2010.

***The resolution has been revised to change the dBA of window-wall noise attenuation to 31dBA. Corrected in Bulletin No. 51, Vol. 96, dated December 21, 2011.**