
BULLETIN

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DOCKETS

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307-08-BZY

163 Orchard Street, Through lot between Orchard and Houston Street between Stanton and Rivington Street., Block 416, Lot(s) 58, Borough of **Manhattan, Community Board: 3**. Extension of time to complete construction (11-331) of a minor development commenced prior to the amendment of the zoning district regulations . C4-4A Zoning District

308-08-BZ

201 East 67th Street, Northeast corner of the intersection of Third Avenue and East 67th Street., Block 1422, Lot(s) 1, Borough of **Manhattan, Community Board: 8**. Special Permit (73-36) to allow legalization of a physical culture establishment.

309-08-BZ

1717 Pitman Avenue, Northwest corner of intersection of Digney Avenue and Pitman Avenue., Block 5049, Lot(s) 21, Borough of **Bronx, Community Board: 12**. Variance to allow a three-story, two family detached building, contrary to use regulations.

310-08-BZ

406 East 91st Street, Southerly side of East 91st Street, 94' west of First Avenue., Block 1570, Lot(s) 41, Borough of **Manhattan, Community Board: 8**. Special Permit (73-19) to permit conversion and enlargement of an existing building from Use Groups 6 & 16 to Use Group 3 (schools & uses accessory to schools), which is contrary to use regulations. C8-4 District.

311-08-BZY

77 & 79, 81 Rivington Street, Five tax lots on the northern portion of the block bound by Orchard Street to the east, Rivington to the north, Allen Street to the west 7 Delancy Street to the south., Block 415, Lot(s) 61, 62, 63, 66, 67, Borough of **Manhattan, Community Board: 3**. Extension of time to complete construction (11-331) of a minor development commenced prior to the amendment of the Zoning district regulations . C4-4A.

312-08-BZ

1134 East 23rd Street, West side of East 23rd between Avenue K and Avenue L., Block 7622, Lot(s) 60, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of an existing single family home. This application seeks to vary floor area and open space (23-141), side yard (23-461) and less than the minimum required rear yard (23-47) in an R2 zoning district.

313-08-A

363-371 Lafayette Street, East side of Lafayette Street between Great Jones and Bond Streets, Block 530, Lot(s) 17, Borough of **Manhattan, Community Board: 2**. Appeal seeking to revoke permits and approvals for a six story commercial building that violates the Building Code and Zoning Resolution ..M1-5B zoning district.

314-08-BZ

437-447 West 13th Street, Southeast portion, block bounded by West 13th, West 14th and Washington Streets, Tenth Avenue., Block 646, Lot(s) 19, 20, Borough of **Manhattan, Community Board: 2**. Variance to allow a 12-story commercial building, contrary to use and bulk regulations

315-08-A

246 Spring Street, Between Varick Street and Hudson Street., Block 491, Lot(s) 36, Borough of **Manhattan, Community Board: 2**. An appeal seeking the revocation of permits for the construction of a condominium hotel on the basis that the approved plans allow for a Floor area far exceeding the permitted applicable zoning regulations . M1-6 zoning .

316-08-BZ

1290 Second Avenue, Northwest corner of East 20th Street and Second Avenue., Block 901, Lot(s) 26, 27, 28, Borough of **Manhattan, Community Board: 6**. Variance (72-21) to permit the development of a three- and eight-story school building. The proposal is contrary to ZR Section 35-24c (minimum base height). R9A with a C1-5 district overlay.

317-08-A

124 Montgomery Avenue, West side of Montgomery Avenue, 140' north of the intersection with Victory Boulevard., Block 17, Lot(s) 112, Borough of **Staten Island, Community Board: 1**. Proposed construction of a four story dwelling located within the bed of a mapped street contrary to General City Law Section 35 .

318-08-A

1009 Beach 21st Street, North west corner of Cornaga Avenue., Block 15705, Lot(s) 1, Borough of **Queens, Community Board: 14**. Proposed enlargement of a commercial use located within the bed of a mapped street contrary to General City Law Section 35 . C8-1

DOCKET

319-08-BZ

323/25 & 327 6th Avenue, Site comprised of three adjoining tax lots, with approximately 75 feet of frontage on 6th Avenue and 54 frontage on Cornelia Street., Block 589, Lot(s) 19,30,31, Borough of **Manhattan, Community Board: 2**. Special Permit pursuant to 73-201 for an expansion of an existing motion picture theater (IFC Center). C1-5 District.

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.

1-09-BZ

39-01 Queens Boulevard, Northerly side of Queens boulevard 0 feet easterly of 39th Street., Block 191, Lot(s) 5, Borough of **Queens, Community Board: 2**. Special Permit (73-36) to legalize the operation of a physical culture establishment.

2-09-A

936 Bayside, Southside of Bayside east of the mapped Beach 210th Street., Block 16350, Lot(s) 300, Borough of **Queens, Community Board: 14**. Proposed reconstruction and enlargement of a single family dwelling not fronting on a legally mapped street contrary to General City Law Section 36 . R4 Zoning District .

3-09-BZ

831 Eagle Avenue, East Avenue, Eagle 159th Street, Saint Anns Avenue, East 161 Street., Block 2619, Lot(s) 27, Borough of **Bronx, Community Board: 1**. Special Permit (73-19) to allow the conversion of an existing two-story warehouse into a high school with sleeping accommodations.The proposal is contrary to the use requirements of the underlying M1-1 district.

4-09-A

27-02 Queens Plaza South, Southeast corner of Queens Plaza and 27th Street., Block 422, Lot(s) 9, Borough of **Queens, Community Board: 1**. An appeal filed by the Department of Buildings seeking to amend the Certificate of Occupancy No. 400872631 issued on 6/17/1999 to remove the reference to "Adult " Establishment "use on the second floor . M1-6/R-10 Special Mixed Use .

5-09-A

7 Manville Lane, North south Manville Lane 206.70' east of Beach 203rd Street., Block 16359, Lot(s) 400, Borough of **Queens, Community Board: 14**. Proposed reconstruction and enlargement of n exsiting single family not fronting a mapped street and the upgrade of a private disposal system is in the bed of a private service road contrary to Department of Buildings Policy .R4 Zoning District .

DESIGNATIONS: D-Department of Buildings; B.BK.-

CALENDAR

FEBRUARY 3, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 3, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

74-49-BZ

APPLICANT – Sheldon Lobel, P.C., for 515 Seventh Associates, owner.
SUBJECT – Application – Pursuant to (§ 11-411) of the Zoning Resolution to request an extension of the term of a variance previously granted allowing a parking garage located in an M1-6 zoning district. The application seeks an amendment to increase the number of parking spaces and a waiver of the BSA's Rules of Practice and Procedure for an extension of time to obtain a Certificate of Occupancy.
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

APPEALS CALENDAR

19-08-BZY

APPLICANT – Edward Lauria, P.E., for Nicholas Valentino, owner.
SUBJECT – Application January 18, 2008 – Extension of time to complete construction (§ 11-332) of a minor development commenced under the prior zoning district regulations. C4-1 SRD
PREMISES AFFECTED – 3871 Amboy Road, north side of Amboy Road, west of Greaves Avenue, Block 4633, Lot 294, Borough of Staten Island.
COMMUNITY BOARD #3SI

305-08-A

APPLICANT – NYC Economic Development Corp.
OWNER: Department of Small Business Services
SUBJECT – Application December 12, 2008 – for a variance of flood plain regulations under Sec. G107 of Appendix G. of the NYC Building Code.
PREMISES AFFECTED – East River Waterfront Esplanade, East side of South Street, 24' south of Maiden Lane, Block 36, Lots 25 & 30, Borough of Manhattan.
COMMUNITY BOARD #1M

FEBRUARY 3, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 3, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

177-07-BZ

APPLICANT – Maurice Dayan, owner.
SUBJECT – Application July 6, 2007 – Variance (§ 72-21) to construct a two story, two family residential building on a vacant corner lot. This application seeks to vary the front yard requirement on one street frontage (§ 23-45) in an R-5 zoning district.
PREMISES AFFECTED – 886 Glenmore Avenue, corner of Glenmore Avenue and Milford Street, Block 4208, Lot 17, Borough of Brooklyn.
COMMUNITY BOARD #7BK

99-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.
SUBJECT – Application April 21, 2008 – Variance (§72-21) to construct a three story with cellar single family home on an irregular triangular lot what does not meet the rear yard requirement (§ 23-47) in an R3-2 (SRD) zoning district.
PREMISES AFFECTED – 102 Drumgoole Road, South side of Drumgoole Road, 144.62 ft. west of the intersection of Drumgoole Road and Wainwright Avenue, Block 5613, Lot 221, Borough of Staten Island.
COMMUNITY BOARD #3SI

169-08-BZ

APPLICANT – James Chin & Associates, LLC, for Jeffrey Bennett, owner.
SUBJECT – Application June 24, 2008 – Variance (§ 72-21) to allow the residential redevelopment of an existing five-story commercial building. Six residential floors and six (6) dwelling units are proposed; contrary to use regulations (§42-00 & § 111-104 (e)). M1-5 (TMU- Area B-2) district.
PREMISES AFFECTED – 46 Laight Street, north side of Laight Street, 25' of frontage on Laight Street, Block 220, Lot 35, Borough of Manhattan.
COMMUNITY BOARD #1M

CALENDAR

173-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Royal One Real Estate, LLC, owner.

SUBJECT – Application July 1, 2008 – Variance (§ 72-21) to allow a new twelve (12) story hotel building containing ninety nine (99) hotel rooms; contrary to bulk regulations (§ 117-522). M1-5/R7-3 Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area C.

PREMISES AFFECTED – 42-59 Crescent Street, northeast corner of the intersection of Crescent Street and 43rd Avenue, Block 430, Lots 37, 38, Borough of Queens.

COMMUNITY BOARD #2Q

258-08-BZ

APPLICANT – Rizzo Group, for Robert G. Friedman, owner; Mid City Gym and Tanning LLC, lessee.

SUBJECT – Application October 20, 2008 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment on the cellar in a 41-story mixed-use building. The proposal is contrary to ZR § 32-10. C6-4 district.

PREMISES AFFECTED – 343-349 West 42nd Street, located on 42nd Street, mid-block between 8th Avenue and 9th Avenue, Block 1033, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #4M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JANUARY 13, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

863-48-BZ

APPLICANT – Alfonso Duarte, for Dilip Datta, owner.
SUBJECT – Application September 25, 2008 – Extension of Term of a previously granted variance for a (UG16A) auto repair establishment, in an R-2 zoning district, which will expire on November 25, 2008.

PREMISES AFFECTED – 259-16 Union Turnpike, south east corner of 259th Street, Block 8678, Lot 1, 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 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 repair establishment, which expired on November 25, 2008; and

WHEREAS, a public hearing was held on this application on November 18, 2008 after due notice by publication in *The City Record*, with a continued hearing on December 16, 2008, and then to decision on January 13, 2009; and

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

WHEREAS, Community Board 13, Queens, recommends approval of this application; and

WHEREAS, the site is located on the south side of Union Turnpike between 259th Street and 260th Street, in an R2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 25, 1958 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; and

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

WHEREAS, most recently, on July 20, 1999, the grant was amended to permit the conversion of the gasoline

service station to an automobile sales and repair establishment, and the term was extended for a term of ten years from the expiration of the prior grant, to expire on November 25, 2008; and

WHEREAS, the applicant has requested a ten-year extension of term; and

WHEREAS, at hearing, the Board requested the applicant to submit a revised signage analysis accurately reflecting all signage located on the site; and

WHEREAS, in response, the applicant submitted a revised signage analysis indicating that the frontage along 259th Street has a total of 43 sq. ft. of signage, and therefore does not comply with C1 zoning district regulations; and

WHEREAS, the applicant represents that due to the trapezoidal shape of the zoning lot, the frontage on 259th Street is only ten feet and allows a total of 30 sq. ft. of signage; and

WHEREAS, the applicant requests that the Board allow the additional 13 sq. ft. of signage on the 259th Street frontage due to the unique shape of the zoning lot; and

WHEREAS, the Board finds that the non-compliance with the C1 requirements is minimal and is created by the irregular lot shape and limited frontage on 259th Street; 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* the resolution, dated November 25, 1958, so that as amended this portion of the resolution shall read: “to extend the term for ten years from November 25, 2008, to expire on November 25, 2018; *on condition* that all use and operations shall substantially conform to plans filed with this application marked “Received September 25, 2008”-(1) sheet and “December 8, 2008”-(2) sheets; and *on further condition*:

THAT the term of the grant shall expire on November 25, 2018;

THAT a new certificate of occupancy shall be obtained by January 13, 2010;

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. 410118527)

Adopted by the Board of Standards and Appeals January 13, 2009.

MINUTES

26-02-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; A & A Automotive Corporation, lessee. SUBJECT – Application June 23, 2008 – Extension of Time to obtain a Certificate of Occupancy/waiver for an existing gasoline service station (Mobil), in a C1-2/R3X zoning district, which expired on December 10, 2006.

PREMISES AFFECTED – 1680 Richmond Avenue, northwest corner of Victory Boulevard, Block 2160, 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 Otley-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 time to obtain a certificate of occupancy for an automobile service station (Use Group 16) with accessory uses, and a legalization of certain modifications to the previously approved site plan; and

WHEREAS, a public hearing was held on this application on December 9, 2008, after due notice by publication in *The City Record*, and then to decision on January 13, 2009; and

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

WHEREAS, the site is located on the northwest corner of the intersection at Richmond Avenue and Victory Boulevard, within a C1-2 (R3X) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 6, 1970 when, under BSA Cal. No. 141-69-BZ, the Board granted a variance authorizing the premises to be occupied by an automotive service station with accessory uses for a term of fifteen years; and

WHEREAS, on December 10, 2002, under the subject calendar number, the variance was reinstated to permit the legalization of the existing automotive service station for a term of ten years from the date of the grant, to expire December 10, 2012; a condition of the grant was that a new certificate of occupancy be obtained by December 10, 2006; and

WHEREAS, the applicant now seeks 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 during the merger of the corporate owner; and

WHEREAS, the applicant also seeks to amend the grant to legalize minor changes to site conditions on the previously approved plans, to reflect: (i) the conversion of a portion of the service building to an accessory convenience store; (ii) the paving of an area designated for landscaping at

the southwest corner of the site; (iii) the placement of a waste oil tank at the northwest corner of the site; (iv) the placement of an air machine at the southwest corner of the site; and (v) the upgrading of the five existing 4,000 gallon gasoline storage tanks instead of the installation of four 10,000 gallon gasoline storage tanks; and

WHEREAS, the Board notes that Technical Policy and Procedure Notice (TPPN) # 10/99, provides that a retail convenience store located on the same zoning lot as a gasoline service station will be deemed accessory if: (i) the retail convenience store is contained within a completely enclosed building; and (ii) the retail convenience store has a maximum retail selling space of 2,500 square feet or 25 percent of the zoning lot area, whichever is less; and

WHEREAS, the applicant represents that the convenience store located within the enclosed building has a retail selling space of less than 2,500 square feet or 25 percent of the zoning lot area; and

WHEREAS, thus, the Board notes that the convenience store qualifies as an accessory use pursuant to TPPN # 10/99; and

WHEREAS, based upon its review of the record, the Board finds that the requested six-month extension of time to obtain a certificate of occupancy and amendment to the approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated December 10, 2002, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to July 13, 2009, and to permit the noted site modifications; *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 20, 2008”–(5) sheets; and *on further condition*:

THAT a certificate of occupancy shall be obtained by July 13, 2009;

THAT all signage shall comply with C1 zoning district regulations;

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. 510027515)

Adopted by the Board of Standards and Appeals January 13, 2009.

MINUTES

242-03-BZ

APPLICANT – Moshe M. Friedman, P.E., for Sion Maslaton, owner.

SUBJECT – Application November 18, 2008 – Extension of Time/waiver to obtain a Certificate of Occupancy which expired on January 13, 2008 and an Amendment to legalize the as-built condition of a previously granted Special Permit (§73-622) in an R3-2 zoning district.

PREMISES AFFECTED – 1858 East 26th Street, West side 285'-0" north of the intersection formed by East 26th Street and Avenue S. Block 6831, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Yosef S. 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, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to obtain a certificate of occupancy and an amendment to legalize the as-built condition of a single-family home previously granted a special permit; and

WHEREAS, a public hearing was held on this application on December 9, 2008, after due notice by publication in *The City Record*, and then to decision on January 13, 2009; and

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

WHEREAS, the site is located on the west side of East 26th Street, between Avenue R and Avenue S, in an R3-2 zoning district; and

WHEREAS, the site is currently occupied by a single-family home; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 13, 2004, when, under the subject calendar number, the Board granted a special permit to permit the enlargement of the single-family home; and

WHEREAS, the applicant represents that it exceeded the four-year deadline for completing substantial construction and obtaining a certificate of occupancy because it did not timely file the necessary special permit plans with the Department of Buildings (“DOB”); and

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

WHEREAS, the applicant also seeks an amendment to legalize the as-built condition of the site, to reflect that an approved second floor extension at the front of the house was not built; and

WHEREAS, based upon its review of the record, the Board finds that a six-month extension of time to obtain a certificate of occupancy and amendment to the approved plans are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and

Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated January 13, 2004, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to July 13, 2009, and to permit the noted site modifications; *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 26, 2008”–(6) sheets; and *on further condition*:

THAT a certificate of occupancy shall be obtained by July 13, 2009;

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. 310115602)

Adopted by the Board of Standards and Appeals, January 13, 2009.

617-56-BZ

APPLICANT – Kenneth H. Koons, R.A., for John O'Dwyer, owner.

SUBJECT – Application December 4, 2008 – Extension of Term/waiver for the continued use of a (UG8) parking lot which expired on September 27, 2007 in an R6 (C1-3, C2-3) zoning district.

PREMISES AFFECTED – 3120 Albany Crescent, east side, 72.7' north of West 231st Street, Block 3267, Lot 15, Borough of Bronx.

COMMUNITY BOARD #15BX

APPEARANCES –

For Applicant: Kenneth H. Koons.

ACTION OF THE BOARD – Laid over to February 10, 2009, at 10 A.M., for continued hearing.

395-60-BZ

APPLICANT – Sheldon Lobel, P.C., for Ali A. Swati, owner.

SUBJECT – Application December 22, 2006 – Pursuant to ZR §11-411 & §11-413 for an Extension of Term/Amendment/waiver for the change of use from a (UG16) gasoline service station to (UG16) automotive repair establishment; to remove a portion of the subject lot from the scope of the granted variance and to request a UG6 designation for the convenience store, in an R-5 zoning district, which expired on December 9, 2005 and an Extension of Time to obtain a Certificate of Occupancy which expired on January 19, 2000.

PREMISES AFFECTED – 2557-2577 Linden Boulevard, north side of Linden Boulevard between Euclid Avenue and Pine Street, Block 4461, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

MINUTES

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to February 10, 2009, at 10 A.M., for continued hearing.

1228-79-BZ

APPLICANT – Harold Weinberg, P.E., for Mike Sedaghati, owner.

SUBJECT – Application December 5, 2008 – Extension of Term/waiver of a previously granted variance for the operation of a (UG6) retail store, in an R5 zoning district, which expired on July 21, 2005 and for an Extension of Time to obtain a Certificate of Occupancy which expired on May 21, 1997.

PREMISES AFFECTED – 2436 McDonald Avenue, between Avenue W and Village Road South, Block 7149, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg, Frank Sellitto and Aldo Valdivesio.

ACTION OF THE BOARD – Laid over to February 3, 2009, at 10 A.M., for continued hearing.

337-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Giuseppe LaSorsa, owner.

SUBJECT – Application November 10, 2008 – Extension of Term/waiver for the continued operation of a one story (UG16) Automotive Repair Shop and a two story (UG6) business and (UG2) dwelling unit on a portion of the site, which expired on June 2, 2002, in a C1-2/R4 zoning district and an Extension of Time/waiver to obtain a Certificate of Occupancy which expired on March 29, 1987.

PREMISES AFFECTED – 1415/17 East 92nd Street, northeast corner of East 92nd Street and Avenue L, Block 8238, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to February 10, 2009, at 10 A.M., for an adjourned hearing.

245-03-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Allied Enterprises LLC, owner.

SUBJECT – Application November 25, 2008 – Extension of Term of a previously granted special permit for an accessory drive-thru to an existing eating and drinking establishment (McDonald's), in an R3-2/C1-2 zoning district, which expired on December 9, 2008.

PREMISES AFFECTED – 160-11 Willets Point Boulevard, northeast corner of Francis Lewis Boulevard, Block 4758, Lot 100, 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 Montanez5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 10, 2009, at 10 A.M., for decision, hearing closed.

97-08-BZ

APPLICANT – New York City Board of Standards and Appeals.

OWNER: Chesky Berkowitz.

LESSEE: Central UTA.

SUBJECT – Application April 18, 2008– To consider dismissal for lack of prosecution – Special Permit (§73-19) to allow legalization of existing community facility use, contrary to use regulations.

PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to no-date, not-determined, off the dismissal calendar.

229-06-A

APPLICANT – Sheldon Lobel, P.C., for Breezy Point Cooperative, Incorporated, owner; Thomas Carroll, lessee.

SUBJECT – Application September 6, 2006 – Appeal seeking to revoke permits and approvals for the reconstruction and enlargement of an existing one family dwelling which creates new non-compliances, increases the degree of existing non-compliances with the bulk provisions of the Zoning Resolutions and violates provisions of the Building Code, regarding access and fire safety. R4 – Zoning District.

PREMISES AFFECTED – 607 Bayside Drive, Adjacent to service road, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Jordan Most.

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: 1

WHEREAS, the instant appeal initially came before the Board in response to a final determination by the Queens Borough Commissioner, dated August 24, 2006, stating that

1 Headings are utilized only in the interests of clarity and organization.

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the Department of Buildings (DOB) determined that New Building Permit No. 402074045 permitting construction of a single-family home at the subject site complied with all relevant sections of the Administrative Code and the Zoning Resolution and that no grounds existed for its revocation; and

WHEREAS, this appeal initially challenged DOB's decision not to revoke the above-referenced permit based on nine alleged violations of the Zoning Resolution and the Administrative Code; and

WHEREAS, a public hearing was held on this application on March 20, 2007 after due notice by publication in The City Record; and

WHEREAS, on April 27, 2007, DOB revoked New Building Permit No. 402074045 (the "Permit"), based on a finding of non-compliance with ZR § 23-45; thereafter, on May 15, 2007, the Board dismissed the instant appeal as moot; and

WHEREAS, on May 24, 2007, the owner of the challenged home filed an appeal with the Board, denominated BSA Cal. No. 140-07-A, challenging DOB's revocation of the Permit; and

WHEREAS, on June 18, 2007, the appellant commenced an Article 78 action in Queens Supreme Court seeking an order, inter alia: (i) declaring the Premises to be contrary to certain provisions of the Zoning Resolution; (ii) directing DOB to revoke the Permit based on all provisions of the Zoning Resolution which were allegedly violated; and alternatively (iii) directing BSA to conduct a hearing on the merits of DOB's decision not to revoke the Permit based on all the provisions of the Zoning Resolution allegedly violated; and .

WHEREAS, the public hearing on BSA Cal. No. 140-07-A was suspended pending a decision on an Article 78 petition filed in Queens Supreme Court seeking an order compelling the Board to subpoena witnesses and documents in the appeal (filed as Carroll v. Srinivasan, 110199/07); and

WHEREAS, on January 30, 2008, the Supreme Court ordered the Board to issue certain of the requested subpoenas requested (see Carroll v. Srinivasan, 110199/07, Jan. 30, 2008); and

WHEREAS, on April 21, 2008, the Supreme Court remanded BSA 229-06-A to the Board for findings concerning all alleged grounds for revocation of the permit and ordered that it be consolidated with BSA Cal. No 140-07-A (see Golia v. Srinivasan, Index No. 45941/07, Apr. 21, 2008) ("April 21, 2008 order"); and

WHEREAS, pursuant to the April 21, 2008 order, the instant appeal was heard with BSA Cal. No. 140-07-A on October 8, 2008, with a continued hearing on November 18, 2008, and then to decision on January 13, 2008; the record is separate for the respective appeals; and

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

WHEREAS, the subject site is located at 607 Bayside Drive, within an R4 zoning district; and

WHEREAS, the subject site is located on Block 16350, Lot 300, which is owned by the Breezy Point

Cooperative, Inc. (the "Breezy Point Cooperative" and the "Cooperative"), a 403-acre privately-owned community incorporated in 1960; the Cooperative property is comprised of 2,834 separate residential plots leased to individual shareholders/proprietary tenants; and

WHEREAS, the subject site is located at the intersection of Bayside Drive, a mapped but unbuilt street, and a service road, which is unmapped and functions as a street pursuant to ZR § 12-10(d); and

WHEREAS, the subject site is an individually designated plot within the Breezy Point Cooperative of approximately 1,944 sq. ft. and is occupied by a single-family home constructed pursuant to the subject permit which is stated to be nearly complete; and

PARTIES AND SUBMITTED TESTIMONY

WHEREAS, this appeal is brought on behalf of the Mrs. Rosemary Golia, a proprietary tenant of the Cooperative who occupies a single-family home at 2 Bayside to the rear of the subject site (the "appellant"); and

WHEREAS, DOB was represented by counsel in this appeal; and

WHEREAS, the appellant, the owner of the home at 607 Bayside Avenue (the "607 Homeowner"), and the Cooperative were represented by counsel in this appeal; and

WHEREAS, Mr. Joseph Sherry, the project architect of the contested building (the "project architect"), testified in opposition to the instant appeal; and

WHEREAS, Arthur C. Lighthall, General Manager of the Breezy Point Cooperative, testified in opposition to the instant appeal; and

PROCEDURAL HISTORY

WHEREAS, on May 10, 2006, DOB issued a demolition permit and on May 17, 2006 issued New Building Permit No. 402074045 (the "Permit") to the 607 Homeowner for the construction of a single-family home at 607 Bayside Drive; and

WHEREAS, on September 6, 2006, the appellant filed the instant appeal in opposition to DOB's approval of the Permit; and

WHEREAS, pursuant to a special audit, on February 27, 2007, DOB issued a ten-day notice of its intent to revoke the Permit based on the failure to provide the required front yard; and

WHEREAS, by letter dated April 11, 2007, DOB informed the project architect that, to avoid revocation of the Permit, the plans needed to be revised to reflect a complying front yard; and

WHEREAS, by letter dated April 27, 2007, DOB informed the project architect that the Permit was revoked; and

WHEREAS, subsequent to the revocation, Board staff informed the appellant that because the Permit had been revoked, as requested, the appeal was now moot and would be dismissed on May 15, 2007; and

WHEREAS, notwithstanding the revocation of the permit, the appellant made a submission, dated May 3, 2007, requesting that the Board not dismiss the case for the following reasons: (1) the basis for the revocation of the

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New Building Permit was only one of the issues claimed in the appeal, and DOB's basis for the determination was flawed; (2) DOB failed to enforce the Zoning Resolution; (3) DOB made procedural errors; and (4) the appellant's property rights were denied; and

WHEREAS, on May 15, 2007 the Board dismissed the instant appeal; the resolution noted that DOB had revoked the Permit based on a finding of non-compliance of the front yard and that, although the revocation is only associated with one issue, the permit was revoked in full, thereby providing the remedy sought; and

WHEREAS, as discussed above, the appellant then commenced an Article 78 petition seeking inter alia a reopening of the instant appeal to hear the additional bases for the revocation of the permit (filed as *Golia v. Srinivasan*, Index No. 45941/07); and

WHEREAS, pursuant to the April 21, 2008 order rendered in the above-referenced case, the Board reopened the hearing on the instant appeal to make findings concerning all the alleged grounds for revocation of the permit; and

ISSUES PRESENTED

WHEREAS, the appellant contends that the issuance of the permit was invalid for the following reasons: (1) the lot area is contrary to the minimum lot area requirements of ZR § 23-32 and is not subject to the small lot exception of ZR § 23-33; (2) the premises violates the rear yard requirements set forth in ZR § 23-47; (3) the premises does not provide the required ten-foot front yard, per ZR § 23-45; (4) the setback of the terrace from Bayside Drive is contrary to the depth and level of the front yard as set forth in ZR §§ 23-45 and 23-42; (5) the required minimum distance between buildings is not provided per ZR § 23-711; (6) construction on the subject site violated GCL § 36 and Section 27-291 of the Administrative Code; (7) the premises is contrary to the Building Code's Table RS 16-21 regarding the distance between septic tanks, foundation walls, and seepage pits; (8) approval of the subject permit required prior certification from the City Planning Commission, per ZR § 62-71; and (9) the premises does not comply with the off-street parking requirements set forth in ZR § 25-21; and

WHEREAS, these nine arguments are addressed below; and

Compliance with minimum lot area requirements

WHEREAS, ZR § 23-32 requires a minimum of 3,800 square feet for a single-family detached residence in an R4 district, and

WHEREAS, the subject site is located in an R4 district and has a lot area of 1,944 sq. ft.; and

WHEREAS, the appellant contends that the subject lot therefore does not comply with minimum lot area requirements of ZR § 23-32; and

WHEREAS, a submission by the Cooperative states that, as an existing small lot, the premises is expressly exempted from the minimum lot area and width requirements under ZR § 23-33; and

WHEREAS, ZR § 23-33 states, in relevant part, that in an R4 district, a single-family or two-family house may be

built on a zoning lot consisting entirely of a tract of land that (a) has less than the prescribed minimum lot area or lot width; and (b) was owned separately and individually from all other adjoining tracts of land, both on December 15, 1961 and on the date of application for a building permit; and

WHEREAS, DOB states that for the purposes of applying the Zoning Resolution, each plot within Breezy Point, as certified by the Breezy Point Cooperative, is accepted as a de facto "zoning lot" as defined by ZR § 12-10(a); and

WHEREAS, in a reconsideration dated February 15, 2005, the former Queens Borough Commissioner determined that the premises was an existing small lot prior to 1961, based on a certification by the Cooperative that the 607 Homeowner had owned the premises separately and individually since before the formation of the cooperative in 1960; and

WHEREAS, accordingly, DOB states that the subject lot complies with the provisions of ZR § 23-33 for existing small lots and does not violate ZR § 23-32; and

WHEREAS, the appellant additionally argues that the premises violates ZR § 23-32 because the Breezy Point Cooperative property is currently held in a single tax lot, Lot 300 in Block 16350, of which the premises in question is a part, and therefore the premises is not an existing zoning lot owned separately and individually from adjoining lots; and

WHEREAS, a submission by the Breezy Point Cooperative states that evidence demonstrating that the premises has been a separate individual plot of the Cooperative since before 1961 includes a 1946 topographical map, the plot card for the subject site, as well as a survey; and

WHEREAS, the Cooperative further states that the fact that adjoining lots are under its ownership does not alter the fact that the premises has been maintained as a separate and individual lot since prior to the adoption of the Zoning Resolution; and

WHEREAS, the appellant additionally argues that the subject site cannot qualify as an existing small lot under ZR § 23-33 because the size of the lot has changed; and

WHEREAS, the appellant states that the plot card filed with DOB indicates a zoning lot of 33.6' x 57.4' while the survey of the subject property filed together with the building permit application identifies the plot as 33.62' x 59.93'; and

WHEREAS, a submission by the Cooperative states the subject zoning lot has not been enlarged, reduced or reconfigured in any way since 1960 and points out that the appellant has offered no evidence establishing a reconfiguration of the zoning lot, other than identifying the discrepancy between the plot card and the survey filed with the permit application; and

WHEREAS, the Cooperative further states that the aforementioned discrepancy totals no more than two feet and likely resulted from the irregular shape of the subject lot and by the preparation of the original plot card by a person who was not a licensed surveyor; and

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WHEREAS, the appellant further argues that the 2006 survey shows that the subject site was enlarged through the annexation of a 12'-0" corridor from the appellant's plot; and

WHEREAS, the Cooperative states that the 2006 survey is contradicted by the official survey of the appellant's premises, as well as by the plot cards for appellant's lot and that of the subject site; and

WHEREAS, the appellant states that Department of Buildings Directive No. 14-1967, dated May 16, 1967, establishes that "it is a legal impossibility" for the subject site to be owned "separately and individually" from all adjoining lots, as required for existing small lots under ZR § 23-33; and

WHEREAS, the Board finds that, contrary to the appellant's contention, Directive No. 14-1967 does not specifically apply to Breezy Point, further, that the appellant has provided no evidence that the subject lot was in common ownership with an adjacent lot; and

WHEREAS, the applicant also argues that the Building permit should not have been issued for the subject site because it was not owned separately and individually from all adjoining plots of land, citing Gherardi & Sons v Glass, 32 A.D2d 960 (1st Dep't 1969); and

WHEREAS, the Board notes that the Gherardi case is irrelevant to the instant appeal, inasmuch as the appellant has not established that the subject site was in common ownership with an adjacent lot or was combined or reconfigured after 1961; and

WHEREAS, based on the foregoing, the Board rejects the appellant's argument and finds that the subject lot does not violate the minimum lot area requirements of ZR § 23-32; and

Compliance with rear yard requirements

WHEREAS, the appellant contends that the subject site violates the rear yard requirements set forth in ZR § 23-47; and

WHEREAS, in pertinent part, ZR § 23-47 requires that a rear yard with a minimum depth of 30'-0" be provided on any zoning lot, except a corner lot; and

WHEREAS, however, in a February 15, 2005 reconsideration, the former Queens Borough Commissioner determined that the subject site is a corner lot and is therefore exempt from the rear lot requirements of ZR § 23-47; and

WHEREAS, the Cooperative also states that the premises is a corner lot under the Zoning Resolution because it is within 100 feet of the intersection of two streets, namely, Bayside Drive and an unmapped service road; and

WHEREAS, a "corner lot" is defined by ZR § 12-10 as a "zoning lot which adjoins the point of intersection of two or more streets and in which the interior angle formed by the extensions of the street lines in the direction which they take at their intersections with lot lines other than street lines, forms an angle of 135 degrees or less" and

WHEREAS, ZR § 12-10(d) defines a "street" as "any other public way that on December 15, 1961 was performing

the functions usually associated with a way shown on the City Map;" and

WHEREAS, DOB states that the service road adjacent to the premises is a street under ZR § 12-10(d) based on findings that: (i) the service road existed prior to 1961; and (ii) the service road performs the functions usually associated with a street by providing access to homeowners and visitors to the adjacent parking area, and access to emergency vehicles and sanitation trucks to the surrounding homes; and

WHEREAS, the appellant contends that the service road is not a street based on holdings in *In re Mayor of New York*, 135 N.Y. 252 (1892); *In re Eureka Basin*, 96 N.Y. 42 (1884); *Forest Hills Gdns. Corp. v. Baroth*, 147 Misc. 2d 404 (Sup. Ct. 1990); and *Hassinger v. Kline*, 91 A.D. 2d 988 (2d Dep't 1983); and

WHEREAS, the Board finds that none of the cases cited by the appellant concern the question of whether the adjacent unmapped service road can be considered a "public way" that "perform[s] the functions usually associated with a way shown on the City Map;" and

WHEREAS, *In re Mayor of New York* and *In re Eureka Basin* concern whether a proposed use of land can appropriately be considered public so as to support being acquired by eminent domain; as DOB points out, these cases are not relevant to the instant appeal since the City is not seeking to acquire the service road by eminent domain; and

WHEREAS, DOB states that the *Forest Hills Gdns.* and *Hassinger v. Kline* cases, which concern whether private streets became public streets through an implied dedication or prescriptive easement, are equally inapplicable, since the agency is not arguing that the service road has been transformed into a public street under a theory of prescriptive easement; and

WHEREAS, the appellant contends that the service road cannot qualify as a street under ZR § 12-10 because it is private; and

WHEREAS, the Board note that the appellant is mistaken, because if a street under ZR § 12-10(d), were public, then the provision stating that it 'was performing the functions of a way shown on the City Map,' would make no sense, because, as a public street, it would necessarily be shown on the City Map; therefore, the Board concludes that a ZR § 12-10(d) street is expressly not a public street; and

WHEREAS, the Board further notes that a "covered pedestrian space" for which a floor area bonus was awarded or could be awarded is defined as a street by ZR § 12-10(e), notwithstanding its private ownership, so long as the space inter alia "functions as a street;" and

WHEREAS, moreover, the broad manner in which "street" is defined under ZR § 12-10 is further illustrated by its narrow exemption of, "a private road or driveway that serves only to give vehicular access to an accessory parking or loading facility, or to allow vehicles to take on or discharge passengers at the entrance to a building; and

WHEREAS, appellant has not argued that the contested service road serves only as a private driveway; and

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WHEREAS, the Board finds that the service road in question is a street pursuant to ZR § 12-10(d) because it performs the functions of a street and existed prior to 1961; and

WHEREAS, DOB further states that the service road intersects with Bayside Drive at an angle of 135 degrees or less, thereby forming a corner lot at the subject site; and

WHEREAS, the appellant contends that the service road intersects with Bayside Drive at an angle of more than 135 degrees, based on a report by a licensed surveyor, and therefore the subject site cannot be considered as a corner lot, even if the service road were construed to be a street; and

WHEREAS, the Board finds the appellant's evidence to be neither conclusive nor compelling, as the 1946 map used as the basis for the surveyor's report depicts the entire Rockaway Point area in an 8 1/2" x 11" format and the scale of the contested service road, as represented, is so small that that the Board finds the accuracy of the purported measurement of its angle to be highly questionable; and

WHEREAS, the Board finds that the subject site is a corner lot which is exempt from the rear lot requirements of ZR § 23-47; and

Compliance with front yard requirements

WHEREAS, the appellant contends that the subject site does not provide the required ten-foot front yard, per ZR § 23-45; and

WHEREAS, the Board addresses this issue in the resolution for BSA Cal. No. 140-07-A, finding that the subject site does not comply with DOB's current interpretation of ZR § 23-45, but that, based on legal precedent, ambiguity of the provisions as applied to Breezy Point and evidence of consistent historic practice respecting the agency's application of ZR § 23-45 in Breezy Point, the Permit was not thereby invalidated; and

Depth and level of the front yard

WHEREAS, the appellant contends that the front yard setback and front yard level of the Premises from Bayside Drive is contrary to ZR §§ 23-45 and 23-42 because a terrace extends by 14'-8" into the required front yard at the subject site; and

WHEREAS, ZR § 23-45 requires a 20-foot front yard in an R4 zoning district and ZR § 23-42 prohibits the construction of any building or structure above ground level in any required yard; and

WHEREAS, DOB states that the terrace was built within the footprint of the prior non-complying building and is therefore a permitted reconstruction under ZR § 54-41; and

WHEREAS, ZR § 54-41 provides that a non-complying building may be demolished and reconstructed so long as the reconstruction does not create a new non-compliance or increase the pre-existing degree of non-compliance; and

WHEREAS, DOB further states that the terrace is not contrary to ZR § 23-42 because a terrace is a permitted obstruction per ZR § 23-44; and

WHEREAS, the Board rejects the appellant's

argument and finds that the terrace is a permitted reconstruction per ZR § 54-41 and a permitted obstruction per ZR § 23-44; and

Required distance between buildings

WHEREAS, the appellant contends that the required minimum distance between buildings on the same zoning lot is not provided per ZR § 23-711; and

WHEREAS, under ZR § 23-711, a minimum distance is required of at least forty feet from the back wall of the subject site and the back wall of the appellant's site, if both homes have windows and are no more than 25 feet in height; and

WHEREAS, based on the record, the Board notes that the distance between the back walls of the two respective sites is less than 40 feet; and

WHEREAS, as stated above, DOB construes each individual plot within Breezy Point to be a separate "zoning lot" for purposes of applying the Zoning Resolution and, since only the home of the 607 Homeowner occupies the subject zoning lot, ZR § 23-711 is therefore not applicable to the subject site; and

WHEREAS, accordingly, the Board finds that the required minimum distance between buildings is not violated because ZR § 23-711 is inapplicable to the subject site; and

Construction on an unmapped street

WHEREAS, the appellant contends that the subject site violates Section 36 of the General City Law ("GCL") and Section 27-291 of the Administrative Code of the City of New York; and

WHEREAS, GCL § 36 provides that no certificate of occupancy can be issued for construction that is not fronting on an official mapped street; and

WHEREAS, Section 27-291 of the Administrative Code requires that at least eight percent of the total perimeter of a proposed building must front directly upon a legally mapped street; and

WHEREAS, DOB states that the subject premises fronts on Bayside Drive, which is a legally mapped street, and therefore GCL § 36 is inapplicable; and

WHEREAS, the Board notes that more than eight percent of the perimeter fronts on Bayside Drive, and therefore Section 27-291 of the Administrative Code of the City of New York is inapplicable; and

WHEREAS, the appellant argues that the subject home has eliminated the appellant's access to a mapped street and rendered it in violation of GCL § 36; and

WHEREAS, the Board notes that the appellant failed to explain how the proposed construction eliminates access to a mapped street and finds that the question of whether the appellant's property may now, or at a future time, consequently require an approval under GCL § 36 is not properly before it, as the validity of the Permit does not implicate the status of the adjacent property; and

WHEREAS, the appellant further contends that approval of the Permit was inconsistent with DOB technical memoranda based on opinions by the Corporation Counsel concerning construction in the bed of a mapped street; and

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WHEREAS, the Board notes that a submission by the appellant includes an Opinion of the Corporation Counsel numbered 107,337 and stamped January 27, 1971, and DOB memoranda dated February 2, 1971, July 10, 1973, and July 20, 1970; and

WHEREAS, the Board further notes that the appellant failed to explain the relevance of the referenced technical memoranda and Corporation Counsel opinion to the issues raised by this appeal and therefore the Board is unpersuaded that the alleged inconsistency has any bearing on the subject site and its compliance with the Zoning Resolution; and

WHEREAS, the Board therefore rejects the appellant's argument that the subject site violates GCL § 36 of the General City Law and Section 27-291 of the Administrative Code of the City of New York; and

Required Distance between Septic Tanks

WHEREAS, the appellant contends that the premises are contrary to the Building Code's Table RS 16-21 regarding the distance between septic tanks, foundation walls, and seepage pits; and

WHEREAS, DOB states that on-site wastewater disposal systems within Breezy Point are required to meet Department of Environmental Protection standards "to the greatest extent feasible from an engineering point of view," and

WHEREAS, at a minimum, if space is available, the Department will require that a septic tank be installed to replace an existing cesspool; and

WHEREAS, DOB states that the owner of the subject site replaced the existing tank and that Department was satisfied that the application met the standards to the greatest extent feasible from an engineering point of view and that the approval to replace the septic tank at the premises was properly issued; and

WHEREAS, accordingly, the Board finds that the premises are not contrary to the Building Code's Table RS 16-21 regarding the distance between septic tanks, foundation walls, and seepage pits; and

Waterfront Certification

WHEREAS, the appellant contends that the proposed home requires a waterfront certification from the City Planning Commission, per ZR § 62-71 which has not been secured, and therefore such construction is non-compliant; and

WHEREAS, ZR § 62-711 provides, in relevant part, that no building permit shall be issued for any development on a waterfront block (as defined by the Zoning Resolution) without a certification by the Chairperson of the City Planning Commission that there is no waterfront public access or visual corridor requirement for the development; and

WHEREAS, DOB states that ZR § 62-71 exempts developments of one and two-family residences within detached or zero lot line buildings on existing zoning lots of less than 10,000 square feet in any district from the requirements of ZR §§ 62-711 and 62-712, provided such zoning lots are not included within an area subject to a waterfront access plan, pursuant to ZR § 62-80; and

WHEREAS, DOB further states that because the subject home is a detached, single-family residence in an existing zoning lot of 1,944 sq. ft. and is not included in an area subject to a Waterfront Access Plan, it is therefore exempt from City Planning certification requirement for visual corridors and zoning lot subdivisions; and

WHEREAS, accordingly, the Board rejects the appellant's argument and finds that no waterfront certification is required from the City Planning Commission under ZR § 62-71; and

Off-street parking requirements

WHEREAS, ZR § 25-21 requires that parking be provided for all "new residences constructed after December 15, 1961 . . . as a condition precedent to the use of such residences;" and

WHEREAS, ZR § 25-22 requires that one off-street parking space be provided for each new dwelling unit in an R4 zoning district; and

WHEREAS, the appellant contends that because an off-street parking space was not provided in connection with the new construction at the subject site, the subject premises does not comply with the requirements of ZR § 25-22; and

WHEREAS, the appellant contends that DOB improperly granted a "waiver" of the required off-street parking space; and

WHEREAS, DOB states that because the existing building was in existence prior to 1961 and did not comply with off-street parking regulations that, pursuant to ZR § 54-41, the reconstructed building is not required to comply with the subsequently adopted parking requirements; and

WHEREAS, ZR § 54-41 provides that a non-complying single-family home may be demolished and reconstructed without having to comply with the applicable district bulk regulations, so long as the reconstruction does not create a new non-compliance or increase the pre-existing degree of non-compliance; and

WHEREAS, DOB additionally points out that the emphasis of ZR § 25-21 is on use, and that because a residential use already existed at the premises, any residential use constructed cannot be considered a new residential use and therefore, parking is not required; and

WHEREAS, DOB further notes that group parking is available in Breezy Point to meet the parking needs of the 607 Homeowner; and

WHEREAS, the Board finds that because the pre-existing residential use at the subject site did not comply with off-street parking regulations, and the new construction merely maintains the pre-existing non-compliance without creating a new non-compliance or increasing the degree of non-compliance, that the 607 Homeowner is exempt from the parking requirements of ZR § 25-22; and

WHEREAS, based on the foregoing, the Board rejects the appellant's arguments and finds that none of the grounds alleged for revocation have been established; and

WHEREAS, with respect to the appellant's argument that the front yard requirement of ZR § 23-45 is violated by the subject home, the Board notes again that DOB revoked the contested permit after finding that the appropriate

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measure of a front yard setback under ZR § 23-45 is from the street line and that the front yard was thereby non-compliant; and

WHEREAS, BSA Cal. No. 140-07-A, also decided herewith on January 13, 2009, sought a reversal of that revocation and a reinstatement of the Permit; and

WHEREAS, as set forth in the referenced resolution, the Board concurs with DOB that the appropriate measure of a front yard setback under ZR § 23-45 is from the street line and finds the front yard of the subject site to be non-compliant; and

WHEREAS, the Board thereby denies the request for a reversal of the DOB decision finding non-compliance with ZR § 23-45; and

WHEREAS, in BSA Cal. No. 140-07-A, the Board also found pursuant, to its powers under Section 666(7) of the New York City Charter, that the record contained sufficient evidence of ambiguity in the language and prior application of ZR § 23-45 to support a reinstatement of New Building Permit No. 402074045; and

WHEREAS, the Board's determinations in BSA Cal. No. 140-07-A with respect to the compliance of the subject site with ZR § 23-45 and the validity of New Building Permit No. 402074045 apply equally to the instant appeal.

Therefore it is resolved that the instant appeal seeking a revocation of New Building Permit No. 402074045 based on the alleged violation of: (1) the minimum lot area requirements of ZR § 23-32; (2) the rear yard requirements of ZR § 23-47; (3) front yard requirements of ZR § 23-45; (4) the front yard depth and level requirements of ZR §§ 23-45 and 23-42; (5) the required minimum distance between buildings required by ZR § 23-711; (6) GCL § 36 and Section 27-291 of the Administrative Code of the City of New York concerning construction on an unmapped street; (7) the Building Code's Table RS 16-21 regarding the distance between septic tanks, foundation walls, and seepage pits; (8) the waterfront certification requirement of ZR § 62-71; and (9) the off-street parking requirements of ZR § 25-21, is denied.

Adopted by the Board of Standards and Appeals, January 13, 2009.

140-07-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Breezy Point Cooperative, Incorporated, owner; Thomas Carroll, lessee.

SUBJECT – Application May 25, 2007 – Appeal seeking to reverse the Department of Building's decision to revoke permits and approvals for a one family home. R4 zoning district.

PREMISES AFFECTED – 607 Bayside Drive, Adjacent to service road, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Appeal granted in part and denied in part.

THE VOTE TO GRANT –

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

Negative:.....0

THE VOTE TO DENY –

Affirmative:0

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

THE RESOLUTION: 1

WHEREAS, the instant appeal comes before the Board in response to a letter of revocation of Application No. 402074045, dated April 27, 2007, from the Queens Borough Commissioner, which was accompanied by a letter from the Assistant General Counsel of the Department of Buildings (“DOB”) stating the building permit was revoked due to the applicant’s failure to provide a front yard at the premises, as set forth in ZR § 23-45; and

WHEREAS, this appeal challenges DOB’s decision to revoke the above-noted application and subsequently issued building permit; and

WHEREAS, on September 6, 2006, the owner of the adjacent home to the rear, located at 2 Bayside, had earlier filed an appeal seeking to revoke the subject permit on the basis of nine alleged violations of the Zoning Resolution; the appeal by the neighbor is denominated BSA Cal. No. 229-06-A, and

WHEREAS, on May 15, 2007, the Board dismissed BSA Cal. No. 229-06-A as moot, based on the revocation of the permit by DOB due to a finding of non-compliance with ZR § 23-45; and

WHEREAS, a public hearing was held on this application on August 14, 2007 after due notice by publication in *The City Record*, with a continued hearing on November 20, 2007; and

WHEREAS, the public hearing on the instant application was suspended pending a decision on an Article 78 petition filed in Queens Supreme Court by the appellant seeking an order compelling the Board to subpoena witnesses and documents in the instant appeal (see *Carroll v. Srinivasan*, 110199/07, described below); and

WHEREAS, on January 30, 2008, the Supreme Court ordered the Board to issue certain of the subpoenas requested by the appellant in the instant appeal (see *Carroll v. Srinivasan*, 110199/07, Jan. 30, 2008); and

WHEREAS, pursuant to the January 30, 2008 order, the Board issued the subpoenas on September 26, 2008; on October 8, 2008, DOB moved to quash them; and

WHEREAS, on November 17, 2008, the Chair granted the motion to quash; the decision by the Chair, dated January 13, 2009, is within the record for the instant appeal; and

WHEREAS, the owner of the adjacent home also filed an Article 78 petition in Queens County Supreme Court challenging the Board’s dismissal of BSA Cal. No. 229-06-

1 Headings are utilized only in the interests of clarity and organization.

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A and seeking an order: (a) declaring the Premises to be contrary to certain provisions of the Zoning Resolution; (b) directing DOB to revoke the permit based on all provisions of the Zoning Resolution which were allegedly violated; or, alternatively (c) directing the Board to conduct a hearing on DOB's decision to revoke of the permit based on only one of the Zoning Resolution provisions allegedly violated (see *Golia v. Srinivasan*, Index No. 45941/07); and

WHEREAS, on April 21, 2008, the Supreme Court remanded BSA 229-06-A to the Board for findings concerning all alleged grounds for revocation of the permit and ordered that the case be consolidated with the instant appeal (see *Golia v. Srinivasan*, Index No. 45941/07, Apr. 21, 2008) ("April 21, 2008 order"); and

WHEREAS, pursuant to the April 21, 2008 order, the instant appeal was heard together with BSA Cal. No. 229-06-A on October 8, 2008, with continued hearing on November 18, 2008, and then to decision on January 13, 2008; the record is separate for the respective appeals; and

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

WHEREAS, the subject site is located at 607 Bayside Drive, within an R4 zoning district; and

WHEREAS, the subject site is located on Block 16350, Lot 300, which is owned by the Breezy Point Cooperative, Inc. (the "Breezy Point Cooperative" and the "Cooperative"), a 403-acre privately-owned community incorporated in 1960; the Cooperative property is comprised of 2,834 separate residential plots leased to individual shareholders/proprietary tenants; and

WHEREAS, the subject site is located at the intersection of Bayside Drive, a mapped but unbuilt street, and a service road which is unmapped and functions as a street pursuant to ZR § 12-10(d); and

WHEREAS, the subject site is an individually designated plot within the Cooperative of approximately 1,944 sq. ft. and is occupied by a single-family home constructed pursuant to the subject permit which is stated to be nearly complete; and

PARTIES AND SUBMITTED TESTIMONY

WHEREAS, this appeal is brought on behalf of Mr. Thomas E. Carroll, a proprietary tenant occupying a single-family home at 607 Bayside Drive (the "tenant"); and

WHEREAS, the applicant states that the tenant has occupied the subject property since 1960; and

WHEREAS, DOB was represented by counsel in this appeal; and

WHEREAS, the tenant, Mrs. Rosemary Golia, a neighbor residing at 2 Bayside and appellant in BSA Cal. No. 229-06-A (the "neighbor"), and the Breezy Point Cooperative were represented by counsel in this appeal; and

WHEREAS, Mr. Joseph Sherry, the project architect of the contested building (the "project architect"), testified in support of the instant appeal; and

WHEREAS, Arthur C. Lighthall, General Manager of the Breezy Point Cooperative testified in support of the instant appeal; and

PROCEDURAL HISTORY

WHEREAS, on May 10, 2006, DOB issued a demolition permit and on May 17, 2006 issued New Building Permit No. 402074045 (the "Permit") to the proprietary tenant for the construction of a single-family home at 607 Bayside Drive; and

WHEREAS, on September 6, 2006, the neighbor filed BSA Cal. No. 229-06-A appealing DOB's approval of the Permit; and

WHEREAS, pursuant to a special audit on February 27, 2007, DOB issued a ten-day notice of its intent to revoke the Permit based on the tenant's failure to provide the required front yard; and

WHEREAS, by letter dated April 11, 2007, DOB informed the project architect that, to avoid revocation of the Permit, the plans needed to be revised to reflect a complying front yard; and

WHEREAS, by letter dated April 27, 2007, DOB informed the project architect that the Permit was revoked; and

WHEREAS, On May 24, 2007, the instant appeal was filed challenging the revocation of the Permit; and

ISSUES PRESENTED

WHEREAS, the appellant contends that the Board should reverse the prior findings of DOB and reinstate the Permit because: (i) the proposed home complies with front yard requirements of the Zoning Resolution and is consistent with DOB's prior determination and precedents; (ii) DOB is equitably estopped from revoking the Permit; and (iii) the appellant has a vested right to continue construction under the Permit; and

WHEREAS, these three arguments are addressed below; and

Compliance with the Zoning Resolution

WHEREAS, on April 27, 2007, DOB revoked the Permit based on a finding of non-compliance with the front yard requirements of ZR § 23-45; and

WHEREAS, as set forth in ZR § 23-45, a ten-foot front yard must be provided in an R4 zoning district; ZR § 12-10 defines a front yard as a "yard extending along the full length of the front lot line"; and

WHEREAS, the appellant states that DOB has consistently accepted that individual plots in existence before the 1961 adoption of the Zoning Resolution within the Breezy Point community are to be treated as separate record zoning lots under ZR § 12-10; and

WHEREAS, this fact has not been disputed by any party; and

WHEREAS, the appellant argues that the subject site complies with the front yard requirements of ZR § 23-45 because the distance between the zoning lot line and the proposed home exceeds ten feet and the historical practice of DOB has been to measure the front yard from the zoning lot line; and

WHEREAS, the Board notes that the zoning lot line, as established by the Breezy Point Cooperative, is located on the center line of the service road adjacent to the subject site; and

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WHEREAS, DOB contends that the Zoning Resolution requires that the front yard be measured from the street line, rather than the zoning lot line, which in this case would be from the unmapped service road bordering the home; and

WHEREAS, ZR § 12-10 defines a front lot line as the “street line,” which is defined as “a lot line separating a street from other land;” and

WHEREAS, DOB states that because the subject site was established as a lot of record existing on December 15, 1961, the street line may be located within the zoning lot and is not required to be bounded by a street (see ZR § 12-10(a)); and

WHEREAS, DOB further states that, in such cases, there is no front lot line separating a street from other land and the “street line” becomes the line within a zoning lot that separates an open street from other developable land within the zoning lot; and

WHEREAS, ZR § 12-10(d) defines a “street” as “any other public way that on December 15, 1961 was performing the functions usually associated with a way shown on the City Map;” and

WHEREAS, as the appellant established that the service road bordering the subject site is open and in use for access by homeowners, emergency and sanitation vehicles, DOB accepts the service road bordering the subject site as a street, pursuant to ZR § 12-10(d); and

WHEREAS, DOB contends that where the street is open and in use within a zoning lot, it is reasonable to interpret the street line as the line separating the open street from other land on a zoning lot; and

WHEREAS, the agency therefore concludes that the revocation of the Permit for a failure to provide a ten-foot front yard from the street line separating the open street from the rest of the zoning lot was proper and consistent with the Zoning Resolution; and

WHEREAS, a DOB submission indicates that measuring front yard setbacks from the street line is consistent with the manner in which front yard setbacks are determined in other cooperative associations in which a lot line falls within the bed of a street; and

WHEREAS, DOB also notes that the appellant regards the unmapped service road as a “street” pursuant to ZR § 12-10(d), which would exempt the home from the rear yard requirement under ZR § 23-47, but does not regard it as a “street” for the purposes of determining compliance with the front yard requirements of ZR § 23-45 applying to a corner lot, which would require a front yard along the frontage on the service road, in addition to the front yard that is provided along Bayside Drive; and

WHEREAS, DOB states that the appellant’s choice to define the service road as a street reinforces the legislative intent to provide a ten-foot front yard from the street line and/or street usage of the service road; and

WHEREAS, however, the applicant states that when the Permit was approved, DOB’s practice was to measure the front yard from the zoning lot line; and

WHEREAS, the Board notes that throughout most of

New York City, the street line of a property is coincident with its property line and that ZR §12-10 defines a front yard as a “yard extending along the full length of the front lot line”; and

WHEREAS, the Board further notes that DOB formerly measured the front yard of Breezy Point properties from a line construed to be a front lot line, and that doing so was consistent with the plain language of ZR § 12-10; and

WHEREAS, however, because the prior interpretation was not inconsistent with the plain language of ZR § 12-10, the interpretation is not irrational, notwithstanding the fact that the property line was not coincident with the street line and, indeed lay within the bed of a street; and

WHEREAS, the Board finds that the unusual manner in which Breezy Point properties are defined and formed – which inter alia gives tenants a leasehold interest in portions of private ways defined as streets, so that the property line and the street line are not coincident as is commonly the case– has led to an ambiguity in the application of ZR § 23-45; and

WHEREAS, the Board also finds that the previous interpretation of ZR § 23-45 as applied by DOB to the front yard setbacks in Breezy Point was not irrational or clearly erroneous based on the unique circumstances of this community; and

WHEREAS, DOB contends that the previous interpretation was erroneous and it that it may not be estopped from correcting its error citing *Parkview Assoc. v. City of New York*, 71 N.Y.2d 274, 282 (1988)); and

WHEREAS, the Board finds *Parkview* to be easily distinguishable from the instant case based on its facts; and

WHEREAS, *Parkview* concerned the mistaken issuance of a permit for the construction of a 31-story building on a site with a height limit of 19 stories, based on an erroneous interpretation of the Zoning Map; the Court held that DOB was not estopped from revoking the permit because the Zoning Map clearly showed the height limitation and “reasonable diligence by a good-faith inquirer would have disclosed the true facts and the bureaucratic error;” and

WHEREAS, in the instant case, there was no “bureaucratic error” in the Permit issuance, as it is uncontroverted that the front lot line was consistently construed to be coextensive with the zoning lot line for more than 40 years; and

WHEREAS, as evidence of this consistent prior policy, the appellant points to determinations by the Queens Borough Commissioner on February 27, 2006 and August 24, 2006; and

WHEREAS, the appellant states that, in both determinations, the Queens Borough Commissioner confirmed that the Permit complied with the front yard requirements of ZR § 23-45; and

WHEREAS, specifically, in the August 24, 2006 determination, the Deputy Borough Commissioner states that “[i]n approving job applications within the Breezy Point Cooperative, DOB has recognized the center line of a service road or walk as the property line. In the case of the captioned application, measuring the property line from the

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center line of the adjacent service road satisfies the minimum ten foot front-yard setback requirement of ZR S 23-45. Based on my review of the above job applications, it is the position of the Department that the applicant complied with all relevant sections of the . . . Zoning Resolution;” and

WHEREAS, the appellant additionally cites to a letter of July 17, 2006 from the Enforcement Unit attorney to counsel for the neighbor, similarly stating that measuring the property line from the center line of the service road adjacent to the subject site satisfies the ten-foot minimum front yard setback requirement of ZR § 23-45; and

WHEREAS, DOB concedes that its past practice accepted the center line of the service road within the plots in Breezy Point as the property line from which to measure a front yard, but contends now that measuring the front yard from the middle of an open street was erroneous; and

WHEREAS, the Board notes that, as opposed to Parkview, where the error in interpretation would be obvious to anyone who consulted the zoning map, it would have been impossible, using any degree of “reasonable diligence” for the appellant to know that DOB would apply a new interpretation to his application, given the ambiguity of the Zoning Resolution language as it was applied in Breezy Point, and the consistent application of the prior interpretation under which his Permit was approved; and

WHEREAS, furthermore, it is well settled that “zoning codes, being in derogation of the common law, must be strictly construed against the enacting municipality and in favor of the property owner” (see Mamaroneck Beach and Yacht Club, Inc., 53 A.D. 3d 494 (2d Dep’t 2008)), and ambiguities are to be resolved in favor of the property owner (see Incorporated Vill of Saltaire v. Feustel, 40 A.D. 3d 586(2d Dep’t 2007)); and

WHEREAS, in Mamaroneck Beach and Yacht Club, after the village’s Director of Buildings concluded that the proposed development was a permitted use under the zoning code, an association of neighboring property owners appealed the “interpretation” and the Village subsequently enacted zoning amendments intended to prevent the proposed development; and

WHEREAS, based on facts which are somewhat similar to the instant case, the Court found that the zoning board was required to apply the original zoning provision to the proposed development, which would be nonconforming under the new statute; and

WHEREAS, furthermore, it is well settled that the Board has the discretion to interpret an ambiguous provision in a case where it is difficult to promulgate a “definitive ordinance” (see Matter of Arceri v. Town of Islip Zoning Bd. of Appeals, 16 A.D. 3d 411, 412 (2d Dep’t 2005); see also Mamaroneck, 53 A.D.3d at 498; and

WHEREAS, the Board notes that the difficulty of promulgating and applying a “definitive” front yard setback provision to many Breezy Point properties is demonstrated by the fact that ZR §12-10 defines a front yard as a “yard extending along the full length of the front lot line”, which in Breezy Point is construed to be a line which, in the

appellant’s case falls within the bed of the adjacent street; and

WHEREAS, in the appellant’s case, measuring the front yard from that point is inconsistent with the Zoning Resolution requirement that a ten-foot front yard be provided from the street line; and

WHEREAS, DOB contends that if the Board finds that the current interpretation of ZR § 23-45 is consistent with its plain meaning and legislative intent that a ten-foot front yard be provided from the street line in the subject R4 zoning district, then the Board must correspondingly find that DOB’s prior interpretation was “clearly erroneous” and that the Permit is invalid, based on In the Matter of Charles A. Field Del. Servs. (66 N.Y.2d 516 (1985)), and

WHEREAS, concomitantly, DOB argues that, if the Board found that both interpretations were valid, Field dictates that “the failure to conform to agency precedent will, therefore, require reversal on the law as arbitrary, even though there is in the record substantial evidence to support the determination made”; (66 N.Y.2d at 518); and

WHEREAS, the Board agrees with DOB that the superseding interpretation of ZR § 23-45 is consistent with the plain meaning of the Zoning Resolution and with its legislative intent; and

WHEREAS, the appellant argues and the Board agrees that Field applies only to changes in departmental policy (see Lacroix v. Syracuse Exec. Air Serv., Inc., 8 N.Y.3d 348 (2007)) and is inapplicable to a case involving a contested zoning interpretation; and

WHEREAS, Field is not relevant to the instant appeal, the Board concludes that there is no bar to a finding that the prospective application of DOB’s current interpretation of ZR § 23-45 is consistent with the legislative intent of the Zoning Resolution and, consequently, that the Permit was valid when issued; and

Equitable Estoppel

WHEREAS, the appellant also argues that DOB is equitably estopped from changing its interpretation of the Zoning Resolution based on the agency’s long accepted and rational prior interpretation and the detrimental reliance it induced (see Reichenbach v Windward at Southampton, 80 Misc. 2d 1031, 1034, aff’d 48 A.D.2d 909 (2d Dep’t 1976)); and

WHEREAS, the appellant states that for more than forty years, DOB measured the front yard setback of Breezy Point properties from a line construed to be a front lot line, consistent with ZR § 12-10, and that highly placed DOB personnel affirmed the validity of that interpretation; and

WHEREAS, the appellant contends that the tenant acted in good faith and in reliance on DOB’s approvals of the Permit, and that his home was 95 percent completed when the Permit was revoked; and

WHEREAS, the appellant further contends that the alteration of the subject home to comply with the new interpretation of ZR § 23-45 would require extensive alterations at significant expense, thereby imposing a great hardship on the tenant; and

WHEREAS, although equitable estoppel may be

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applied by a court upon a finding that it would be inequitable to allow the government to repudiate its prior conduct, the Board is an administrative body and is not empowered to provide an equitable remedy (see *People ex rel. New York Tele. Co. v. Public Serv. Comm.*, 157 A.D. 156, 163 (3d Dep't 1913) (administrative body "ha[s] no authority to assume the powers of a court of equity"); see also *Faymor Dev. Co. v Bd. of Sds. and Apps.*, 45 N.Y.2d 560, 565-567 (1978)); and

Vested Rights to Continue Construction

WHEREAS, the Appellant additionally argues that DOB instituted its change in policy and interpretation of the setback requirement of ZR § 23-45 subsequent to the issuance of the Permit, and asserts a vested right to complete construction and obtain a certificate of occupancy under the prior interpretation; and

WHEREAS, at hearing the Board asked the Appellant whether caselaw supported a vested rights determination based on a changed administrative interpretation; and

WHEREAS, the Appellant cites to the decision in *Village Green Condo. Corp. v. Nardechia* (85 A.D. 2d 692 (2d Dep't 1981)) for the proposition that DOB cannot refuse to issue a certificate of occupancy based on a changed interpretation; and

WHEREAS, for additional support for the argument that vested rights can apply to a changed administration interpretation of a regulation, rather than only to a change in zoning law, the appellant also cites to *Kennedy v. Zng. Bd. of Apps* (205 A.D.2d 629 (2d Dep't)) (prior interpretation that a building was a legal non-conforming use could not be upset based on substantial evidence); *Perrotta v. City of New York* 122 Misc.2d 683 (N.Y. Sup. 1984) (vested right to complete a nonconforming building matures when substantial work is performed and obligations are assumed in good faith reliance on a permit legally issued); and *Friend v. Feriola*, 230 N.Y.S.2d 783 (1962), *aff'd*, 258 N.Y.S.2d TK (2d Dep't 1965); and

WHEREAS, DOB contends that vested rights cannot be established because the Permit was mistakenly issued based on an initial incorrect interpretation of ZR § 24-35 and is therefore invalid; and

WHEREAS, DOB maintains that a threshold issue in a vested rights case is that construction proceeded pursuant to valid permits (see *Asharoken v. Pitassy*, 119 A.D.2d 404 (N.Y. App. Div. 1986) ("[b]asic to traditional vested rights jurisprudence is the tenet that there is no right to reliance upon an invalid building permit"); and

WHEREAS, DOB asserts that the Permit was not valid when issued because it did not comply with ZR § 23-45 and, accordingly, rejects the Appellant's vesting claim; and

WHEREAS, the Board concurs that that vested rights may only be granted for work performed pursuant to a valid permit; and

WHEREAS, the Board agrees with DOB that the proper measurement of the front yard is from the street line, further, that such measurement is consistent with the City's application of the R4 zoning citywide and with the legislative intent of the Zoning Resolution when applied to a

home adjacent to an unmapped street which is treated as a street under ZR § 12-10(d) for the purposes of defining the front yard setback; and

WHEREAS, however, notwithstanding the fundamental validity of DOB's current interpretation, the Board finds, based on the precedents discussed above, that the appellant has demonstrated sufficient ambiguity in the application of ZR § 23-45 to the subject site to establish the validity of the Permit when issued; and

WHEREAS, in light of the highly unique circumstances in this case, including the longstanding plausible interpretation of the Zoning Resolution requirements by DOB, as well as the substantial reliance by the property owner on that interpretation, the findings of the Board are limited to the instant appeal and the decision as set forth herein should not be construed to limit or constrain the authority of DOB concerning the determination of front yard setbacks under ZR § 23-45, or as precedent concerning the appropriate treatment of differing interpretations of the Zoning Resolution by DOB.

Therefore it is resolved that the instant appeal seeking a reversal of the April 27, 2007 determination of the Queens Borough Commissioner and accompanying letter, inasmuch as the Board has determined that the appropriate measure of a front yard setback under ZR § 23-45 is from the street line, is denied in part, and inasmuch as the Board has determined that the record contains sufficient evidence of ambiguity in the language and prior application of ZR § 23-45, is hereby granted in part and, pursuant to its powers under section 666(7) of the New York City Charter, the Board hereby reinstates New Building Permit No. 402074045.

Adopted by the Board of Standards and Appeals, January 13, 2009.

33-08-A

APPLICANT – Yury Menzak, for Robert M. Scarano Jr., owner.

SUBJECT – Application February 20, 2008 – Proposed construction of a six story multi-family home not fronting a legally mapped street contrary to General City Law Section 36. R6/Ocean Parkway Zoning District.

PREMISES AFFECTED – 67 Brighton 1st Lane, a/k/a 209-213 Brighton 1st Lane, north side of Brighton 1st lane, 63.19°W of Brighton 1st Street, Block 8670, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #13BK

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 Montanez5
Negative:.....0

Adopted by the Board of Standards and Appeals, January 13, 2009.

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70-08-A thru 72-08-A

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

SUBJECT – Application April 1, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue construction commenced under the prior Zoning district regulations. R3A Zoning District.

PREMISES AFFECTED – 215C, 215B, 215A Van Name Avenue, north of the corner formed by intersection of Forest Avenue, Block 1194, Lot 42, 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, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of a proposed development of three detached two-family homes 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 a finding that the subject owner obtained a vested right to continue construction under the common law for the site located at 345A, 345B, and 345C Van Name Avenue; and

WHEREAS, the construction of the latter site is identical to, and occurred under the same contract as, the subject site, the Board finds the applicant’s apportionment of half the total construction costs to each development to be a reasonable estimate of the costs; and

WHEREAS, a public hearing was held on this application on October 7, 2008, after due notice by publication in *The City Record*, with continued hearings on November 18, 2008 and December 16, 2008, and then to decision on January 13, 2009; and

WHEREAS, the site was inspected 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, 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 develop each

prospective tax lot with a detached two-story, two-family dwelling (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, 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, on March 13, 2008, the applicant was issued a Stop Work Order by DOB, halting construction of the proposed development, due to the lapse of the building permits as a matter of law; 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, 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, a DOB submission further states that the Permits were lawfully issued and were effective until August 12, 2006; and

WHEREAS, thus, the Board finds that the Permits were validly issued by DOB to the owner of the subject premises and were in effect until their lapse by operation of law on August 12, 2006; and

WHEREAS, ZR § 11-31(c) sets forth definitions for various types of development, including a “major development”; and

WHEREAS, major development includes construction of multiple non-complying buildings on contiguous zoning lots, provided that all of the proposed buildings were planned as a unit evidenced by an approved site plan showing all of the buildings; and

WHEREAS, the Board notes that the proposed development meets the definition for a major development; and

WHEREAS, pursuant to ZR § 11-311, DOB may vest a major development after completion of just one foundation within the development, provided permits have been issued for each building and the development as a whole was illustrated on an approved site plan; and

WHEREAS, the applicant states that one of the foundations on Zoning Lot 41 was complete as of the date the Permits lapsed by operation of law; and

WHEREAS, because the Permits were putatively vested under ZR § 11-331 prior to their lapse, the developer would have been eligible to apply for an extension of time to complete construction under Z.R. § 11-332; and

WHEREAS, an application for an extension of time to complete construction under Z.R. § 11-332 must be filed within 30 days from the date that a permit lapses; and

WHEREAS, the deadline to submit such an application was September 12, 2006; and

WHEREAS, an application for an extension of time to complete construction under Z.R. § 11-332 was not filed; and

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WHEREAS, the applicant now files the instant application seeking to establish a common law right to complete construction; and

WHEREAS, the Board notes that when work proceeds under a valid permit, 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, Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) stands for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance;" and

WHEREAS, however, notwithstanding this general framework, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that "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 lapse of the Permits, the foundations, framing, roofing, and installation of HVAC equipment for the three buildings of the proposed development were complete, and the drywall, plumbing and insulation were partially installed; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site, a timetable of the work performed, cancelled checks, and an affidavit of the project architect; 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 found by New York State courts to support a positive vesting determination, a significant amount of work was performed at the site prior to the lapse of the Permits; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress was made prior to the lapse of the Permits, and that said work 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

WHEREAS, the applicant states that prior to the lapse of the Permits, the owner expended \$429,387.41, including hard and soft costs and irrevocable commitments for the entire

project, out of the approximately \$500,000 budgeted for the proposed development; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices, receipts, cancelled checks, and credit card statements; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid \$173,083.68 for excavation, installation of foundations, exterior and interior construction, and architectural and engineering fees prior to the lapse of the Permits; and

WHEREAS, the applicant states that the owner paid an additional \$44,974.82 after the date the Permits lapsed, for costs that were committed to the development under irrevocable contracts prior to that date; and

WHEREAS, the applicant further states that the owner also irrevocably owes an additional \$211,328.91 in connection with work performed at the site prior to the lapse of the Permits, which had not yet been paid; 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, such a determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning; and

WHEREAS, the applicant states that under the LDGMA regulations, the two buildings located at 215B Van Name Avenue and 215C Van Name Avenue would have to be demolished and reconstructed for a complying development; and

WHEREAS, the applicant further states that it has expended an estimated \$143,129 for the construction of each building on the subject site prior to the lapse of the Permits; thus, the demolition of the aforementioned two buildings would result in a loss of approximately \$286,258 in project costs incurred prior to the lapse of the Permits; and

WHEREAS, the Board agrees that the need to redesign, the cost of demolition, the limitations of any complying development, and the \$286,258 in 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 Building had accrued to the owner of the premises as of the date the Permits lapsed by operation of law; and

WHEREAS, accordingly, based upon its consideration

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of the arguments made by the applicant, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under the common law and is entitled to the reinstatement of the Permits, and all other related permits necessary to complete construction.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of 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 and obtain a certificate of occupancy, is granted, and the Board hereby extends the time to complete the proposed development for two years from the date of this resolution, to expire on January 13, 2011.

Adopted by the Board of Standards and Appeals, January 13, 2009.

73-08-A thru 75-08-A

APPLICANT – Eric Palatnik, P.C., for S.B. Holding, owner.
SUBJECT – Application April 1, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue construction under the prior district regulations. R3A zoning district.

PREMISES AFFECTED –354 Van Name, northeast of the corner formed by the intersection of Van Name and Forest Avenue, Block 1198, Lots 42, 43, 44, 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, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete construction of a proposed development of three detached two-family homes 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 a finding that the subject owner obtained a vested right to continue construction under the common law for the site located at 215A, 215B, and 215C Van Name Avenue; and

WHEREAS, the construction of the latter site is identical to, and occurred under the same contract as, the subject site, the Board finds the applicant’s apportionment of half the total construction costs to each development to be a reasonable estimate of the costs; and

WHEREAS, a public hearing was held on this application on October 7, 2008, after due notice by publication

in *The City Record*, with continued hearings on November 11, 2008 and December 16, 2008, and then to decision on January 13, 2009; and

WHEREAS, the site was inspected 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, 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 develop each prospective tax lot with a detached two-story, two-family dwelling (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, 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, on March 13, 2008, the applicant was issued a Stop Work Order by DOB, halting construction of the proposed development, due to the lapse of the building permits as a matter of law; 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, New Building Permit Nos. 500706364, 500706373, and 500706382 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, a DOB submission further states that the Permits were lawfully issued and were effective until August 12, 2006; and

WHEREAS, thus, the Board finds that the Permits were validly issued by DOB to the owner of the subject premises and were in effect until their lapse by operation of law on August 12, 2006; and

WHEREAS, ZR § 11-31(c) sets forth definitions for various types of development, including a “major development”; and

WHEREAS, major development includes construction of multiple non-complying buildings on contiguous zoning lots, provided that all of the proposed buildings were planned as a unit evidenced by an approved site plan showing all of the buildings; and

WHEREAS, the Board notes that the proposed development meets the definition for a major development; and

WHEREAS, pursuant to ZR § 11-311, DOB may vest a

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major development after completion of just one foundation within the development, provided permits have been issued for each building and the development as a whole was illustrated on an approved site plan; and

WHEREAS, the applicant states that one of the foundations on Zoning Lot 42 was complete as of the date the Permits lapsed by operation of law; and

WHEREAS, because the Permits were putatively vested under ZR § 11-331 prior to their lapse, the developer would have been eligible to apply for an extension of time to complete construction under Z.R. § 11-332; and

WHEREAS, an application for an extension of time to complete construction under Z.R. § 11-332 must be filed within 30 days from the date that a permit lapses; and

WHEREAS, the deadline to submit such an application was September 12, 2006; and

WHEREAS, an application for an extension of time to complete construction under Z.R. § 11-332 was not filed; and

WHEREAS, the applicant now files the instant application seeking to establish a common law right to complete construction; and

WHEREAS, the Board notes that when work proceeds under a valid permit, 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, *Putnam Armonk, Inc. v. Town of Southeast*, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) stands for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance;" and

WHEREAS, however, notwithstanding this general framework, the court in *Kadin v. Bennett*, 163 A.D.2d 308 (2d Dept. 1990) found that "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 lapse of the Permits, the foundations, framing, roofing, and installation of HVAC equipment for the three buildings of the proposed development were complete, and the drywall, plumbing and insulation were partially installed; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site, a timetable of the work performed, cancelled checks, and an affidavit of the project architect; 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 found by New York State courts to support a positive vesting determination, a significant amount of work was performed at the site prior to the lapse of the Permits; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress was made prior to the lapse of the Permits, and that said work 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

WHEREAS, the applicant states that prior to the lapse of the Permits, the owner expended \$429,387.41, including hard and soft costs and irrevocable commitments for the entire project, out of the approximately \$500,000 budgeted for the proposed development; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices, receipts, cancelled checks, and credit card statements; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid \$173,083.68 for excavation, installation of foundations, exterior and interior construction, and architectural and engineering fees prior to the lapse of the Permits; and

WHEREAS, the applicant states that the owner paid an additional \$44,974.82 after the date the Permits lapsed, for costs that were committed to the development under irrevocable contracts made prior to that date; and

WHEREAS, the applicant further states that the owner also irrevocably owes an additional \$211,328.91 in connection with work performed at the site prior to the lapse of the Permits, which has not yet been paid; 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, such a determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning; and

WHEREAS, the applicant states that under the LDGMA regulations, the two buildings located at 345B Van Name Avenue and 345C Van Name Avenue would have to be demolished and reconstructed for a complying development; and

WHEREAS, the applicant further states that it has expended an estimated \$143,129 for the construction of each building on the subject site prior to the lapse of the Permits; thus, the demolition of the aforementioned two buildings

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would result in a loss of approximately \$286,258 in project costs incurred prior to the lapse of the Permits; and

WHEREAS, the Board agrees that the need to redesign, the cost of demolition, the limitations of any complying development, and the \$286,258 in 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 Building had accrued to the owner of the premises as of the date the Permits lapsed by operation of law; and

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under the common law and is entitled to the reinstatement of the Permits, and all other related permits necessary to complete construction.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of 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 and obtain a certificate of occupancy, is granted, and the Board hereby extends the time to complete the proposed development for two years from the date of this resolution, to expire on January 13, 2011.

Adopted by the Board of Standards and Appeals, January 13, 2009.

103-08-BZY

APPLICANT – Law Office of Fredrick A. Becker, for Carlilis Realty by Carlos Isdith, owner.

SUBJECT – Application April 21, 2008 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on March 25, 2008. C2-4 in R6B.

PREMISES AFFECTED – 208 Grand Street, south side of Grand Street, between Bedford Avenue and Driggs Avenue, Block 2393, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #1BK

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 under ZR §11-331 to renew a building permit and extend the time for the completion of the foundation of a four-story and penthouse mixed-use residential/commercial/community facility building; and

WHEREAS, a public hearing was held on this application on November 25, 2008, after due notice by publication in *The City Record*, with a continued hearing on December 16, 2008, and then to decision on January 13, 2009; and

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

WHEREAS, the subject site is located on the south side of Grand Street between Bedford Avenue and Driggs Avenue; and

WHEREAS, the site has a frontage of 25 feet and a depth of 100 feet, and a total lot area of 2,500 sq. ft.; and

WHEREAS, the site is proposed to be developed with a four-story and penthouse seven-unit residential building (the “Building”) with commercial and community facility uses on the first floor; and

WHEREAS, the Building is proposed to have a total floor area of approximately 8,020 sq. ft. (3.2 FAR) and a total residential floor area of approximately 5,500 sq. ft. (2.2 FAR); and

WHEREAS, the site was formerly located within a C2-4 (R6) zoning district; and

WHEREAS, on December 5, 2007, New Building Permit No. 302308321-01-NB (the “Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the Building, and work commenced on December 6, 2007; and

WHEREAS, on March 26, 2008 (hereinafter, the “Enactment Date”), the City Council voted to enact the Grand Street Rezoning, which changed the zoning district to C2-4 (R6B); and

WHEREAS, the applicant represents that the Building complies with the former C2-4 (R6) zoning district parameters; specifically, the proposed 3.2 FAR, base height of 44’-6”, and total building height of 55’-0” were permitted; and

WHEREAS, because the site is now within a C2-4 (R6B) zoning district, the Building would not comply with the maximum FAR of 2.0, the maximum base height of 40’-0”, or the maximum total building height of 50’-0”;

WHEREAS, because the Building violated these provisions of the C2-4 (R6B) zoning district and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on March 26, 2008 halting work on the building; and

WHEREAS, the applicant now applies to the Board to reinstate the Permit pursuant to ZR § 11-331, so that the proposed development may be fully constructed under the prior C2-4 (R6) zoning district; 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,

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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 the Permit was issued to the owner by DOB on December 5, 2007 authorizing construction of the proposed Building; and

WHEREAS, by letter dated November 18, 2008, DOB stated that the Permit was lawfully issued on December 5, 2007; and

WHEREAS, DOB initiated a special audit review of the Permit on June 23, 2008, and certain zoning and Building Code objections were raised (the “Objections”); and

WHEREAS, on June 26, 2008, DOB issued a letter to the owner providing notice of its intent to revoke the Permit based on the Objections (the “Notice of Intent”); and

WHEREAS, DOB approved revised plans on November 12, 2008 that addressed the objections identified by the audit and rescinded the letter of intent to revoke the Permit on November 17, 2008; and

WHEREAS, thus, the Board finds that the Permit was lawfully issued by DOB on December 5, 2007; 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 one building, it meets the definition of minor development; and

WHEREAS, since the proposed development is a minor development, the Board must find that excavation was completed and substantial progress was made as to the required foundation; and

WHEREAS, the applicant states that excavation began on December 6, 2007 and was completed on March 24,

2008, and that substantial progress was made on the foundation 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

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 foundation was 85 percent complete as of the Enactment Date; and

WHEREAS, specifically, the applicant states that as of the Enactment Date, all shoring and underpinning was complete and the majority of the concrete for the foundation was poured; and

WHEREAS, the applicant further states that approximately 75 percent of the first floor was complete as of the Enactment Date; and

WHEREAS, the Board notes that the Stop Work Order issued by DOB on March 26, 2008 also indicates that the foundation was approximately 85 percent complete as of the Enactment Date; and

WHEREAS, the applicant has also submitted financial documents, including cancelled checks, invoices, and accounting tables, which reflect significant expenditure associated with the excavation and foundation work incurred as of the Enactment Date; and

WHEREAS, specifically, the record indicates that the applicant spent \$147,360, or approximately 94 percent, of the total estimated foundation cost of \$157,360 as of the Enactment Date; 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 Permit, and all other related permits necessary to complete construction.

WHEREAS, because the Board finds that excavation was complete and that substantial progress had been made on the foundation, it concludes that the applicant has adequately satisfied all the requirements of ZR § 11-331.

Therefore it is Resolved that this application to renew New Building Permit No. 302308321-01-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 13, 2009.

Adopted by the Board of Standards and Appeals, January 13, 2009.

213-08-A

APPLICANT – Joseph A. Sherry, for Breezy Point

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Cooperative Inc., owner; Thomas Durante, lessee.
SUBJECT – Application August 19, 2008 – Proposed reconstruction and enlargement of an existing single family home located in the bed of a mapped street and not fronting on a mapped street contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 68 Hillside Avenue, south side of Hillside Avenue, 172.10' east of mapped Beach 178th Street, Block 16340, Lot 50, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Commissioner, dated August 13, 2008, acting on Department of Buildings Application No. 410095043 reads, in pertinent part:

“A1- 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, Sect. 35 of the General City Law.

A2- The site and building is not fronting on an official mapped street, therefore no permit or certificate of occupancy can be issued as per Art. 3, Sect. 36 of the General City Law; also no permit can be issued since proposed construction does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and is therefore contrary to Section C27-291 (C26-401.1) of the Administrative Code of the City of New York.

A3- The upgraded private disposal system is partially in the bed of a mapped street contrary to Department of Buildings Policy;” and

WHEREAS, a public hearing was held on this application on January 13, 2009, after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated October 17, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated September 24, 2008 the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 25, 2008, 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 August 13, 2008, acting on Department of Buildings Application No. 410095043 is modified by the power vested in the Board by Section 35/36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received August 19, 2008” – 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, January 13, 2009.

242-08-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative, Inc., owner; Noreen Haggerty, lessee.

SUBJECT – Application September 26, 2008 – Reconstruction and enlargement of an existing single family home not fronting on a mapped street contrary to Section 36 of the GCL and partially in the bed of a mapped street contrary to Section 35 of the GCL. R4 zoning district.

PREMISES AFFECTED – 53 Beach 216th Street, east side Tioga Walk, 225.04’ south of 6th Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO 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 17, 2008, acting on Department of Buildings Application No. 410113611, which reads in pertinent part:

“A1- The proposed enlargement is on a site located

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partially in the bed of a mapped street therefore no permit or certificate of occupancy can be issued as per Art. 3, Sect. 35 of the General City Law.

- A2- The site and building is not fronting on an official mapped street, therefore no permit or certificate of occupancy can be issued as per Art 3, Sect. 36 of the General City Law; also no permit can be issued since 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;” and

WHEREAS, a public hearing was held on this application on January 13, 2009 after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated October 17, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated October 23, 2008 the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 25, 2008, 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 September 17, 2008, acting on Department of Buildings Application No. 410113611 is modified by the power vested in the Board by Section 35/36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received September 26, 2008 ” – 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,

January 13, 2009.

141-07-A

APPLICANT – Hakime Altine, for Charles Macena, owner.
SUBJECT – Application May 29, 2007 – Proposed construction of a two story one family residential building in the bed of mapped street (Hook Creek Boulevard) contrary to General City Law Section 35. R2 Zoning.

PREMISES AFFECTED – 129-48 Hookcreek Boulevard, situated on the West side of Hookcreek Boulevard, Block 12891, Lot 10, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to February 10, 2009, at 10 A.M., for an adjourned hearing.

60-08-A

APPLICANT – Eric Palatnik, P.C., for F & Z Properties, owners.

SUBJECT – Application March 21, 2008 – Proposed construction of a four Story Community Facility located within the bed of a mapped street (102nd Street) contrary to General City Law Section 35. R6B (C1-4) zoning district.

PREMISES AFFECTED – 101-20 39th Avenue (formerly 101-20, 101-22 & 101-24 103rd Street, between 102nd and 103rd Streets, Block 1770, Lot 22, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 17, 2009, at 10 A.M., for continued hearing.

120-08-A

APPLICANT – Law Office of Fredrick A. Becker, for Harmanel, LLC, owner.

SUBJECT – Application April 24, 2008 – Appeal seeking the determination that the owner has acquired a common law vested right to continue development commenced under the prior C2-4 /R6 zoning district regulations. C2-4 in R6B Zoning District.

PREMISES AFFECTED – 186 Grand Street, south side of Grand Street, between Bedford Avenue and Driggs Avenue, Block 2393, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Lyra 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 January 27, 2009, at 10 A.M., for decision, hearing closed.

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261-08-BZY & 262-08-A

APPLICANT – Eric Palatnik, P.C., for Henry Zheng, owner.
SUBJECT – Application October 21, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.

An appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R7-1/C1-2 Zoning District.

PREMISES AFFECTED – 140-75 Ash Avenue, between Kissena Boulevard and Bowne Streets, Block 5182, Lot 34, 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 Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 27, 2009, at 10 A.M., for decision, hearing closed.

263-08-BZY & 264-08-A

APPLICANT – Slater & Beckerman, LLP, for Wilshire Hospitality, LLC, owner.

SUBJECT – Application October 24, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.

An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R7-1/C1-2 Zoning District.

PREMISES AFFECTED – 29-23 40th Road and 30-02 40th Avenue, Block 402, Lots 12 & 35, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Stuart Beckerman.

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 February 3, 2009, at 10 A.M., for decision, hearing closed.

245-08-BZY

APPLICANT – Sheldon Lobel, P.C., for Airport Hotels, LLC, owner.

SUBJECT – Application October 23, 2008 – Extension of time to complete construction (11-331) of minor development commenced under the prior C2-2/R3-2+ district regulations. C1-1/R3X.

PREMISES AFFECTED – 219-05 North Conduit

Boulevard, bounded by Springfield Boulevard, 144th Avenue and North Conduit Boulevard, Block 13085, Lot 4, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Jordan Most.

For Opposition: Council Member Sanders, Richard Hellenbrecht, CB #13Q, Patrick Evans, Michael Dancan, Jacqueline Boyce, Dwight Johnson, Kamal F. Salsen, Elmer H. Blackborne, Donovan Richards, Leroy Gadsder, George A. Bradly, Marquez Claxton, Derrick M. Husbands, Mimose Nelson.

ACTION OF THE BOARD – Laid over to February 24, 2009, at 10:00 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, JANUARY 13, 2009
1:30 P.M.**

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

ZONING CALENDAR

20-08-BZ

CEQR #08-BSA-046M

APPLICANT – Law Office of Fredrick A. Becker, for Wegweiser & Ehrlich, LLC, owner.

SUBJECT – Application January 30, 2008 – Special Permit (§75-53) to permit a 2,900 square foot vertical enlargement to an existing warehouse (UG 17); M1-5 District/Special Tribeca Mixed Use District.

PREMISES AFFECTED – 53-55 Beach Street, north side of Beach Street, west of Collister Street, Block 214, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: 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, the decision of the Manhattan Borough Commissioner, dated January 24, 2008, acting on Department of Buildings Application No. 104415571 reads, in pertinent part:

“Proposed total floor area is contrary to Z.R. 43-12 in that it exceeds the maximum permitted FAR. Proposed height of street wall and setback exceeds the maximum permitted values per Z.R. 43-43;” and

WHEREAS, this is an application made pursuant to ZR §§ 73-53 and 73-03, to allow, in an M1-5 zoning district within the Special Tribeca Mixed Use District and Tribeca West Historic District, the proposed enlargement of a legal conforming Use Group 17 warehouse, which does not comply with requirements related to floor area, wall height, and setback, contrary to ZR §§ 43-12 and 43-43; and

WHEREAS, a public hearing was held on this application on November 25, 2008, after due notice by publication in *The City Record*, with a continued hearing on December 16, 2008, and then to decision on January 13, 2009; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan 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 the intersection at Beach Street and Collister Street, in an M1-5 zoning district within the Special Tribeca Mixed Use District and the Tribeca West Historic District; and

WHEREAS, the subject site has a lot area of 5,000 sq. ft. and is occupied by a 30,000 sq. ft., six-story mixed-use building; the first, second, and third floors are occupied by a Use Group 3 pre-school, and the fourth, fifth, and sixth floors are occupied by a Use Group 17 warehouse; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 6, 2003, when, under BSA Cal. No. 359-02-BZ, the Board granted a variance authorizing the ground floor and cellar of the premises to be occupied by the Use Group 3 pre-school; and

WHEREAS, the applicant represents that it has occupied the fourth, fifth, and sixth floors of the subject building since 1985 as a warehouse for the storage of seasonal decorations and live plants; and

WHEREAS, warehouse use is a permitted use in the subject zoning district; and

WHEREAS, the applicant now proposes a one-story enlargement that will add an additional 2,900 sq. ft. of floor area, to be located on the roof of the existing building; and

WHEREAS, the proposed enlargement will result in the following non-compliances: an FAR of 6.59 (the maximum permitted FAR is 6.0); a setback of 6'-2½" above the sixth floor of the Collister Street frontage (the minimum required setback is 20'-0"); and a height of seven stories (the maximum building height is six stories); and

WHEREAS, ZR § 73-53 requires a finding that: (i) the use of the premises is not subject to termination pursuant to ZR § 52-70; (ii) the use for which the special permit is sought has lawfully existed for more than five years; (iii) no residential use occupied the site within the past five years; (iv) no enlargement of the subject building pursuant to ZR §§ 11-412, 43-121 or 72-21 has been approved; and (v) the subject use is listed in Use Group 17, not Use Group 18; and

WHEREAS, through testimony and submission of supporting documentation, the applicant has established that the requirements of ZR § 73-53 have been met; and

WHEREAS, the applicant also demonstrated that the proposed enlargement constitutes less than 45 percent of the floor area occupied by the Use Group 17 use on December 17, 1987, which does not exceed 10,000 square feet; and

WHEREAS, in support of the above, the applicant submitted plans, an owner's affidavit, and invoices as proof that it occupied the requisite square footage in the building prior to December 17, 1987; and

WHEREAS, the applicant represents that the enlargement is entirely enclosed and that there will be no open uses of any kind; and

WHEREAS, the applicant represents, and the Board agrees, that the requirements of ZR § 73-53 are either satisfied, or are inapplicable to the instant application; and

WHEREAS, the applicant represents that the purpose

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of the proposed enlargement is to allow for increased storage space to accommodate the growing needs of the business and provide a better office environment for the staff; and

WHEREAS, the applicant states that the enlargement will not increase the number of employees or the nature of the business, and therefore will not generate an increase in vehicular or pedestrian traffic; and

WHEREAS, as to potential parking impacts, the applicant states that the available parking is sufficient to accommodate the proposed enlargement because it will not generate an increase in vehicular traffic; and

WHEREAS, the applicant further states that the proposed enlargement will not generate any additional pickups or deliveries; and

WHEREAS, accordingly, the record indicates and the Board finds that the subject enlargement will not generate significant increases in vehicular or pedestrian traffic, nor cause congestion in the surrounding area, and that there is adequate parking and loading space to service the enlarged warehouse use; and

WHEREAS, the Board notes that there are no required side yards; and

WHEREAS, the applicant states that the proposed enlargement will not alter the essential character of the neighborhood, nor impair the future use or development of the surrounding area; and

WHEREAS, the applicant represents that measures have been taken to preserve the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission approving the proposed enlargement, dated December 30, 2008; and

WHEREAS, the applicant notes that the proposed enlargement will be constructed entirely within the subject M1-5 zoning district; and

WHEREAS, the applicant states that the surrounding neighborhood is characterized by a significant manufacturing and commercial presence, including a two-story commercial building that abuts the site to the west, and a five-story warehouse located on the subject block within 100 feet of the site; and

WHEREAS, the applicant further states that the scale and bulk of the proposed enlargement is consistent with the scale and bulk of other buildings in the surrounding neighborhood; and

WHEREAS, the applicant provided a 200-foot radius diagram, indicating that a 15-story condominium building is located immediately to the east of the site; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will not alter the essential character of the surrounding neighborhood, nor will it impair the future use and development of the surrounding area; and

WHEREAS, the Board notes that the grant of the special permit will facilitate the enlargement of a Use Group 17 use on a site where such use is appropriate and legal; and

WHEREAS, based upon the above, the Board finds that,

under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use 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 determines that the evidence in the record supports the findings required to be made under ZR §§ 73-53 and 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to Sections 617.6(h) and 617.2(h) of 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. 08-BSA-046M dated October 3, 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, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-53 and 73-03 for a special permit to allow, in an M1-5 zoning district within the Special Tribeca Mixed Use District and the Tribeca West Historic District, the proposed enlargement of a legally conforming use Group 17 warehouse, which does not comply with floor area, setback, and number of stories, contrary to ZR §§ 43-12 and 43-43, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received January 30, 2008"– (13) sheets; and *on further condition*;

THAT the premises shall be maintained free of debris and graffiti;

THAT there shall be no open uses on the site;

THAT all applicable fire safety measures will be complied with;

THAT this approval 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

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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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals January 13, 2009.

46-08-BZ

CEQR #08-BSA-063M

APPLICANT – Law Office of Fredrick A. Becker, for Congregation Adas Yereim, owner.

SUBJECT – Application February 15, 2008 – Variance (§72-21) to permit the construction of a community facility building. The proposals contrary to §24-11 (Floor area ratio and lot coverage) and §24-522 (front wall height, setback, sky exposure plane and number of stories). R6 district.

PREMISES AFFECTED – 491 Bedford Avenue, 142 Clymer Street, southwest corner of Bedford Avenue and Clymer Street, Block 2173, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #1BK

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 Superintendent, dated January 17, 2008, acting on Department of Buildings Application No. 402313493 reads, in pertinent part:

- “1. Proposed floor area ratio is contrary to ZR 24-11.
2. Proposed lot coverage is contrary to ZR 24-11.
3. Proposed height of the front walls, front wall setback & sky exposure plane (slopes) is contrary to ZR 24-522.
4. Proposed number of stories is contrary to 24-522;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R6 zoning district, a proposed six-story and mezzanine yeshiva which does not comply with FAR, lot coverage, front wall height, front wall setback, sky exposure plane, and number of stories, contrary to ZR §§ 24-11 and 24-522; and

WHEREAS, a public hearing was held on this application on October 7, 2008, after due notice by publication in *The City Record*, with continued hearings on November 18, 2008 and December 16, 2008, and then to decision on January 13, 2009; 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 1, Brooklyn, recommends approval of the application; and

WHEREAS, this application is being brought on behalf of Congregation Adas Yereim, a not-for-profit educational entity (the “Yeshiva”); and

WHEREAS, the subject premises is located on the southeast corner at the intersection of Bedford Avenue and Clymer Street, within an R6 zoning district; and

WHEREAS, the site is currently vacant; and

WHEREAS, the proposed building provides for a six-story and mezzanine yeshiva with the following non-compliances: an FAR of 5.32 (the maximum permitted FAR is 4.8); a lot coverage of 86 percent (70 percent is the maximum permitted); a front wall height of 73'-8" (60 feet is the maximum permitted); no front wall setback on Bedford Avenue or Clymer Street (a minimum front wall setback of 15 feet on a wide street and 20 feet on a narrow street is required); and an encroachment into the sky exposure plane; and

WHEREAS, the proposal provides for the following uses: (1) a cafeteria, meat kitchen, and dairy kitchen in the cellar; (2) student bathrooms, staff offices, and storage in the cellar mezzanine; (3) a medrash, classrooms, and two administrative offices on the first floor; (4) classrooms and office space for teachers on the second through fifth floors; and (5) a computer laboratory, sewing room/library, and a multi-purpose room which can be used as a gymnasium or auditorium on the sixth floor; and

WHEREAS, the applicant states that the Yeshiva has operated for more than 40 years at a nearby site which is now inadequate to accommodate its current and projected enrollment; and

WHEREAS, further, the applicant states that it must relocate its operations because the Yeshiva building has been sold; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Yeshiva: (1) accommodating the current enrollment while allowing for future growth; (2) physical education and recreation space; and (3) storage space; and

WHEREAS, the applicant states that the current enrollment is 725 students and the projected enrollment is approximately 760 students; and

WHEREAS, the applicant represents that a complying building could accommodate approximately 600 students; and

WHEREAS, the applicant further represents that the FAR and lot coverage waivers are necessary to provide the program space necessary to adequately serve its current enrollment and projected enrollment; and

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

WHEREAS, additionally, the applicant represents that

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the front wall height, front wall setback, and sky exposure plane waivers are necessary to provide a sixth floor multipurpose room with adequate ceiling heights for its proposed use as a gymnasium and auditorium; and

WHEREAS, the applicant represents that a waiver of the required number of stories is necessary to enable the addition of a mezzanine for the storage of equipment above the classrooms on the sixth floor, while still providing the floor-to-ceiling height necessary for a viable gymnasium and auditorium on the sixth floor; and

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

WHEREAS, the applicant need not address ZR § 72-21(b) since the Yeshiva is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

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

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district and that schools are located on the northeastern and southeastern corners of the intersection of Taylor Street and Bedford Avenue, one and two blocks from the subject site, respectively; and

WHEREAS, the applicant provided a 400-foot radius diagram indicating that the bulk and height of the Yeshiva are consistent with the bulk and height of the buildings in the surrounding area; and

WHEREAS, specifically, two 21-story multiple dwellings are located immediately opposite the Yeshiva on Bedford Avenue; and

WHEREAS, the applicant represents that the traffic impacts of the Yeshiva will be limited because approximately 300 students will take a private bus to and from the school, and many students will walk to the school; and

WHEREAS, the applicant further represents that the Yeshiva will ensure student safety by: (1) providing a bus loading and unloading area directly in front of the building which permits the students to be delivered to and picked up from the school entirely within the school's property, and

(2) by stationing crossing guards at the corner of Bedford Avenue and Clymer Street to ensure the safety of students who walk to the Yeshiva; and

WHEREAS, the Board notes that it received a letter from the Department of Transportation's School Safety Engineering Office dated May 6, 2008, indicating that it has no objection to the proposed building and will prepare a school map with additional signage and markings upon approval of the application and construction of the building; 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 Yeshiva 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, at hearing, the Board asked the applicant to explain the need for an additional 3,841 sq. ft. of floor area (0.52 FAR) beyond what is permitted under zoning district regulations; and

WHEREAS, specifically, the Board asked the applicant whether the program could be accommodated within a building with a complying FAR; and

WHEREAS, the applicant responded that the floor area was calculated based on the projected enrollment of 725 students, while a building with a complying FAR could accommodate no more than 600 students; and

WHEREAS, the applicant states that the additional floor area, in conjunction with the lot coverage waivers, allows for larger floor plates that would accommodate a greater number of students at the standard classroom size of 35 sq. ft. of floor area per student, for Head Start and Kindergarten classrooms, and 20 sq. ft. of floor area per student for other elementary classrooms; and

WHEREAS, at hearing, the Board requested that the applicant investigate the feasibility of either providing a side yard or a side setback above the permitted height along the eastern side of the building; and

WHEREAS, in response, a submission by the applicant represents that the proposal provides the standard one-to-one width-to-depth ratio for classrooms, and that providing a side yard or setback along the eastern side of the building would produce a layout with classrooms with disproportionate width-to-depth ratios, resulting in a less functional building that would not meet the programmatic needs of the school; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to meet the programmatic needs of the Yeshiva 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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA063K, dated February 15, 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, 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 R6 zoning district, a proposed six-story and mezzanine yeshiva, which does not comply with FAR, lot coverage, front wall height, front wall setback, sky exposure plane, and number of stories, contrary to ZR §§ 24-11 and 24-522, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 6, 2008"– thirteen (13) sheets; and *on further condition*:

THAT the building parameters shall be: six stories and a mezzanine; a floor area of 39,361 sq. ft. (5.32 FAR); a lot coverage of 86 percent, a front wall height of 73'-8", no front wall setback, and an encroachment into the sky exposure plane;

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

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

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

THAT substantial construction be completed 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, January 13, 2009.

93-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Worlds Fair Development LLC, owner.

SUBJECT – Application June 30, 2008 – Variance (§72-21) to allow a six-story transient hotel (UG 5), contrary to use regulations (§22-00). R6 district.

PREMISES AFFECTED – 112-12, 112-18, 112-24 Astoria Boulevard, southwest of the intersection of 112th Place and Astoria Boulevard, Block 1706, Lots 5, 9, 11, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Todd Dole.

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 June 11, 2008, acting on Department of Buildings Application No. 410053720, reads in pertinent part:

“Proposed building use is contrary to ZR section 22-00. Refer to the Board of Standards and Appeals for their review and resolution;”

WHEREAS, this is an application under ZR § 72-21, to permit, within an R6 zoning district, a six-story and cellar hotel building which does not conform to district use regulations, contrary to ZR § 22-00; and

WHEREAS, a public hearing was held on this application on July 29, 2008, after due notice by publication in *The City Record*, with continued hearings on September 23, 2008, October 28, 2008, and November 25, 2008, and then to decision on January 13, 2009; 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 3, Queens recommends approval of this application, subject to certain conditions; and

WHEREAS, Councilmember Hiram Monserrate recommends approval of this application; and

WHEREAS, the subject site is located within an R6 zoning district on the southwest corner of Astoria Boulevard and 112th Place; and

WHEREAS, the site is an irregularly shaped corner lot with approximately 152 feet of frontage on Astoria Boulevard and approximately 96 feet of frontage on 112th Place, and a total lot area of approximately 16,141 sq. ft.; and

WHEREAS, the site is currently developed with four vacant one-story and two-story commercial buildings formerly occupied by a gasoline service station and automotive repair

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shop that will be demolished to make way for the proposed development; and

WHEREAS, the applicant proposes to construct a six-story hotel (UG 5); and

WHEREAS, the building is proposed to have a total floor area of approximately 48,423 sq. ft. (3.00 FAR), with 126 rooms and 31 accessory parking spaces; 17 spaces in the cellar and 14 spaces in a parking lot to the building's rear; and

WHEREAS, commercial use is not permitted in the subject R6 district, thus the applicant seeks a use variance to permit the proposed hotel use (UG 5); 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 contamination of the site's soil from a prior commercial use; (2) its location adjacent to heavily-traveled arterial roads; (3) its location on a street with numerous commercial uses; and (4) its irregular shape; and

WHEREAS, as to soil conditions, the applicant represents that soil tests reflect significant contamination by several chemical pollutants; and

WHEREAS, the applicant states that the site was used for approximately 60 years as a gasoline service station and automotive repair shop; and

WHEREAS, the Board notes that the previous use of the site as an automotive service and repair establishment predates the enactment of modern environmental standards and regulations; and

WHEREAS, due to documented spills and releases of petroleum products from the prior use, significant environmental remediation is necessary prior to the redevelopment of the subject property; and

WHEREAS, specifically, the applicant states that the premium costs associated with the remediation of the site are estimated at approximately \$940,000, which reflects the need for tank removal, removal of contaminated soil, air monitoring and sub-slab ventilation and vapor barrier systems, among other remediation work; and

WHEREAS, the applicant states that the site's environmental conditions impede the development of the site for a conforming residential use; and

WHEREAS, as to the site's proximity to heavily-traveled roadways, the applicant states that the subject site is located on a six-lane divided thoroughfare and is directly to the south of an entrance ramp servicing the Grand Central Parkway and one block south of another entrance ramp servicing Northern Boulevard; and

WHEREAS, the applicant represents that the high volume of traffic and corresponding noise resulting from the site's proximity to these major roadways inhibits the residential use of the property; and

WHEREAS, the applicant also asserts that an abundance of commercial uses in the surrounding area also diminishes the marketability of the site for a conforming residential use; and

WHEREAS, the applicant submitted a land use map of the area indicating that, of the 31 lots fronting the south side of Astoria Boulevard to the east and west of the subject site, 22 are occupied by commercial uses while only two are occupied

by residential uses; and

WHEREAS, the applicant states that the block immediately to the east of the subject site and a portion of the subject block fronting Northern Boulevard are established within a C2-4 overlay district and that both of these blocks are occupied by commercial uses; and

WHEREAS, the applicant represents that the infeasibility of the use of the subject site for a complying development is further evidenced by the discounted sales prices of a new residential development immediately to its west; and

WHEREAS, as to the site's irregular shape, the applicant represents that the depth of the site varies from approximately 95 feet to 125 feet, further constraining a conforming residential development; and

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

WHEREAS, the applicant submitted a feasibility study which analyzed a complying residential development; and

WHEREAS, the feasibility study concluded that a complying residential development would generate a negative rate of return due to the site's constraints, including its proximity to the Grand Central Parkway and the significant premium costs related to environmental remediation; and

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

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

WHEREAS, specifically, the proposed hotel complies with the FAR, height, setback, and rear yard requirements for a Quality Housing building in the subject zoning district; and

WHEREAS, the applicant further states that the pending North Corona rezoning will change the subject zoning district from R6 to R6A and that the proposed building will comply with FAR, height, setback and rear yard regulations of the new contextual R6 district; and

WHEREAS, the applicant represents that the proposed use is consistent with the surrounding area, which is characterized by an abundance of commercial uses; and

WHEREAS, as noted above, the block immediately to the east of the subject site and the portion of the subject block fronting Northern Boulevard are within a C2-4 overlay district and both blocks are occupied by commercial uses; and

WHEREAS, the applicant states that, pursuant to ZR § 32-14, the proposed hotel use would be permitted as-of-right within the adjacent C2-4 overlay district, due to its location within a 1,000-foot radius of the entrance to the Grand Central Parkway; and

WHEREAS, the applicant also represents that the

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proposed hotel use would be more compatible with the residential district than the prior automotive use; and

WHEREAS, the Board has reviewed the map and photos of the immediate area submitted with this application, and concludes that the proposed use of the building will be compatible with the existing conditions in the surrounding neighborhood; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the unique site conditions, specifically the site's contaminated soil conditions and proximity to major arterial roadways; and

WHEREAS, the Board directed the applicant to provide a financial analysis for a smaller hotel; and

WHEREAS, in response, the applicant provided a financial analysis of hotel with 76 rooms and an FAR of 2.0, which did not provide a reasonable rate of return; and

WHEREAS, the applicant represents that the significant premium costs related to environmental remediation constrain the smaller hotel from realizing a reasonable return; 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; 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. 08BSA083Q, dated November 24, 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, in connection with the North Corona Rezoning approved by the City Council on September 17, 2003, an "E" designation for hazardous materials was mapped on the subject site shown on the City Zoning Map panel 10b; and

WHEREAS, the Department of Environmental Protection ("DEP") and the New York State Department of Environmental Conservation ("DEC") have reviewed a September 2008 Phase II Subsurface Investigation Report,

Remedial Action Plan, and Construction Health and Safety Plan for the subject site, which were completed as a result of the "E" designation imposed on the site; 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, with the implementation of the requirements of the "E" designation, no significant adverse impacts would occur, and 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 based on the implementation of investigation and remediation activities required in connection with the "E" designation 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 R6 zoning district, the proposed construction of a six-story hotel building (UG 5) 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 30, 2008" – (13) sheets; and *on further condition*:

THAT street trees shall be planted in accordance with ZR § 28-12;

THAT all signage shall comply with C1 zoning district parameters;

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

THAT 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 this grant is contingent upon final approval from the Department of Environmental Protection before an issuance of construction permits other than permits needed for soil remediation; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant 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 13, 2009.

135-08-BZ

CEQR #08-BSA-024Q

APPLICANT – Sheldon Lobel, P.C., for Fresh Meadows Bukharian Synagogue, Inc. owner.

SUBJECT – Application April 30, 2008 – Variance (§72-21) to permit a one-story and mezzanine synagogue. The

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proposal is contrary to ZR §24-34 (minimum front yard) and §25-31 (minimum parking requirements). R2 district.

PREMISES AFFECTED – 71-52 172nd Street, northwest corner of the intersection of 73rd Avenue and 172nd Street, Block 6959, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

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 Queens Deputy Borough Commissioner, dated December 2, 2008, acting on Department of Buildings Application No. 402652134 reads, in pertinent part:

- “1. The proposed front yards of 10’ & 5’ are contrary to ZR 24-34.
2. The proposed number of parking spaces does not comply with ZR 25-31.
3. The proposed FAR of 0.65 does not comply with ZR 24-111;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R2 zoning district, a one-story and mezzanine building to be occupied by a synagogue (Use Group 4), which does not comply with front yard, FAR, and parking requirements for community facilities, contrary to ZR §§ 24-34, 24-111, and 25-31; and

WHEREAS, a public hearing was held on this application on September 16, 2008, after due notice by publication in *The City Record*, with a continued hearing on December 9, 2008, and then to decision on January 13, 2009; 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 8, Queens, recommends approval of the application, subject to certain conditions; and

WHEREAS, certain members of the community provided testimony in opposition to the proposal; and

WHEREAS, this application is being brought on behalf of the Fresh Meadows Bukharian Synagogue, Inc., a non-profit religious entity (the “Synagogue”); and

WHEREAS, the subject site is located on the northwest corner of the intersection at 73rd Avenue and 172nd Street within an R2 zoning district and has a lot area of approximately 4,940 sq. ft.; and

WHEREAS, the subject site is currently occupied by a one-story detached residential building with a floor area of 1,294 sq. ft. and a two-story garage; and

WHEREAS, the proposed building provides for a one-story and mezzanine synagogue with the following parameters: a floor area of 3,317 sq. ft. (the maximum

permitted floor area is 2,470 sq. ft.), an FAR of 0.67 (the maximum permitted FAR is 0.5); a front yard of 5’-0” along the southern lot line and a front yard of 10’-0” along the eastern lot line (two front yards with minimum depths of 15’-0” each are required); and no parking spaces (14 are required); and

WHEREAS, the proposal provides for the following uses: (1) a multi-purpose room at the cellar level; (2) a religious sanctuary on the first floor; and (3) a women’s balcony on the mezzanine level; 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 has worshipped at the subject site since 2006; and

WHEREAS, the applicant represents that the size, layout and design of the current synagogue, which was constructed as a one-family home, is inadequate to serve its congregation of approximately 264 members; 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 required by religious doctrine; and

WHEREAS, the applicant represents that a complying building would be inadequate to accommodate more than 80 congregants and would not permit the creation of a women’s balcony on the mezzanine level; and

WHEREAS, the applicant states that the requested waivers enable the Synagogue to provide adequate space for worship services in the first floor sanctuary and a 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 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

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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, the applicant further states that the FAR waiver is minimal and that the waivers for the front yards and FAR are necessary to permit a building that can accommodate the size of the congregation; and

WHEREAS, the applicant provided a 400-foot radius diagram indicating that the bulk and height of the Synagogue are consistent with the bulk and height of the one and two-story homes that characterize the area; and

WHEREAS, at hearing, residents of the community raised concerns regarding access to parking and whether the site would be used as a catering hall; and

WHEREAS, as to traffic impacts and parking, a submission by the applicant indicated that approximately 75 percent of the congregants lived within three-quarters of a mile from the Synagogue; and

WHEREAS, the applicant represents that traffic impact would be minimal as most congregants live near enough to walk to services and are not permitted to drive to worship services on religious holidays or on the Sabbath; and

WHEREAS, the applicant further represents that the subject site will not be used for commercial catering, thereby further limiting traffic demand; and

WHEREAS, in response to concerns raised by the Community Board, the applicant has also agreed to limit its hours of operation to no later than 10:00 p.m.; 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, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue 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 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. 09BSA024Q, dated

September 10, 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, 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 R2 zoning district, a one-story and mezzanine building to be occupied by a synagogue, which does not comply with front yard, FAR, and parking requirements for community facilities, contrary to ZR §§ 24-34, 24-111, 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 April 30, 2008” – (1) sheet and “Received December 8, 2008” – (7) sheets and *on further condition*:

THAT the building parameters shall be: a floor area of 3,317 sq. ft., an FAR of 0.67; a front yard of 5’-0” along the southern lot line; a front yard of 10’-0” along the eastern lot line; and no accessory parking;

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 garbage shall be stored in the building except when in the designated area for pickup;

THAT the hours of operation shall not extend past 10:00 p.m.;

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

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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, January 13, 2009.

155-08-BZ

APPLICANT – Eric Palatnik, P.C., for Arkadiy Kofman, owner.

SUBJECT – Application June 3, 2008 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a one family home. This application seeks to vary floor area, open space and lot coverage (§23-141(a)); less than the minimum required rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 282 Beaumont Street, south of Oriental Boulevard, Block 8739, Lot 71, 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 Superintendent, dated May 20, 2008, acting on Department of Buildings Application No. 310113588, reads in pertinent part:

“Proposed enlargement of two-story one-family dwelling in Use Group 1 in R3-1 zoning.

1. Proposed floor area ratio contrary to ZR 23-141(a).
2. Proposed open space contrary to ZR 23-141(a).
3. Proposed lot coverage is contrary to ZR 23-141.
4. Proposed rear yard is contrary to ZR 23-47. Minimum required: 30’. Proposed: 20’;” 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 an existing two-family residence and its conversion into a single-family home which does not comply with the zoning requirements for floor area, open space, lot coverage and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on August 26, 2008, after due notice by publication in *The City Record*, with continued hearings on October 7, 2008, November 18, 2008, and December 16, 2008, and then to decision on January 13, 2009; 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 disapproval of this application; and

WHEREAS, residents of the Manhattan Beach community provided testimony in opposition to the proposal (hereinafter, the “Opposition”); and

WHEREAS, the subject site is located on the west side of Beaumont Street, between Oriental Boulevard and Esplanade; and

WHEREAS, the subject site has a total lot area of 4,000 sq. ft., and is occupied by a two-family residence with a floor area of approximately 2,521 sq. ft. (0.63 FAR); and

WHEREAS, the premises are within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in floor area from approximately 2,521 sq. ft. (0.63 FAR) to approximately 3,992 sq. ft. (0.99 FAR); the maximum floor area permitted is 2,400 sq. ft. (0.60 FAR, including the attic allowance); and

WHEREAS, the proposed enlargement provides approximately 44 percent of lot coverage (a maximum of 35 percent is permitted) and approximately 56 percent of open space (a minimum of 65 percent is required); and

WHEREAS, the proposed enlargement decreases the non-compliance of the rear yard, from an existing depth of 9’-6” to a proposed depth of 20’-0” (a minimum rear yard of 30’-0” is required); and

WHEREAS, at hearing, the Board asked for drawings clarifying the amount of the existing building to be retained as a result of the enlargement; and

WHEREAS, in response, the applicant provided revised plans indicating the portions of the existing building that will be retained; and

WHEREAS, at hearing, the Opposition provided testimony claiming that the proposal would result in the demolition of the existing building and that the proposed building was not an enlargement but a new building; and

WHEREAS, the Board has reviewed the information provided by the Opposition and the applicant and concludes that the portion of the building to be retained is sufficient to qualify as an enlargement; and

WHEREAS, at hearing, the Board raised concerns about whether the proposed enlargement complies with a Department of Buildings (“DOB”) pre-consideration regarding the proposed building envelope, particularly in regards to Zoning Resolution regulations pertaining to perimeter wall height; and

WHEREAS, in response, the applicant submitted revised drawings indicating that the perimeter wall height of the proposed enlargement is in compliance with the Zoning Resolution and the proposed building envelope adheres to the DOB pre-consideration; and

WHEREAS, the Board notes that the size and scale of the proposed building, including: (1) the proposed FAR of 0.99; (2) the proposed height of 35’-0”; (3) the proposed front yard of 15’-4”; and (4) the proposed increase in the rear yard from the existing 9’-6” to 20’-0”, is consistent with

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the character of the neighborhood; and

WHEREAS, at hearing, the Opposition provided a photo-board depicting existing homes in the area, claiming that the proposal would alter the essential character of the neighborhood; and

WHEREAS, the Board was not persuaded by the limited number of photographs provided as proof that the proposal would alter the essential character of the neighborhood; and

WHEREAS, further, the photographs included those of several homes that were similar to the bulk and height of the proposed home; and

WHEREAS, the Board notes that within Manhattan Beach it has granted several special permits that allowed similar zoning parameters, specifically in regards to FAR; and

WHEREAS, finally, the Board notes that unlike many of the homes granted special permits, the subject home has complying side yards and is increasing the existing rear yard from 9'-6" to 20'-0", and no waivers are requested or granted for perimeter wall and building height; 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 proposed enlargement of a 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, 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 December 2, 2008"-(15) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of approximately 3,992 sq. ft. (0.99 FAR); a lot coverage of approximately 44 percent; an open space of approximately 56 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

perimeter wall, height and setback requirements under ZR § 23-631;

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, January 13, 2009.

170-08-BZ

CEQR #08-BSA-100M

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Cornell University, owner.

SUBJECT – Application June 25, 2008 – Variance (§72-21) to permit the construction of a research building (Weill Cornell Medical College) with sixteen occupied stories and two mechanical floors. The proposal is contrary to ZR §24-11 (Floor area and lot coverage), §24-36 (Rear yard), §24-522 (Height and setback), and §24-552 (Rear yard setback). R8 district.

PREMISES AFFECTED – 411-431 East 69th Street, block bounded by East 69th and East 70th Streets and York and First Avenues, Block 1464, Lots 8, 14, 15, 16 p/o 21, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Gary T. Tarnoff and James Power.

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 June 23, 2008, acting on Department of Buildings Application No. 110098787, reads in pertinent part:

1. ZR 24-11 – The floor area proposed exceeds that permitted for an R8 Zoning District.
2. ZR 24-11 – The lot coverage proposed exceeds that allowed for an R8 Zoning District.

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3. ZR 24-36 – The minimum rear yard requirement has not been met.
4. ZR 24-522 – The height and setback proposed for the building does not comply with the requirements.
5. ZR 24-552 – A rear yard setback is required for the proposed building;
6. ZR 24-35 – The open areas provided along the side lot lines, at the mechanical penthouse level, are less than 8'-0";" and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R8 zoning district, the proposed construction of an 18-story biomedical research building for Weill Cornell Medical College to be occupied by community facility use, that does not comply with zoning parameters for community facility floor area, lot coverage, front and rear height and setbacks, and rear and side yards, contrary to ZR §§ 24-11, 24-36, 24-522, 24-552, and 24-35; and

WHEREAS, the application is brought on behalf of Weill Cornell Medical College (“Weill Cornell”), a non-profit educational institution; and

WHEREAS, a public hearing was held on this application on October 28, 2008, after due notice by publication in the *City Record*, with a continued hearing on December 9, 2008 and then to decision January 13, 2009; 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 8, Manhattan, recommends approval of this application; and

WHEREAS, certain area residents testified in opposition to the application; and

WHEREAS, additionally, the Kingsley Condominium, represented by counsel (hereinafter, the “Opposition”), also appeared at hearing, and made submissions into the record in opposition to the application; the arguments made by the Opposition related to the required findings for a variance, as well as other items, and are addressed below; and

WHEREAS, the subject site consists of tax lots 8, 14, 15, 16, and part of Tax Lot 21, which together comprise a single zoning lot (tentative Tax Lot 8, the “Zoning Lot”); and

WHEREAS, the subject site is occupied by three buildings which are proposed to be demolished; 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, the subject site has a total lot area of 26,116 sq. ft., and

WHEREAS, the subject site is located at the southwestern end of Weill Cornell’s campus, which is primarily located on the subject block and on the east side of York Avenue between East 68th and East 70th Streets; and

WHEREAS, the first and second floors are proposed to be occupied by public lobbies and meeting, educational

and building support space; the third through 16th floors will be occupied by research laboratories and related functions (totaling 287,910 sq. ft.); the 17th and 18th floors are proposed to be occupied by mechanical space; and six below-grade levels will be occupied by laboratory support and building support space, which do not contribute to the building’s total floor area; and

WHEREAS, the proposed building would have the following parameters: (1) floor area of 331,945 sq. ft. (169,754 sq. ft. is the maximum permitted floor area); (2) an FAR of 12.71 (6.5 is the maximum permitted FAR for community facility use); (3) lot coverage of 92 percent (65 percent is the maximum permitted lot coverage); (4) a street wall height of approximately 231 feet and total building height (including mechanicals) of 302’-7” (85’-0” is the maximum height permitted), without a setback (a setback of 20’-0” is required); (5) a rear yard of 15’-0” (30’-0” is required above 23’-0”), with no setback (a setback of 20’-0” is required above 125’-0”); and (6) two side yards of 5’-0” (if provided, two side yards of 8’0” are required); and ZR § 72-21 (a) – Unique Physical Conditions Finding

WHEREAS, under § 72-21 (a) of the Zoning Resolution, the Board must find that there are unique physical conditions inherent to the Zoning Lot which create practical difficulties or unnecessary hardship in strictly complying with the zoning requirements (the “(a) finding”); and

WHEREAS, the applicant represents that the waivers are sought to enable Weill Cornell to construct a facility that meets its programmatic needs; and

WHEREAS, as to these programmatic needs, the applicant represents that Weill Cornell is a non-profit profit educational institution, with a mission to develop a state-of-the-art medical science and research facility with floor plates that facilitate interdisciplinary and translational research and laboratories and which are proximate to the Weill Cornell Medical Center; and

WHEREAS, the applicant states that Weill Cornell has adopted a strategic plan focusing on translational and clinical research in metabolic, cardiovascular and neuro-psychiatric disorders, infectious diseases, genetics, nano-biotechnology and stem cell biology and intends to recruit 50 additional tenure-track research faculty, and to enroll an additional 51 graduate students, 101 post-doctoral fellows, 101 technicians, 25 non-tenure track research faculty, and 25 support personnel to conduct this research; and

WHEREAS, the applicant further states that all available research facilities on the campus are being used to capacity and there is no room to expand within Weill Cornell’s existing buildings; and

WHEREAS, the applicant represents that Weill Cornell’s existing research facilities are inadequate in size and quality, lack floor plates capable of supporting modern research and are largely located in obsolete buildings constructed before 1960; and

WHEREAS, the applicant represents that Weill Cornell cannot fulfill its research mission, remain competitive, and attract and retain highly-skilled physicians, researchers, and medical students without providing modern

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research laboratories; and

WHEREAS, the applicant further represents that the research space of the proposed research facility has been designed to be modern and competitive with other such facilities and to promote the desired research environment by creating opportunities for collaborations among different scientific disciplines; and

WHEREAS, to achieve this multi-disciplinary collaborative model with efficiency and adaptability, the laboratory floors require large uniform floor plates; and

WHEREAS, the applicant cites spatial analyses reflecting that effective laboratory floor plates for institutions with similar missions to Weill Cornell's range from 20,000 sq. ft. to 35,000 sq. ft.; and

WHEREAS, the studies reflect that a certain sized floor plate is dictated by the optimum number of principal investigators ("P.I.'s") per floor, their space requirements and the additional space necessary for ancillary offices, equipment rooms and conference rooms required by multi-disciplinary teams of scientists; and

WHEREAS, a study cited by the applicant also reflects that 1,400 to 1,700 net sq. ft. is the minimum area required for each lead scientist or P.I., and that eight to ten is the optimum number of P.I.'s to station on each floor; and

WHEREAS, the applicant represents that none of the laboratory floor plates of Weill Cornell's existing facilities is optimally sized and that each active P.I. now occupies an average of only 925 sq. ft.; and

WHEREAS, the applicant represents that the proposed 21,752 sq. ft. floor plate (not including mechanical space) will provide 1,600 sq. ft. of space to each of the proposed 370 P.I.s and is therefore the minimum size required for Weill Cornell's research programs; and

WHEREAS, the applicant also proposes to provide two floors of above-grade mechanical space; and

WHEREAS, the applicant states that above-grade mechanical space is necessary to provide better air quality to laboratories and that placing air and exhaust air streams adjacent to each other at the top of the building allows air-to-air heat exchangers to maximize heat recovery and achieve greater energy efficiency; and

WHEREAS, the applicant represents that the waiver to floor area is sought to provide the square footage necessary to meet Weill Cornell's research and educational programmatic needs, and the waivers to lot coverage, front and rear height and setbacks, and rear and side yards, allow Weill Cornell to achieve research facility floor plates that are efficient and encourage collaboration among research teams; and

WHEREAS, the applicant states that a complying facility would be limited to 169,754 sq. ft. of floor area; and

WHEREAS, based on an extensive review of its facilities and operations, Weill Cornell determined that 280,000 sq. ft. of laboratory and educational programmatic space was needed for development of an academic and medical center building that would reduce overcrowding on its campus, while creating an interdisciplinary and translational research center consistent with National

Institute of Health (NIH) guidelines; and

WHEREAS, the applicant states that Weill Cornell determined that approximately 280,000 sq. ft. of program space was required: 220,000 sq. ft. for laboratory space; and 60,000 sq. ft. of educational program space, consisting of classrooms, lecture halls, conference rooms, and an atrium with garden area; and

WHEREAS the applicant further states that Weill Cornell's demands are also driven by the programmatic need to relocate 54 to 90 faculty members from overcrowded facilities on the east side of the campus, as well as the need to accommodate 50 additional faculty being recruited in response to the NIH strategic plan for interdisciplinary and translational research centers; and

WHEREAS, the applicant represents that recruitment of 50 additional tenure-track research faculty will result in the addition of approximately 51 additional graduate students, 101 post-doctoral fellows, 101 technicians, 25 non-tenure track research faculty, and 25 other support personnel, while the relocated 54 faculty members would result in the addition of 53 graduate students, 107 post-doctoral fellows, 107 technicians, 27 non-tenure track research faculty, and 27 other support personnel; and

WHEREAS, the applicant further represents that a complying building would provide less than half the programmable square footage necessary to meet Weill Cornell's research and educational programmatic need, and that a complying building would further require 11,737 sq. ft. of program space to be located in below grade space where it would not count as floor area; and

WHEREAS, the applicant states that the proposed facility would provide the research laboratory space needed to meet the programmatic need on above-grade floors in space appropriate to that use and without the loss of research support facilities; and

WHEREAS, the applicant states that the rear yard, height and setback waivers are necessary to accommodate the minimum floor plate depth of 85 feet required for an efficient laboratory module; and

WHEREAS, further, the applicant states that the proposed site is the most viable to satisfy its programmatic needs because the nature of clinical research requires that facilities be located proximate to patient care facilities and the subject site is adjacent to the Weill Greenberg Ambulatory Care Center at the corner of East 70th Street and York Avenue; and

WHEREAS, the subject site's location within the Medical Center's campus also facilitates connectivity and allows students to be integrated into research programs and clinical physician faculty to have easy access to both their patients and to research laboratories; and

WHEREAS, in addition to its proximity to the Medical Center's campus, Weill Cornell identified the subject site as the most operationally feasible location for the proposed research facility because: (1) research laboratory uses are currently located on the site; and (2) the existing uses can be relocated elsewhere on the campus or within the proposed building; and

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WHEREAS, although the subject site was found to constitute the optimum site for the proposed project from an operational standpoint, Weill Cornell represents that it is unable to accommodate its programmatic needs within a building or a site plan that complies with all relevant R8 zoning district regulations; and

WHEREAS, in its submission, the applicant considered an as-of-right alternative for the proposed development, but determined that – at 12 above-grade stories and 169,754 sq. ft. of floor area – it would provide less than half the floor area of the proposed facility; and

WHEREAS, the applicant further represents that complying with the subject zoning would produce a tiered facility with inefficient non-uniform floor plates that would severely compromise the functionality and efficiency of the laboratory space; and

WHEREAS, the applicant states that the third through sixth floors would be limited by the lot coverage and rear yard regulations to 10,370 programmable square feet per floor; and

WHEREAS, the lot coverage limitations would allow a maximum building depth of 65'-3", necessitating a design that would hinder effective research collaboration and the informal interaction that is the catalyst for scientific discovery; and

WHEREAS, the applicant states that the setback regulations require a 20-foot setback from the street line for floor seven through nine and a setback of approximately 53 feet from the western lot line on floors 10 through 12; and

WHEREAS, the applicant states that the seventh, eighth and ninth floors would consequently have floor plates of 7,232 sq. ft. and the 10th, 11th, and 12th floors would have floor plates of 5,168 sq. ft., all with maximum depths of 50'-5"; and

WHEREAS, the applicant further states that floors seven through nine of a complying building would accommodate a maximum of five principal investigators and that the 10th through 12th floors could accommodate only three principal investigators, each with a lab group size of no more than two to three researchers with a layout that would not permit direct relationships and collaborations between lab teams; and

WHEREAS, the applicant further states that the height and setback regulations would also limit the efficiency of the program and of the mechanical and other building systems, the cost benefits of sharing expensive scientific equipment among an optimum number of researchers, and the economies of the building support systems; and

WHEREAS, the applicant concludes that the floor area, lot coverage, front and rear height and setbacks, and rear and side yard relief is required to meet the programmatic and design imperatives of the proposed research facility; and

WHEREAS, in analyzing the applicant's waiver requests, the Board notes at the outset that Weill Cornell, as a non-profit educational institution, may use its programmatic needs 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) (hereinafter, "Cornell")); and

WHEREAS, the Board notes that Weill Cornell is a New York State chartered educational institution providing a significant educational program, which will operate the proposed research facility; and

WHEREAS, the Board also notes that the proposed research facility 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, accordingly, the Board finds it appropriate to give deference to Weill Cornell's programmatic needs; and

WHEREAS, the Board observes that such deference has been accorded to comparable institutions in numerous other Board decisions, certain of which were cited by the applicant in its submission; and

WHEREAS, here, the waivers will facilitate construction of a building that will meet the specific needs of Weill Cornell; and

WHEREAS, specifically, as set forth above, the applicant represents that the proposed research facility will provide Weill Cornell with 14 laboratory floors, which meet the minimum required floor area for modern translational research programs, and two floors for other educational uses; and

WHEREAS, in sum, the Board concludes that the need for the waivers to accommodate Weill Cornell's programmatic needs has been fully explained and documented by the applicant; and

WHEREAS, the Opposition argues that the applicant has failed to make the (a) finding because: (1) the site is not unique; and (2) the negative impacts of the proposed development outweigh its positive benefits; and

WHEREAS, as to its lack of uniqueness, the Opposition contends that the applicant cannot satisfy the (a) finding under ZR § 72-21 because the Zoning Lot is not subject to a unique physical condition which creates a hardship; and

WHEREAS, the Board finds that the applicant's submissions, which include statements, plans, and other evidence, provide the required specificity concerning its requirements for laboratory space to establish that the requested variances are necessary to satisfy its programmatic needs, consistent with the Cornell decision; and

WHEREAS, in Cornell, the New York Court of Appeals adopted the presumptive benefit standard that had formerly been applied to proposals of religious institutions, finding that municipalities have an affirmative duty to

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accommodate the expansion needs of educational institutions; and

WHEREAS, the applicant states that Weill Cornell enrolls 465 MD and MD/Ph.D students as well as 394 candidates for other degrees (Ph.D., M.S. and P.A.) in its graduate biomedical and health sciences degree programs; and

WHEREAS, the applicant further states that the employees at the proposed research facility will include approximately 104 to 182 Medical School faculty, 98 graduate students, 196 post-doctoral fellows and 196 technicians; and

WHEREAS, the applicant represents that the outcomes of research conducted at the proposed research facility will be “translated” into Weill Cornell’s clinical care and medical education in furtherance of its mission, and that research facilities such as that proposed are customarily found on the campuses of medical schools; and

WHEREAS, the Opposition argues that Weill Cornell is not entitled to the deference accorded educational institutions seeking variances to zoning requirements under Cornell because the negative impacts of the project use outweigh the public benefits presented by the proposed project; 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, as discussed below, the Opposition has failed to establish that the proposed research facility will negatively impact the health, safety or welfare of the surrounding community; and

WHEREAS, in sum, the Board has reviewed the submissions made by the Opposition, 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 research facility; and

WHEREAS, accordingly, the Board finds that the applicant has sufficiently established that unnecessary hardship and practical difficulty exist in developing the site in compliance with the applicable zoning regulations due to the programmatic needs of Weill Cornell; and
ZR § 72-21 (b) – Financial Return Finding

WHEREAS, under ZR § 72-21 (b), the Board must establish that the physical conditions of the site preclude any reasonable possibility that its development in strict conformity with the zoning requirements will yield a reasonable return, and that the grant of a variance is therefore necessary to realize a reasonable return (the “(b) finding”), unless the applicant is a

nonprofit organization, in which case the (b) finding is not required for the granting of a variance; and

WHEREAS, since Weill Cornell is a nonprofit institution and each of the required waivers are associated with its community facility use and are sought 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

ZR § 72-21 (c) – Neighborhood Character Finding

WHEREAS, the applicant represents that the waivers of community facility floor area, lot coverage, rear yard, front and rear height and setbacks, and rear and side yards 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 development is compatible with the medical and research uses that characterize the York Avenue corridor from East 60th Street to East 72nd Street; and

WHEREAS, the applicant states that the campus of Memorial Sloane Kettering Cancer Center (“MSK”) is located immediately to the south of the subject site between East 66th and East 69th Streets and First and York Avenues and that a NYPH-Weill Cornell superblock is located one-half block from the subject site on the east side of York Avenue between East 68th and East 71st Streets; and

WHEREAS, the applicant represents that the proposed development is also compatible with the scale and bulk of the surrounding area; and

WHEREAS, the applicant states that the surrounding area consists of higher density, R10, R10A and R10 equivalent districts along the avenues and wide streets, and mid-density districts, primarily R8, R9 and R8B districts on the mid-blocks; and

WHEREAS, maps submitted by the applicant indicate that there are numerous large buildings in the surrounding area, including (i) the adjacent 40-story Kingsley Condominium with a height of 406 feet, and an FAR of 16.94; (ii) the Payson House residence at 435 East 70th Street, with a height of 332 feet; (iii) the Oxford Condominium, at 422 East 72nd Street, with a height of 374 feet; (iv) the 26-story Baker Tower and 36-story Helmsley Medical Tower, to the east of the subject site across York Avenue, with respective heights of 398 feet and 384 feet; and (v) MSK’s Zuckerman Research Center, located directly across East 69th Street with a height of 424 feet and FAR of 11.24; and

WHEREAS, the Opposition contends that the development of the proposed building would be inconsistent with the mid-block scale of the surrounding area which is stated to be predominately built of moderate-height residential tenement buildings; and

WHEREAS, the applicant states that the mid-blocks to the south of the subject site, from East 67th Street to the midpoint between East 68th and East 69th Streets, were rezoned from R8 to R9 in 2001; and

WHEREAS, the applicant further states that a 26-story, approximately 420-foot MSK-occupied research

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building was recently constructed on the mid-block portion of the block bounded by First and York Avenues and East 69th and East 68th Streets across the street from the subject site, and that other tall mid-block buildings in the surrounding area include the MSK Research Building at 430 East 67th Street (16 floors), and residential buildings at 333 East 68th Street (16 floors), 310 East 70th Street (12 floors), 309 East 70th (12 floors), 311-19 East 69th Street (13 floors) and 325-339 East 69th Street (13 floors); and

WHEREAS, the applicant represents that the proposed research facility would not impact the development or use of other property, in that all the sites to the north and east are owned and occupied by the Weill Cornell Medical Center and sites to the south are owned and occupied by MSK; and

WHEREAS, further, any impacts on surrounding development would also be limited by the location of the subject site within Weill Cornell's campus and by its proximity to the MSK campus; and

WHEREAS, the applicant represents that the proposed waivers to the required setback and sky exposure plane would not result in a building that is out of context in terms of its height or its location at the streetline, as East 69th Street is characterized by buildings of varied height, massing and material, with some setback configurations that are not in compliance with the bulk regulations of the Zoning Resolution; and

WHEREAS, the applicant further represents that the façade of the proposed building includes decorative elements that relate to nearby residential buildings as well as to the primary façade of the adjacent Weill Greenberg Center and that the building has been designed to reduce its apparent height from the street; and

WHEREAS, the applicant states that the proposed facility will result in no significant impacts to traffic or parking in the area; and

WHEREAS, with respect to traffic, the applicant states that the project is expected to generate truck traffic estimated at 15 to 20 vehicles per day and that the projected traffic generated by the proposed facility is below the City's established thresholds for requiring a traffic analysis; and

WHEREAS, the applicant further states that East 69th Street is a one-way street which is not a primary route for emergency vehicles arriving at or departing from New York Presbyterian Hospital, which will generally travel west on 68th Street and north and south on York Avenue; and.

WHEREAS, the applicant states that special measures will be implemented with respect to the handling and disposal of biohazardous materials in conformance with all applicable federal, State and City regulations; and

WHEREAS, during the process, the Board raised concerns regarding the loading berths; and

WHEREAS, the Board noted that the loading berths were located on the west side of the proposed facility, adjacent to residential buildings, and asked whether they could be relocated to the east site; and

WHEREAS, the applicant's response states that the west side of the site is four feet higher than the mid-point of the site where the building entrances are proposed and that

the placement of the loading docks on the west thereby takes advantage of grade elevation changes across the site to resolve the differences in the floor-to-floor height requirements needed for the loading docks and for the program spaces; and

WHEREAS, the applicant further states that a floor of classroom space can fit within the 14'-0" floor-to-floor height of the proposed facility, but that the loading docks need a height of 24'-0" for truck clearance and structural transfers and MEP systems distributions over the docks, and that locating the loading docks on the higher side of the site, to the west, maximizes the college program space on the east side of the lobby of the proposed facility and provides for a more efficient layout; and

WHEREAS, further, the Board noted that the two proposed waste compactor berths were not fully enclosed and asked whether they could be redesigned to ensure that any loading activities would be less disruptive to the adjacent residential uses; and

WHEREAS, in response, the applicant provided revised plans which can accommodate a 40-foot truck with the loading dock doors in a closed position, so that all removal operations can be fully contained within the proposed facility; and

WHEREAS, the applicant states that the materials handling entrance/loading dock area will therefore be fully enclosed and that all trash loading activities would take place within the building concealed behind a stainless steel art wall when trucks are not entering or leaving the facility; and

WHEREAS, according to shadow studies performed by the applicant, the proposed research facility would result in incremental shadows on five sun-sensitive resources: St. Catherine's Park, two blocks to the southwest; the Church of St. Catherine of Siena across 69th Street, and public plazas at 400 East 70th Street (the Kingsley); 400 East 71st Street (the Windsor), and 422 East 72nd Street, which would be of limited extent and duration during the late spring and summer months; 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
ZR § 72-21 (d) - Self Created Hardship Finding

WHEREAS, as pertains to the (d) finding under ZR § 72-21, the Board is required to find that the practical difficulties or unnecessary hardship burdening the site have not been created by the owner or by a predecessor in title; 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 development of a state-of-the-art translational research facility with: (i) at least 280,000 sq. ft. of laboratory and educational programmatic floor area; (ii) floor plates of at least 20,000 sq. ft; (iii) a floor plate configuration that promotes collaborations among laboratory teams; (iv) above-grade mechanical space; and (v) proximity to Weill Cornell's

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campus; and by the consequential difficulty in accommodating those needs within an as-of-right development; and

WHEREAS, the Opposition contends that Weill Cornell created its hardship by its desire to expand; and

WHEREAS, the Board notes that the need by an educational institution to expand its facilities is not 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 Weill Cornell or a predecessor in title; and ZR § 72-21 (e) – Minimum Variance Finding

WHEREAS, as pertains to the (e) finding under ZR § 72-21, the Board is required to find that the variance sought is the minimum necessary to afford relief; and

WHEREAS, the applicant further represents that Weill Cornell, through its consultants, has designed research space that is modern and competitive with other such facilities and which minimizes the degree of waivers sought by meeting certain thresholds for maximum efficiency; and

WHEREAS, the applicant states that the requested waivers of floor area, lot coverage, front and rear height and setbacks, and rear and side yards represent the minimum variance necessary to allow Weill Cornell to meet its programmatic needs; and

WHEREAS, the Opposition argues that the (e) finding cannot be met because an as-of-right research facility could be built on the subject site; and

WHEREAS, as discussed above, the applicant explored an as-of-right scenario for the proposed project, and found that it provided insufficient floor area and lacked floor plates with the same size and functionality as that of the proposed building; and

WHEREAS, the Board asked the applicant to explore the feasibility of a 10 FAR research facility; and

WHEREAS, in response, the applicant prepared plans indicating that development of a 10 FAR facility would result in a loss of four floors of laboratory space, representing a loss of 29 percent of the laboratory space in the proposed facility; and

WHEREAS, the applicant states that the loss of four floors of laboratory space would consequently result in a reduction of between 28 and 40 new and existing faculty intended to be housed in the new research building, and would reduce the number of PIs to between 76 and 100, as compared to the between 104 and 140 PIs that would be accommodated in the proposed facility and that the numbers of PIs and faculty that could be accommodated would be insufficient to meet its programmatic need; and

WHEREAS, the Board therefore finds that the requested waivers of floor area, lot coverage, front and rear height and setbacks, and rear and side yards represent the minimum necessary to allow Weill Cornell 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, the project is classified as a Type I action pursuant to Section 617.4(b) (6) (v) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has identified and considered relevant areas of environmental concern about the project documented in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA100M, dated January 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 Department of Environmental Protection (“DEP”) Office of Environmental Planning and Assessment has evaluated the following submissions from the Applicant: (1) a June 2008 EAS; (2) a May 2008 Phase I Environmental Site Assessment report; (3) a October 2008 Revised Phase II Workplan and; (4) a Health and Safety Plan (HASP); and

WHEREAS, the applicant has agreed to implement any hazardous materials remediation, pursuant to a Restrictive Declaration executed on January 5, 2009 and recorded against the subject property on January 6, 2009; and

WHEREAS, a passenger car equivalent screening analysis was performed which determined that the proposed project would not generate sufficient traffic to have the potential to cause a significant noise impact from mobile noise sources; and

WHEREAS, based on noise measurements performed at two locations adjacent to the subject site, the proposed project would require a window/wall attenuation of 30 dBA in order to maintain an interior noise level of 45 dBA; and

WHEREAS, the EAS stated that this attenuation would be achieved through the use of double-glazed windows which would provide a window/wall attenuation of 30 dBA; and

WHEREAS, the proposed building would also include central air-conditioning which is an acceptable alternate means of ventilation to maintain a closed window condition; and

WHEREAS, the Board finds that the proposed action will not have a significant adverse impact on stationary source noise; and

WHEREAS, as discussed above, the EAS found that the proposed facility would result in incremental shadows on five sun-sensitive resources: St. Catherine’s Park, two blocks to the southwest, the Church of St. Catherine of Siena across 69th Street, and public plazas at 400 East 70th Street (the Kingsley), 400 East 71st Street (the Windsor), and 422 East 72nd Street, but that these shadows would be of

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limited extent and duration and would not result in a significant adverse impact; and

WHEREAS, DEP also evaluated air quality analysis submissions to examine the potential air quality impacts of the proposed action; and

WHEREAS, with respect to air quality, the DEP evaluated submissions dated October 27, 2008 and January 5, 2009 and determined that the maximum hourly incremental traffic from the proposed project was less than the mobile source air quality screening threshold of 100 peak hour trips set forth in the CEQR Technical Manual and therefore the project is not expected to create significant adverse impacts from mobile source air emissions; and

WHEREAS, the applicant states that laboratories will be equipped with a fume hood exhaust system to prevent any hazardous airborne chemical released within the laboratory from escaping into other areas of the building, or through windows to the outside; and

WHEREAS, the EAS analyzes potential emissions from the proposed facility's fume hood exhaust system in the event of an accidental spill of the chemicals with the greatest potential health hazard; and

WHEREAS, the analysis indicates that the maximum concentrations emitted as a result of a chemical spill would be lower than the corresponding short term exposure limits ("STELs") or ceiling values set by the Occupational Safety and Health Administration or the National Institute for Occupational Safety and Health for each of the chemicals analyzed; and

WHEREAS, accordingly, the EAS concludes that there would be no significant impacts from a chemical spill from fume hood emissions due to recirculation back into the building's air intakes or on other nearby buildings in the surrounding community; and

WHEREAS, the applicant additionally states that there is no potential for significant adverse impacts arising from emissions from a spill of materials in laboratories due to special exhaust features which remove 99.97 percent of all airborne matter 0.3 microns in diameter and larger, and cannot fans that further dilute emissions; and

WHEREAS, a stationary source screening analysis was performed to evaluate the potential for significant air quality impacts on the proposed project from the New York Presbyterian Hospital's boilers/cogeneration operation and the proposed new boilers/cogeneration plant which would be ducted to an existing common stack located above the Annex building between East 70th and 71st Streets east of York Avenue; and

WHEREAS, based on the screening analysis, emissions from the New York Presbyterian Hospital's boilers/cogeneration operation and the proposed new boilers/cogeneration plant are not anticipated to result in significant adverse stationary source air quality impacts; and

WHEREAS, the applicant states that no significant effects that would require an environmental impact statement are foreseeable; and

WHEREAS, the Opposition contends that the preparation of an environmental impact statement is required by SEQRA

because the proposed research facility has the potential to create a health hazard in a densely populated residential neighborhood; and

WHEREAS, the Opposition argues that the building will be a biomedical research facility with a biosafety classification of "Level 3" that may endanger the surrounding community; and

WHEREAS, the applicant states that biohazards are classified by the Public Health Service Centers for Disease Control ("CDC") according to the degree of containment required, from BSL-1, which requires the lowest level of containment, to BSL-4 which requires the highest level of containment; and

WHEREAS, the applicant states the proposed facility will have many different laboratories and that the current plans for the building include one BSL-3 ("Level 3") laboratory on a portion of one floor of the building, with the other laboratories to be a mix of BSL-1 and BSL-2; no BSL-4 laboratories are planned; and

WHEREAS, the Opposition asserts that the siting of a BSL-3 laboratory in a "high traffic area;" is discouraged by "Biosafety in Microbiological and Biomedical Laboratories" (the "BMBL"), published by the US Department of Health and Human Services, CDC and National Institute of Health ("NIH"); and

WHEREAS, the applicant states that the BMBL sets forth guidelines to prevent personal, laboratory and environmental exposure to potentially infectious agents or biohazards and that there is no potential for significant environmental or health risk associated with medical research if the laboratories are operated by trained professionals in compliance with such guidelines; and

WHEREAS, the applicant asserts that Weill Cornell's proposed operations are consistent with the BMBL guidelines; and

WHEREAS, the applicant further points out that numerous BSL-3 laboratories currently operate in densely populated New York City neighborhoods; and

WHEREAS, the applicant further states that the Opposition has misconstrued a recommendation from an outdated edition of the BMBL concerning the siting of a BSL-3 laboratories within a high traffic area of a research facility, not an urban neighborhood; and

WHEREAS, the applicant represents that the distinction is clear in the most recent edition of the BMBL which does not contain the phrase "high traffic areas," but states that BSL-3 laboratories are to be "separated from areas which are open to unrestricted traffic flow *within the building* (emphasis added)," and which continues, "[p]assage through two sets of self-closing doors is the basic requirement for entry into the [BSL-3] laboratory from access corridors or other contiguous areas;" and

WHEREAS, the applicant states that Weill Cornell has many years of experience operating BSL-3 laboratories and currently conducts medical research with hazardous materials, including chemicals and biological agents in the existing buildings on the subject site, and in other locations throughout its campus, and

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WHEREAS, represents that the proposed facility will not contain any uses that are not already allowed as-of-right on the site, and that are not already conducted safely throughout the Weill Cornell campus and New York City; and

WHEREAS, the applicant further represents that, if the instant application is not approved, Weill Cornell may construct a smaller biomedical research building on the subject site in which could operate a new BSL-3 laboratory as-of-right; and

WHEREAS, the Opposition also asserts that the EAS was deficient in its analysis of potential significant adverse impacts by failing to consider the potential risks associated with: (i) malfunction of containment systems; (ii) infection of staff; (iii) failure of the exhaust system; (iv)

release of infectious materials during transportation; (v) unauthorized removal of pathogens; and (vi) bioterrorism; and

WHEREAS, the applicant states that the potential for an accident is speculative, and neither SEQRA nor CEQR require the analysis of speculative impacts (see, e.g., *Ind. Liaison Comm. v. Williams*, 72 N.Y.2d 137, 146 (1988); *Real Estate Bd. of New York, Inc. v. City of New York*, 157 A.D.2d 361, 364 (1st Dep't 1990); and

WHEREAS, the Board agrees that the mere theoretical possibility of an accident, whether affecting a lab worker or the community, is not enough to support a finding that the proposed research facility has the potential for a significant adverse environmental impact; and

WHEREAS, the applicant states that all medical research activities involving the use of chemicals, biological materials, and radiological materials that would be conducted in the proposed facility are strictly regulated at the federal, State and local level; and

WHEREAS, the applicant further states that the CDC and the NIH have established guidelines specifying appropriate containment procedures for research activities involving recombinant DNA, pathogenic agents, and other biohazards which are mandatory for federally-funded institutions such as Weill Cornell and that all activities at the building would be conducted in compliance with all applicable regulatory requirements and research guidelines; and

WHEREAS, laboratories also are subject to New York City Fire Department rules relating to flammable and explosive materials and the certification of certain laboratory personnel; and

WHEREAS, the applicant represents that Weill Cornell laboratories involving the use of biological materials have special safety features including security check points, visual and audio surveillance, double-locking doors, intruder alarms, and locked and extra-strength storage cabinets and that BSL-3 laboratories in particular have special design measures that comply with the CDC/NIH guidelines to further ensure the safety of lab personnel and the community; and

WHEREAS, the applicant further represents that Weill Cornell implements security policies and practices to meet

the requirements of the USA PATRIOT Act and subsequent bioterrorism legislation, including the performance of background checks of persons with access to hazardous agents, and that the location and quantities of these materials are frequently checked and inventoried; and

WHEREAS, all chemical, biological and radioactive wastes from the laboratories of the proposed facility would be containerized, labeled and stored prior to off-site disposal in appropriate storage areas; waste would be removed by appropriately licensed contractors; and

WHEREAS, the EAS states that the building will have diesel emergency generators which would be used in the event of a sudden loss of power from the electrical grid to provide life safety and other functions to protect both the occupants of the building and the surrounding community against the effects of any power outages on the exhaust systems of the proposed facility; and

WHEREAS, the Opposition argues that decisions in *Save the Audubon Coalition v. City of New York* 180 A.D. 2d 348 (1st Dept. 1992); *Allen v. Boston Redevelopment Authority*, 877 N.E. 2d 907 (2007); and *Tri-Valley Cares v Department of Energy* 203 Fed. Appx. 105, 2006 WSL 2971651 (9th Cir. 2006) support its position that preparation of an EIS is required to analyze the potential environmental impacts of the proposed facility; and

WHEREAS, the Board notes that the cases cited by the Opposition each concern environmental review of a facility in which biohazardous or radioactive materials will be present, but that none support the Opposition's position that an EIS is required to evaluate potential environmental impacts associated with the proposed development of such a facility; and

WHEREAS, for example, the petitioners in *Audubon* argued that the EIS analyzing the potential impacts of a biological research complex proposed to be located at 165th Street and Broadway did not sufficiently study public health and safety issues related to the expected use and possible release of hazardous chemicals, radioactive material and biohazardous materials at a research facility located in a populated area; and

WHEREAS, the Court rejected the petitioner's claim, finding that the environmental review had identified the relevant areas of environmental concern, taken the required "hard look" at them, and made a "reasoned elaboration" of the basis for its determination, as required by SEQRA; and

WHEREAS, both *Allen v. Boston Redevelopment Authority* (877 N.E. 2d 907 (2007)) and *Tri-Valley Cares v Department of Energy* (203 Fed. Appx. 105, 2006 WSL 2971651 (9th Cir. 2006)) cited by the Opposition similarly concern the adequacy of environmental review, not the requirement that an EIS be prepared; and

WHEREAS, in *Allen*, which involved a challenge to a BSL-4 biomedical research complex brought under the Massachusetts Environmental Policy Act, the court found that the environmental review was inadequate because it had failed to analyze the likelihood of damage to the environment caused by the release of a contagious pathogen; and

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WHEREAS, in Tri-Valley Cares, the Ninth Circuit found that environmental review of the proposed construction of a federal biological weapons research laboratory was inadequate because it had failed to consider the effects of a terrorist attack; and

WHEREAS, each of the three cited cases stand for the proposition that a lead agency must conduct a detailed review of the potential impacts of biohazardous materials, radioactive materials and chemical agents, but none hold that that review can only take the form of an EIS, as the Opposition asserts; and

WHEREAS, the Board notes that the environmental review for the instant application included a detailed examination of the potential health and safety impacts of the chemical and biological agents that may be present at the proposed facility, and describes a comprehensive system of regulations and physical protections designed to contain potential hazards and protect the residents of the surrounding community, as well as the workers at the facility; and

WHEREAS, Board finds that, based on the implementation of the requirements of the applicable statutes and regulations, compliance with the CDC/NIH guidelines, the design features of the building, and waste management practices, the proposed facility would have no significant adverse impacts related to hazardous materials; 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 within an R8 zoning district, the proposed construction of an 18-story biomedical research facility building to be occupied for community facility use by the Weill Cornell Medical College, that does not comply with zoning parameters for floor area, lot coverage, front and rear height and setbacks, and rear and side yards, contrary to ZR §§ 24-11, 24-36, 24-522, 24-552, and 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 25, 2008"- (9) sheets, "September 29, 2008"- (7) sheets and "November 12, 2008"- (1) sheet; and *on further condition*:

THAT the proposed building shall have the following parameters: (1) floor area of 331,945 sq. ft.; (2) an FAR of 12.71; (3) a lot coverage of 92 percent; (4) street wall height of approximately 231 feet and a total building height (including mechanicals) of 302'-7" without setbacks; (5) a

rear yard of 15'-0" without a setback; and (6) two side yards of 5'-0"; and

THAT all requirements as set forth in the Restrictive Declaration shall be fully complied with;

THAT this approval 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 mechanical space calculations shall be subject to DOB review and approval;

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, January 13, 2009.

172-08-BZ

APPLICANT – Mitchell A. Korbey, Esq., for Sunnyside Jewish Center, owners.

SUBJECT – Application June 27, 2008 – Variance (§72-21) to permit the conversion of an existing two-story residential building to a house of worship. The proposal is contrary to ZR Section 24-35 (a) (Side yards). R5 district.

PREMISES AFFECTED – 40-20 47th Avenue, aka 4702-4710 41st Street, southwest corner of 47th Avenue and 41st Street, Block 198, Lot 36, Borough of Queens.

COMMUNITY BOARD #2Q

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 December 31, 2008, acting on Department of Buildings Application No. 402547525, reads, in pertinent part:

“Proposed Use Group 4 house of worship does not provide two side yards of 11 feet each, as is required due to an aggregate street wall width of 109’-11”, and is therefore contrary to 24-35(a). Additionally, proposed enlargement creates non-compliance in front yard, contrary to 24-34;” 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 enlargement of a two-story and cellar residential building to a two-story community facility building to be occupied by a

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synagogue (Use Group 4), which does not comply with front yard and side yard requirements for community facilities, contrary to ZR §§ 24-34 and 24-35; and

WHEREAS, a public hearing was held on this application on November 18, 2008, after due notice by publication in *The City Record*, and then to decision on January 13, 2009; and

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

WHEREAS, Community Board 2, Queens, recommends approval of the application; and

WHEREAS, Council Member Eric Gioia submitted written testimony in support of the application; and

WHEREAS, the United Forties Civic Association also submitted written testimony in support of the application; and

WHEREAS, certain members of the community provided testimony in opposition to the proposal; and

WHEREAS, this application is brought on behalf of the Sunnyside Jewish Center, a non-profit religious entity (the "Synagogue"); and

WHEREAS, the subject premises is located on the southwest corner of the intersection at 47th Avenue and 41st Street, within an R5 zoning district, and has a lot area of approximately 1,980 sq. ft.; and

WHEREAS, the subject site is currently occupied by a two-story residential building with a floor area of 2,190 sq. ft. and a one-story garage; and

WHEREAS, the existing non-complying residential building has the following parameters: a front yard of 7'-5" along the northern lot line and a front yard of 2'-1" along the eastern lot line (two front yards with minimum depths of 10'-0" each are required); and no side yards (one side yard with a minimum width of 8'-0" is required for a residential use); and

WHEREAS, the proposed two-story synagogue, as an enlargement of the existing residential building, maintains the non-complying front yard along the northern lot line; provides no front yard along the eastern lot line; and provides no side yards (two side yards with minimum widths of 11'-0" each are required for a community facility use); and

WHEREAS, the proposal provides for the following uses: (1) two meeting rooms, a pantry, and a storage area on the cellar level; (2) a synagogue on the first floor; and (3) two classrooms, a library, and the Rabbi's office on the second 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 70 members; and (2) to provide space for services and programs other than worship services; and

WHEREAS, the applicant further states that its former synagogue located nearby at 45-46 42nd Street accommodated a congregation of over 500 members, which is far in excess of its current needs; and

WHEREAS, the applicant represents that due to a major decline in membership, the congregation was no longer able to

sustain the larger facility and was forced to seek a synagogue building which can better accommodate the size of its congregation; 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, the applicant states that, in addition to its programmatic needs, the following unique physical condition creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the site's narrow width; and

WHEREAS, the applicant states that the proposed floor area, which complies with zoning district regulations, cannot be accommodated within the as-of-right yard parameters and allow for efficient floor plates that would accommodate the Synagogue's programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, specifically, the subject site has a width of 22 feet and a depth of 90 feet; and

WHEREAS, the applicant states that two ten-foot front yards and two 11-foot side yards would be required for a complying community facility building in the subject zoning district; and

WHEREAS, the applicant represents that due to the front and side yard requirements, a complying community facility building would have a width of one-foot and a depth of 69 feet, and would be too narrow to accommodate any viable building; and

WHEREAS, therefore, the applicant represents that the requested front and side yard waivers are necessary to enable the Synagogue to develop a building with viable floor plates; and

WHEREAS, accordingly, based upon the above, the Board finds that the unique conditions on the site, namely the narrow width, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the 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 and floor area are permitted in the subject zoning district;

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and

WHEREAS, the applicant submitted a 400-foot radius diagram establishing that the bulk and height of the proposed Synagogue are consistent with the with the bulk and height of the homes in the surrounding neighborhood, which have heights ranging between two and six stories; and

WHEREAS, the applicant states that the Synagogue will maintain its brick façade, which is consistent with the homes in the surrounding neighborhood; and

WHEREAS, the applicant submitted photographs depicting nearby homes which were compatible with the bulk, height, and façade of the proposed Synagogue; 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, the Board notes that the development of the proposed Synagogue is entirely as-of-right, with the exception of the non-compliant front and side yards; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue 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 an Unlisted action pursuant to 6 NYCRR Part 617.12 (aj) 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 R5 zoning district, the enlargement of a two-story residential building to a two-story community facility building to be occupied by a synagogue, which does not comply with front and side yard requirements for community facilities, contrary to ZR §§ 24-34 and 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 October 14, 2008" – (8) sheets and "Received January 9, 2009"- (1) sheet; and *on further condition*:

THAT the building parameters shall be: a front yard of 7'-5" along the northern lot line, no front yard along the eastern lot line, and no side yards;

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;

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, January 13, 2009.

190-08-BZ

APPLICANT – Valerie Campbell, Esquire c/o Kramer Levin Naftalis & Frankel, for 41-43 Bond Street LLC, owner.

SUBJECT – Application July 14, 2008 – Variance (§72-21) to allow a nine (9) story residential building (UG 2) containing eight (8) dwelling units; contrary to use regulations (§42-10). M1-5B district.

PREMISES AFFECTED – 41-43 Bond Street, south side of Bond Street, between Lafayette Street and Bowery, Block 529, Lots 29 & 30, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Sheila Pozon.

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, the decision of the Manhattan Borough Commissioner, dated June 25, 2008, acting on Department of Buildings Application No. 110009188, reads in pertinent part:

“Proposed Use Group 2 (residential) use in an M1-5B District is contrary to ZR 42-10.

There are no bulk regulations for Use Group 2 buildings in M1-5B districts;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-5B zoning district within the NoHo Historic District Extension, an eight-story and penthouse residential building with eight dwelling units, which is contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on October 7, 2008, after due notice by publication in the *City Record*, with a continued hearing on November 25,

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2008, and then to decision on January 13, 2009; and

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

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

WHEREAS, City Council Member Alan J. Gerson provided written testimony recommending approval of this application; and

WHEREAS, the subject premises is located on the south side of Bond Street between Lafayette Street and the Bowery, and has 4,274 sq. ft. of lot area; and

WHEREAS, the site is located within an M1-5B zoning district within the NoHo Historic District Extension; and

WHEREAS, the site is currently vacant, but was formerly occupied by two four-story buildings; and

WHEREAS, the applicant proposes an eight-unit residential building with a floor area of 23,621 sq. ft. (5.0 FAR), a street wall height of 95'-0", a total building height of 117'-0", and a rear yard of 30'-0"; and

WHEREAS, as to the proposed building: (1) the cellar level will be occupied by accessory storage and mechanicals, (2) the first floor will be occupied by the building lobby and one apartment unit, (3) the second floor through eighth floor will each be occupied by individual floor-through residential units, for a total of eight residential units; and (4) the roof level will be occupied by mechanicals and a one-story penthouse; and

WHEREAS, further, the proposed building will provide a 7'-6" setback above the seventh floor on the Bond Street frontage at a height of 95'-0"; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site is small; and (2) the site has a shallow depth; and

WHEREAS, the applicant states that the site has a frontage of 49'-10 1/2" and an irregular depth of between 89'-7" and 99'-5", for a total lot area of 4,725 sq. ft.; and

WHEREAS, the applicant represents that the small size of the site and its irregular depth would not accommodate efficient floor plates for a conforming commercial office development at the site; and

WHEREAS, the applicant represents that the small size of the lot results in an inefficient floor plate, in which a disproportionate share is devoted to the building core (elevators, stairways, and bathrooms); and

WHEREAS, the applicant represents that the consequential floor plate can accommodate no more than three marketable offices on each side of the core, yielding a total of six offices on each of the second through sixth floors of a complying building; and

WHEREAS, the applicant represents that this condition, in conjunction with the 20-foot setback requirement, further yields a total of three offices on each of the seventh through ninth floors, for a total of 39 offices in the conforming commercial building; and

WHEREAS, the applicant also states that the small and

irregular lot size similarly constrains the design of a conforming hotel and limits the ability to offer the amenities and number of rooms necessary to provide a reasonable rate of return; and

WHEREAS, the applicant represents that the small footprint of the site precludes the use of the ground floor for eating and drinking facilities characteristic of a typical hotel, as the reception, lobby and other hotel functions would occupy virtually all the ground floor area; and

WHEREAS, as to the uniqueness of the site, the applicant submitted an analysis of development within an area bounded by Broadway to the west, East 4th Street to the north, Bleecker Street to the south and the Bowery to the east, within the M1-5B zoning district (the "study area"); and

WHEREAS, of the approximately 100 lots within the study area, the analysis indicates that seven sites other than the subject site are not occupied by permanent structures; and

WHEREAS, the analysis further found six of the seven sites were commercially active or were undergoing development; three of the six sites were larger than the subject site, and three sites comparable in size to the subject site were located on Lafayette Street and the Bowery, major commercial thoroughfares; and

WHEREAS; of the approximately 100 sites within the study area, the Board notes that only one was found to be comparable to the subject site based on its size, location and lack of commercial use or permanent development; and

WHEREAS, the Board further notes that the incidence of one within a 100-building study area sharing the same "unique conditions" as the subject site would not, in and of itself, be sufficient to defeat a finding of uniqueness; and

WHEREAS, under New York law, a finding of uniqueness does not require that a given parcel be the only property so burdened by the condition(s) giving rise to the hardship, only that the condition is not so generally applicable as to dictate that the grant of a variance to all similarly situated properties would effect a material change in the district's zoning (see *Douglaston Civ. Assn. v. Klein*, 51 N.Y.2d 963, 965 (1980)); 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 that analyzed: (1) a conforming nine-story office building; (2) a conforming nine-story hotel; and (3) the proposed eight-story and penthouse residential building; and

WHEREAS, the feasibility study indicated that neither a conforming office building nor a conforming hotel would result a reasonable return, while the proposed residential building would result in a reasonable return; and

WHEREAS, the Board notes that prior to their demolition, the site was occupied by two buildings; and

WHEREAS, the Board questioned why it was not feasible to preserve and enlarge the two buildings for use as Joint Living Work Quarters (JLWQ) for artists, which is a conforming use; and

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WHEREAS, the applicant states that the buildings formerly located on the site were not suitable for JLWQ use due to their eight-foot ceiling heights and limited ambient light; and

WHEREAS, the applicant represents that the re-use of the former buildings for commercial or residential use was also infeasible because they contained only 12,008 sq. ft. of floor area and would require a costly gut rehabilitation and the installation of new mechanical and electrical systems; and

WHEREAS, at hearing, the Board questioned whether the residential sales prices used by the feasibility analysis accurately reflected the residential real estate market for the surrounding community; and

WHEREAS, the applicant stated that the planned finishes and construction of the proposed apartments would be less luxurious than those of many recently constructed buildings and that the proposed apartments would consequently not command the premium sales prices generated by other buildings in the area; and

WHEREAS, a submission by the applicant identified five comparable buildings which yield an averaged sales price per square foot that is equivalent to the projected per foot sales price of the subject building; 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 residential use is consistent with the character of the area and with new residential developments located across from the subject property at 40 and 48 Bond Street, respectively, and to its west, at 25 Bond Street and east, at 57 Bond Street; and

WHEREAS, the applicant further states that in the subject M1-5B zoning district, JLWQ use is permitted as of right in buildings constructed prior to December 15, 1961 with a lot coverage of less than 5,000 sq. ft.; and

WHEREAS, the applicant notes that the building's height is within the parameters permitted for a conforming building in the subject M1-5B zoning district; and

WHEREAS, the applicant further states that the height and bulk are compatible with the area, noting that the proposed building is comparable in height to the buildings at 40 and 48 Bond Street, as well as to loft-style buildings west of Lafayette Street; and

WHEREAS, the Board notes that a streetscape submitted by the applicant demonstrates the compatibility of the design and height of the subject building with those on the north and south sides of Bond Street between Lafayette Street and the Bowery; and

WHEREAS, the proposed building is located within the

NoHo Historic District Extension, and

WHEREAS, the applicant submitted a Certificate of Appropriateness from the Landmarks Preservation Commission ("LPC") dated September 30, 2008, approving the proposed building; and

WHEREAS, based upon its review of submitted maps and photographs and its inspection, the Board agrees that the proposed building's height, bulk and design are compatible with other buildings in the neighborhood; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is due to the unique dimensions of the lot; and

WHEREAS, the applicant asserts, and the Board agrees, that the waiver associated with the proposed building represents the minimum variance; and

WHEREAS, the Board observes that the proposed building of eight dwelling units is limited in scope and compatible with nearby development; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to compensate for the additional construction costs associated with the uniqueness of the site and to afford the owner relief; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09BSA009M, dated July 10, 2008; and

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

WHEREAS, the Department of Environmental Protection ("DEP") Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: (1) a July 2008 Environmental Assessment Statement, (2) an August 2008 Phase I Environmental Site Assessment (3) an October 2008 Phase II Workplan and Health and Safety Plan; and

WHEREAS, these submissions specifically examined the

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proposed action for potential hazardous materials impacts; and

WHEREAS, pursuant to a Restrictive Declaration executed on December 26, 2008 and recorded against the subject property on December 30, 2008, the applicant has agreed to implement any hazardous materials remediation required by a revised RAP; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, in an M1-5B zoning district within the NoHo Historic District Extension, an eight-story and penthouse residential building with eight dwelling units, which is contrary to ZR § 42-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 17, 2008"-(8) sheets; and *on further condition*:

THAT the following shall be the parameters of the proposed building: an eight-unit residential building with a floor area of 23,621 sq. ft. (5.0 FAR), a street wall height of 95'-0", a total building height of 117'-0", and a rear yard of 30'-0"; and

THAT all requirements as set forth in the Restrictive Declaration shall be fully complied with;

THAT this approval 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 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, January 13, 2008.

196-08-BZ

APPLICANT – DID Architects, for 53-10 Associates, LLC, owner.

SUBJECT – Application July 21, 2008 – Special Permit (§§11-411 & 73-03) the reinstatement of a Board of Standards and Appeals variance, originally granted under calendar number 346-47-BZ, to permit the continued operation of a public parking garage. The lot is located in a C6-2 zoning district within the Clinton Special District Area

A Preservation area.

PREMISES AFFECTED – 792 Tenth Avenue, a/k/a 455 West 53rd Street, north east corner of Tenth Avenue and West 53rd Street, Block 1063, Lot 1, 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, the decision of the Manhattan Borough Commissioner, dated July 16, 2008, acting on Department of Buildings Application No. 110158454, reads in pertinent part:

"ZR §§ 11-411, 11-412, 73-01, 73-03. Refer to Board of Standards and Appeals for extension of variance under Cal # 346-47-BZ;" and

WHEREAS, this is an application for a special permit pursuant to ZR § 11-411, to reinstate a prior variance which allowed the operation of a public parking garage (Use Group 8) in a C6-2 zoning district within the Special Clinton District; and

WHEREAS, a public hearing was held on this application on October 28, 2008, after due notice by publication in the *City Record*, with a continued hearing on November 25, 2008, and then to decision on January 13, 2009; 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 4, Manhattan, recommends approval of this application, subject to the following conditions: (i) that the garage encourage monthly parking over transient parking; (ii) that parking be limited to 81 spaces plus ten reservoir spaces; (iii) that transient parking be accepted only from the Tenth Avenue entrance; (iv) that unnecessary curb cuts be removed; (v) that street trees be planted in accordance with ZR § 26-41; and (vi) that the reinstatement of the permit be limited to the current use of the building; and

WHEREAS, the premises is located on the northeast corner of the intersection at Tenth Avenue and West 53rd Street, in a C6-2 zoning district within the Special Clinton District; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 8, 1949 when, under BSA Cal. No. 346-47-BZ, the Board granted a variance to permit the premises to be occupied as a storage garage; and

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

WHEREAS, most recently, on April 10, 1979, the grant was amended to extend the term for ten years; and

WHEREAS, the term of the variance has not been extended since its expiration on April 10, 1989, and

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WHEREAS, the applicant represents, however, that the use of the site as a parking garage has been continuous since the expiration noted above; and

WHEREAS, the applicant now proposes to reinstate the prior grant and seeks a special permit pursuant to ZR § 73-01(d); 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; and

WHEREAS, at hearing, the Board requested the applicant to install rooftop screening and lighting and to respond to the recommendations of the Community Board; and

WHEREAS, in response, the applicant submitted revised plans indicating that: (i) the westernmost curb cut on West 53rd Street will be reduced from 37 feet to 20 feet; (ii) the garage will be limited to 81 spaces with ten reservoir spaces; (iii) eight foot screening which is mostly opaque will be provided along the roof's perimeter; (iv) rooftop lighting will be controlled by motion sensors and angled down to minimize glare to neighboring uses; and (v) street trees will be planted pursuant to ZR § 26-41, subject to approval by the Department of Parks and Recreation and the Department of Transportation; and

WHEREAS, in addition, the applicant represents that the rooftop parking area will be used exclusively for long-term monthly parking; 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 Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411 and 73-03.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 11-411 and 73-03 for a reinstatement of a prior Board approval and an extension of term for a parking garage (Use Group 8) in a C6-2 zoning district within the Special Clinton District; *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 November 12, 2008"- (5) sheets; and *on further condition*:

THAT this permit shall be for a term of ten years, to expire on January 13, 2019;

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

THAT the capacity of the garage shall be limited to 81 spaces and an additional ten reservoir spaces;

THAT the rooftop parking area will be used exclusively for long-term monthly parking;

THAT rooftop screening and lighting shall be provided in accordance with the BSA-approved plans;

THAT street trees shall be planted 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 January 13, 2010;

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

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

THAT the approved plans shall 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 13, 2009.

224-08-BZ CEQR #09-BSA-020Q

APPLICANT – Omnipoint Communications Inc., for Remzija Suljovic, Rizo Muratovic, Brahim Muratovic, owners; Omnipoint Communications Inc., lessee.

SUBJECT – Application August 29, 2008 – Special Permit (§73-30) to allow an extension to an existing non-accessory radio tower, to mount nine small panel antennas and related equipment cabinets on the rooftop.

PREMISES AFFECTED – 47-10 Laurel Hill Boulevard, south side of Laurel Hill Boulevard, bounded by 47th Street, to the west and 48th Street to the east, Block 2305, Lot 22, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Robert Gardioso.

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 Deputy Borough Commissioner, dated July 30, 2008, acting on Department of Buildings Application No. 410103105, reads in pertinent part:

“Proposed telecommunication facility exceeds 400 square feet allowed under TPPN # 5/98 and therefore will require a special permit from the Board of Standards and Appeals pursuant to Section 73-30 of the NYC Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R4 zoning district, the proposed construction of a telecommunications facility, which consists of nine panel antennas and related equipment

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for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on November 18, 2008, after due notice by publication in *The City Record*, with a continued hearing on December 9, 2008, and then to decision on January 13, 2009; and

WHEREAS, Community Board 13, Queens, recommends approval of this application, subject to a condition that the applicant provide additional screening; and

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

WHEREAS, the proposed telecommunications facility will be located on the roof of a four-story residential building upon which existing antennas are already situated; and

WHEREAS, the applicant states that the proposed telecommunications facility consists of six panel antennas mounted to the interior of the building parapet and extending to a maximum height of six feet above the parapet, three panel antennas mounted to the wall of the penthouse and extending to a maximum height of six feet above the penthouse, and three small equipment cabinets located on a steel frame centered on the rooftop, for public utility wireless communications; and

WHEREAS, the applicant represents that the telecommunications facility is necessary to remedy a significant gap in reliable service in the vicinity of the site caused by a lack of coverage and capacity; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications facility, provided it finds “that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood;” and

WHEREAS, the applicant represents that the facility has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the facility will comply with all applicable laws, that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant further represents that the size and profile of the facility is the minimum necessary to provide the required wireless coverage, and that the facility will not interfere with radio, television, telephone or other uses; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed facility and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

WHEREAS, the Board asked the applicant to respond to the concerns of the Community Board concerning the need for additional screening; and

WHEREAS, in response, the applicant provided an alternative design that provided additional screening for the

telecommunications facility; and

WHEREAS, the Board reviewed both designs and concludes that the additional screening would in fact have a greater visual impact because it would render the antenna area more visually prominent than it would be without the proposed screening; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

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

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

WHEREAS, therefore, the Board finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09-BSA-020Q, dated August 29, 2008; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR § 73-03 and § 73-30, to permit, within an R4 zoning district, the proposed construction of a telecommunications facility (non-accessory radio facility) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked “Received August 29, 2008”- (7) 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;

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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 § 73-30; and

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

Adopted by the Board of Standards and Appeals, January 23, 2009.

244-08-BZ

CEQR #09-BSA-030M

APPLICANT – Rizzo Group, for BP/CGCenter II, LLC, owner; 24 Hour Fitness USA, Inc., lessee.

SUBJECT – Application October 1, 2008 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment at the cellar level and first floor in a 59-story building. The proposal is contrary to ZR §32-10. C6-6 district.

PREMISES AFFECTED – 139-153 East 53rd Street; 140-16 East 54th Street; 601-635 Lexington Avenue; 884-892 3rd Avenue, north side of 53rd Street, between 3rd and Lexington Avenues, Block 1308, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Kenneth Barbina.

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, a decision of the Manhattan Borough Commissioner, dated October 1, 2008, acting on Department of Buildings Application No. 110338929, reads in pertinent part:

“Proposed ‘Physical Culture Establishment’ is not permitted as-of-right in C6-6 zoning district. This use is contrary to ZR Section 32-10. BSA approval required;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-6 zoning district within the Special Midtown District, the establishment of a physical culture establishment (PCE) on the cellar and first floor of a 59-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 9, 2008, after due notice by publication in *The City Record*, and then to decision on January 13, 2009; and

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

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the subject site occupies a through lot located on the south side of East 54th Street and the north side of East 53rd Street between Lexington Avenue and Third Avenue; and

WHEREAS, the site is occupied by a 59-story commercial building; and

WHEREAS, the PCE will occupy a total of 3,418 sq. ft. of floor area on the first floor; and

WHEREAS, the PCE will be operated by 24 Hour Fitness USA, Inc.; and

WHEREAS, the applicant represents that the services at the PCE will include cardiovascular exercise machines, weight-training equipment, and organized instruction; and

WHEREAS, the PCE will operate 24 hours per day; and

WHEREAS, the applicant represents that the proposed PCE meets the requirements in ZR § 81-13 for a special permit use in the Special Midtown District; and

WHEREAS, specifically, the applicant states that the proposed PCE use is consistent with other retail uses within the Midtown District and will provide a desirable amenity to the neighborhood; and

WHEREAS, as a result, the applicant states that the subject PCE use will strengthen the business core of Midtown Manhattan by improving working and living environments and will promote a desirable use of land and building development in accordance with the District Plan for Midtown wherein the value of land is conserved and tax revenue is protected; and

WHEREAS, accordingly, the Board finds that the proposed special permit use is consistent with the purposes and provisions of ZR § 81-00; 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

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Assessment Statement, CEQR No. 09BSA030M, dated July 23, 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 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 C6-6 zoning district, the establishment of a physical culture establishment on the cellar and first floor of a 59-story commercial building, contrary to ZR § 32-10, *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 9, 2009"- (3) sheets; and "Received January 12, 2009"- (1) sheet and *on further condition*:

THAT the term of this grant shall expire on January 13, 2019;

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;

THAT substantial construction be completed in accordance with ZR § 73-70; 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 13, 2009.

11-07-BZ

APPLICANT – Dominick Salvati and Son Architects, for Joseph Giahn, owner.

SUBJECT – Application January 9, 2007 – Variance (§72-21) to allow a five (5) story office building with ground floor retail, contrary to use regulations (§22-00). R6B district.

PREMISES AFFECTED – 41-06 Junction Boulevard, south west corner formed by Junction Boulevard and 41st Avenue, Block 1598, Lots 7 & 8, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: M. McCarthy.

ACTION OF THE BOARD – Laid over to March 31, 2009, at 1:30 P.M., for continued hearing.

61-08-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 429-441 86th Street, LLC, owner; TSI Bay Ridge 86th Street, LLC dba New York Sports Club, lessee.

SUBJECT – Application March 25, 2008 – Special Permit (§73-36) to allow the operation of a Physical Culture Establishment on the second and third floors of an existing building. The proposal is contrary to ZR §32-10. C4-2A (BR) district.

PREMISES AFFECTED – 439 86th Street, north side of 86th Street and east of 4th Avenue, Block 6035, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #10BK

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

Negative:.....5

ACTION OF THE BOARD – Laid over to February 3, 2009, at 1:30 P.M., for decision hearing closed.

134-08-BZ

APPLICANT – Eric Palatnik, P.C., for Asher Goldstein, owner.

SUBJECT – Application April 30, 2008 – Variance (§72-21) to construct a third floor to an existing two story, two family semi-detached residence partially located in an R-5 and M1-1 zoning district.

PREMISES AFFECTED – 34 Lawrence Avenue, Lawrence Avenue, 80' west of McDonald Avenue, Block 5441, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

MINUTES

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to February 3, 2009, at 1:30 P.M., for continued hearing.

163-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Kol Torah, owner.

SUBJECT – Application June 13, 2008 – Variance (§72-21 to permit the construction of a two-story and attic community facility building (Congregation Kol Torah). The proposal is contrary to ZR §24-11 (floor area, FAR ad lot coverage), §24-34 (front yard), §24-35 (side yards), and §25-30 (minimum parking requirements). R2 district.

PREMISES AFFECTED – 2022 Avenue M, southwest corner of the intersection of Avenue M and East 21st Street, Block 7656, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel.

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 February 10, 2009, at 1:30 P.M., for decision hearing closed.

198-08-BZ

APPLICANT – Mitchell S. Ross, Esq., for Pamela Equities Corp., owner; New York Health & Racquet Club, lessees.

SUBJECT – Application July 24, 2008 – Special Permit (§73-36) to allow the proposed physical culture establishment in the subcellar, cellar, first, second, and the second mezzanine floors in a 12-story and penthouse mixed-use building. The proposal is contrary to ZR §32-10. C6-4A district.

PREMISES AFFECTED – 268 Park Avenue South (aka 268-276 Park Avenue South) west side of Park Avenue South at East 21st Street, Block 850, Lot 39, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Laid over to February 2, 2009, at 1:30 P.M., for continued hearing.

216-08-BZ

APPLICANT – Eric Palatnik, P.C., for Valeri Gerval, owner.

SUBJECT – Application August 22, 2008 – Special Permit (§73-622) In-Part Legalization for the enlargement and modification of a single family home. This application seeks to vary floor area, open space and lot coverage (§23-141) and side yard (§23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 1624 Shore Boulevard, Shore

Boulevard and Oxford Street, Block 8757, Lot 88, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Judith Baron.

ACTION OF THE BOARD – Laid over to February 10, 2009, at 1:30 P.M., for continued hearing.

236-08-BZ

APPLICANT – Sheldon Lobel, for Joey Aini, owner.

SUBJECT – Application September 18, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (§23-141) and the permitted perimeter wall height (§23-631) in an R2X (OPSD) zoning district.

PREMISES AFFECTED – 1986 East 3rd Street, west side of East 3rd Street, 100' south of Avenue S, Block 7105, Lot 152, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to February 3, 2009, at 1:30 P.M., for continued hearing.

63-08-BZ

APPLICANT – Eric Palatnik for Royal Palace, lessee. Manton Holding , owner

SUBJECT – Application March 27, 2008 – Special Permit (§73-244) to legalize an eating and drinking establishment with entertainment and a capacity of more than 200 persons with dancing within a C4-2 zoning district.

PREMISES AFFECTED – 116-33 Queens Boulevard, Between 77th and 78th Avenues, Block 2268, Lot 23, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Eric Palatnik and Franklyn Estrella.

For Opposition: Charlotte Picot, George Megrath, Carole Keit, Nancy Jorisch, Matthew Mandell and James Messemer.

ACTION OF THE BOARD – Laid over to February 3, 2009, at 1:30 P.M., for continued hearing.

188-08-BZ

APPLICANT – Rizzo Group, for Hotel Carlyle Owners Corp., owners; The Hotel Carlyle, lessee.

SUBJECT – Application July 14, 2008 – Special Permit (§73-36) and Variance (§72-21) to allow the legalization of a Physical Culture Establishment and to extend this use into an R8B district for the subject hotel which exists in the C5-1MP and R8B zoning districts. The proposal is contrary to ZR Section 32-10.

PREMISES AFFECTED – 35 East 76th Street, (975-983 Madison; 981 Madison; 35-53 East 76th Street) northeast

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corner of Madison Avenue and East 76th Street, Block 1391, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to February 10, 2009, at 1:30 P.M., for postponed hearing.

207-08-BZ

APPLICANT – Eric Palatnik, P.C., for Cheon Park, owner.
SUBJECT – Application August 11, 2008 – Variance (§72-21) to permit the expansion on the first floor of an existing day care center. The proposal is contrary to ZR Section 24-34 (front yard). R4 district.

PREMISES AFFECTED – 40-69 94th Street, northern corner of the intersection formed by 41st Avenue and 94th Street, Block 1587, Lot 1, 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 Montanez5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 3, 2009, at 1:30 P.M., for decision hearing closed.

222-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Moshe Cohn, owner.

SUBJECT – Application August 29, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary lot coverage, open space and floor area (23-141); rear yard (23-47) and exceeds the perimeter wall height (23-631) in an R3-1 zoning district.

PREMISES AFFECTED – 71 Beumont Street, for east side of Beumont Street, 200' north of Hampton Avenue, Block 8728, Lot 77, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Todd Dale.

For Opposition: Judith Barr.

ACTION OF THE BOARD – Laid over to February 24, 2009, at 1:30 P.M., for postponed hearing.

257-08-BZ

APPLICANT – Slater & Beckerman, LLP, for 120 East 56th Street, LLC, owner; Susan Ciminelli, Inc., lessee.

SUBJECT – Application October 17, 2008 – Special Permit (§73-36) to allow a Physical Culture Establishment on the second floor in an existing 15-story commercial building. The proposal is contrary to ZR Section 32-10. C5-2 district.

PREMISES AFFECTED – 120 East 56th Street, between Park Avenue and Lexington Avenue, Block 1310, Lot 65,

Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Joshua Trauner.

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 January 27, 2009, at 1:30 P.M., for decision hearing closed.

289-08-BZ

APPLICANT – Dennis D. Dell'Angelo, for Ephraim Nierenberg, owner.

SUBJECT – Application November 21, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (23-141); side yards (23-461); and less than the required rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 966 East 23rd Street, west side of East 23rd, 220' north of Avenue J, Block 7586, Lot 75, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Dennis D. Dell'Angelo.

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 February 10, 2009, at 1:30 P.M., for decision hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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New Case Filed Up to January 27, 2009

6-09-BZ

24 Nelson Avenue, South side 0.0' from the corner of Nelson Avenue & Giffords Glenn, Block 5429, Lot(s) 29 & 31, Borough of **Staten Island, Community Board: 3**. Variance to permit continued use of an automobile repair establishment.

7-09-BZ

1082 East 26th Street, East 26th Street between Avenue J and Avenue K., Block 7607, Lot(s) 85, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (23-141), side yards (23-461) and rear yard (23-47) in an R-2 zoning district.

8-09-BZ

125 Fulton Street, North side of Fulton Street between Nassau Street and Williams Street., Block 91, Lot(s) 11, Borough of **Manhattan, Community Board: 1**. Special Permit(73-36) to legalize the operation of a physical culture establishment.

9-09-BZ

63-03 Fresh Pond Road, East side of Fresh Pond Road 269.8' south of Metropolitan Avenue and Fresh Pond Road., Block 3608, Lot(s) 14, Borough of **Queens, Community Board: 5**. Special Permit (73-36) to legalize the operation of a physical culture establishment.

10-09-BZ

2307 Farragut Road, Northeast corner of Farragut Road and East 23rd Street., Block 5223, Lot(s) 2, Borough of **Brooklyn, Community Board: 14**. Variance to allow proposed community facility use, contrary to bulk regulations.

11-09-A

38-30 28th Street, Between 38th and 39th Avenues., Block 386, Lot(s) 27, Borough of **Queens, Community Board: 1**. An appeal seeking a Common law vested right to continue development commenced under the prior district regulations . M1-2/R5B Zoning Distirct .

12-09-A

5 Beekman Street, Beekman Street between Nassau Street and Theater Alley., Block 90, Lot(s) 14, Borough of **Manhattan, Community Board: 1**. Proposed retention of an existing 10 story atrium and open access stair unenclosed contrary to Building Code Section 26-638, 26-642, 26-645, 26-292, 26-239 and 26-290 as part of a conversion of an exsiting Commercial Class " E " building to Transient "J-1 " Hotel occupancy .

13-09-BZ

5611 21st Avenue, East side 95'-8" north of intersection of 21st Avenue and 57th Street, Block 5495, Lot(s) 430, Borough of **Brooklyn, Community Board: 12**. Variance to permit a synagouge & rectory, contrary to bulk regulations.

14-09-BZ

2294 Forest Avenue, Southeast intersection of Forest Avenue and South Avenue., Block 1685, Lot(s) 15,20, Borough of **Staten Island, Community Board: 1**. Special Permit (73-211) to allow reconstruction of a auto service station.

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 10, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 10, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

218-96-BZ

APPLICANT – Mitchell S. Ross, Esq. for The Armenian Apostolic Church.

SUBJECT – Application January 16, 2009 – Extension of Time to complete construction/waiver for a one story rear enlargement above the basement of an existing community use facility (The Armenian Prelacy), which expired on January 11, 2007, located in an R8B zoning district.

PREMISES AFFECTED – 138 East 39th Street, South side, 123.4 feet east of Lexington Avenue, Block 894, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEALS CALENDAR

270-08-A

APPLICANT – NYC Department of Buildings.

OWNER OF RECORD: Johnny Ubiles.

SUBJECT – Application November 5, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 200983962F issued on February 8, 2008 as it was issued in error due to failure to comply with Special Flood Hazard Area requirements as set forth in the Building Code and Department of Buildings TPPN #1/04. R3A Zoning District. PREMISES AFFECTED – 221 Betts Avenue (aka 221B Betts Avenue) west side of Betts Avenue, north of Gildersleeve Avenue, Block 3460, Lot 58, Borough of Bronx.

COMMUNITY BOARD #9BX

271-08-A

APPLICANT – NYC Department of Buildings.

OWNER OF RECORD: Pedro Febres.

SUBJECT – Application November 5, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 200983962F issued on February 8, 2008 as it was issued in error due to failure to comply with Special Flood Hazard Area requirements as set forth in the Building Code and Department of Buildings TPPN #1/04. R3A Zoning District. PREMISES AFFECTED – 221 A Betts Avenue, west side of Betts Avenue, north of Gildersleeve Avenue, Block 3460, Lot 59, Borough of Bronx.

COMMUNITY BOARD #9BX

FEBRUARY 10, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 10, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

133-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Pilot Realty Co., owner.

SUBJECT – Application April 25, 2008 – Special Permit (§§73-48 & 73-49) to allow rooftop parking above the first floor of an existing one and two-story commercial building and waive limitation on number of vehicles in a group parking facility, located in an M1-1 zoning district.

PREMISES AFFECTED – 1601 Bronxdale Avenue, northeast side of Bronxdale Avenue between Pierce and Van Nest Avenues, Block 4042, Lot 200, Borough of Bronx.

COMMUNITY BOARD #11BX

228-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sephardic Mikvah Israel by Isaac Hidary, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) to permit the construction of a one-story mikvah (ritual bath). The proposal is contrary to ZR Sections 24-34 (front yards) and 24-35 (side yards). R3-2 district.

PREMISES AFFECTED – 2802 Avenue R, aka 1801-1811 East 28th Street, southeast corner of Avenue R and East 28th Street, Block 6834, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

253-08-BZ

APPLICANT – Law Office of Fredrick A. Becker for Paula Digrazia and Lisa Tapani, owner.

SUBJECT – Application October 15, 2008 – Variance (§72-21) to legalize a prior enlargement at the rear of the home and to allow for a new enlargement to an existing single family home on a narrow zoning lot. This variance seeks to vary floor area ratio, open space lot coverage (§23-141(b)); side yards (§23-461(a)) & (§23-48) and less than the required rear yard (§23-47) in an R-4 zoning district.

PREMISES AFFECTED – 2623 East 11th Street, East side of East 11th Street between Avenue Z and William Court, Block 7455, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #15BK

CALENDAR

275-08-BZ

APPLICANT – Eric Palatnik, P.C., for South Side House LLC, owner.

SUBJECT – Application November 20, 2008 – Special Permit (§73-36) to allow a physical culture establishment on the ground floor of an existing building. The proposal is contrary to ZR Section 42-10. M1-2/R6 (MX8) district.

PREMISES AFFECTED – 98 South 4th Street, south side of South 4th Street, between Bedford Avenue and Berry Street, Block 2443, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #1BK

276-08-BZ

APPLICANT – Alfonso Duarte, for Kesy LLC, owner; Beljanski Wellness Center Inc., lessee.

SUBJECT – Application November 12, 2008 – Special Permit (§73-36) to allow a physical culture establishment on the sixth floor in a seven-story office building. The proposal is contrary to ZR Section 32-10. C5-2 district.

PREMISES AFFECTED – 150 East 55th Street, south side, 155' east of Lexington Avenue, Block 1309, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #6M

291-08-BZ

APPLICANT – Moshe M. Friedman, for Eva Hershovic, owner.

SUBJECT – Application November 24, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area ration (§23-141(a)) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 3141 Bedford Avenue, West side 140' south of the intersection of Bedford Avenue & Avenue J, Block 7607, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JANUARY 27, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

241-47-BZ

APPLICANT – Sheldon Lobel, P.C., for Marin Vajanc, owner.

SUBJECT – Application July 24, 2008 – Extension of Term and Amendment filed pursuant to §§11-411 & 11-413 requesting an extension of the variance previously granted by the Board of Standards and Appeals which expired on January 29, 2004. The application seeks a change in use from knitting mill (Use Group 17) to a contractor's establishment (Use Group 17). The site is located in an R5B zoning district.

PREMISES AFFECTED – 16-23/25 Hancock Street, West side of Hancock Street approximately 245' north of Wycoff Street, Block 3548, Lot 97, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Elizabeth Saphire.

ACTION OF THE BOARD – Laid over to March 3, 2009, at 10 A.M., for continued hearing.

889-55-BZ

APPLICANT – J & H Management Corporation, owner.

SUBJECT – Application October 22, 2008 – Application filed pursuant to §11-411 to extend the term of Automotive Repair Facility for 10 years which expired on May 1, 2008. The application seeks a Waiver of the Rules of Practice and Procedure for an Extension of Time to obtain a Certificate of Occupancy. The subject site is located in a C1-2/R3-2 zoning district.

PREMISES AFFECTED – 69-15 164th Street, Block 9631, Lot 38, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Irene Fisher.

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 10, 2009, at 10 A.M., for decision, hearing closed.

719-56-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Victory Service Station Incorporated, lessee.

SUBJECT – Application July 2, 2008 – Extension of Term/waiver for a gasoline service station (Mobil) in a C2-1/R3-2 zoning district which expired on April 27, 2007 and Extension of Time to obtain a Certificate of Occupancy which expired on October 26, 2000.

PREMISES AFFECTED – 2525 Victory Boulevard, northwest corner of Willowbrook Road, Block 1521, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Cindy Bachan.

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 10, 2009, at 10 A.M., for decision, hearing closed.

239-97-BZ

APPLICANT – Kenneth H. Koons, for B.W. Partners Incorporated, owner.

SUBJECT – Application September 3, 2008 – Extension of Term for a UG16 automotive service station and UG8 parking lot, in an R-6 zoning district, which expires on July 13, 2009.

PREMISES AFFECTED – 1499 Bruckner Boulevard, north west corner of Wheeler Avenue, Block 3712, Lot 1, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Rod Saunders.

ACTION OF THE BOARD – Laid over to February 3, 2009, at 10 A.M., for deferred decision.

124-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for BLDG Management Company, Incorporated; New York Sports Club, lessee.

SUBJECT – Application November 8, 2008 – Extension of the term of a previously granted special permit allowing the operation of a physical culture establishment health club in portions of the cellar and first floor of an existing twenty story commercial building located in a C6-6 (Mid) zoning district.

PREMISES AFFECTED – 1372 Broadway, Easterly side of Broadway between West 37th and West 38th Streets, Block 813, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

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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 24, 2009, at 10 A.M., for decision, hearing closed.

217-03-BZ

APPLICANT – Sheldon Lobel, P.C., for 140 Pennsylvania Avenue, LLC, owner.

SUBJECT – Application July 17, 2008 – Extension of Time to Complete Construction of a previously granted variance for the proposed expansion of a one story and cellar building in an R-5 zoning district.

PREMISES AFFECTED – 142 Pennsylvania Avenue, southeast corner of Pennsylvania Avenue and Liberty Avenue, Block 3703, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Elizabeth Sapphire.

ACTION OF THE BOARD – Laid over to February 24, 2009, at 10 A.M., for continued hearing.

51-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Rivoli Realty Corporation, owner.

SUBJECT – Application – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) to permit the operation of a PCE in a portion of the cellar and the legalization of a dance studio in the cellar and first floor of an existing commercial building, in an C1-2/R2 zoning district, which expired on December 12, 2008.

PREMISES AFFECTED – 188-02/22 Union Turnpike, south side of Union Turnpike between 188th and 189th Street, Block 7266, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

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 February 10, 2009, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

120-08-A

APPLICANT – Law Office of Fredrick A. Becker, for Harmanel, LLC, owner.

SUBJECT – Application April 24, 2008 – Appeal seeking the determination that the owner has acquired a common law vested right to continue development commenced under the prior C2-4 /R6 zoning district regulations. C2-4 in R6B Zoning District.

PREMISES AFFECTED – 186 Grand Street, south side of Grand Street, between Bedford Avenue and Driggs Avenue, Block 2393, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Appeal 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 proposed development of a four-story and penthouse mixed-use residential/commercial building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on November 25, 2008, after due notice by publication in *The City Record*, with continued hearings on December 16, 2008 and January 13, 2009, and then to decision on January 27, 2009; and

WHEREAS, the site was inspected by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Montanez; and

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

WHEREAS, the subject site is located on the south side of Grand Street between Bedford Avenue and Driggs Avenue, within an R3A zoning district; and

WHEREAS, the subject site has a frontage of 53 feet and a depth of 100 feet, and a total lot area of 5,450 sq. ft.; and

WHEREAS, the site is proposed to be developed with a four-story and penthouse mixed-use residential/commercial building (the “Building”); and

WHEREAS, the Building is proposed to have a total floor area of approximately 11,945 sq. ft. (2.2 FAR); and

WHEREAS, the site was formerly located within a C2-4 (R6) zoning district; and

WHEREAS, on December 5, 2007, New Building Permit No. 302220228-01-NB (the “Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the Building, and work commenced on December 21, 2007; and

WHEREAS, on March 26, 2008 (hereinafter, the “Enactment Date”), the City Council voted to enact the Grand

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Street Rezoning, which changed the zoning district to C2-4 (R6B); and

WHEREAS, the applicant represents that the Building complies with the former C2-4 (R6) zoning district parameters; specifically, the proposed 2.2 FAR, base height of 43'-6", and total building height of 53'-6" were permitted; and

WHEREAS, because the site is now within a C2-4 (R6B) zoning district, the Building would not comply with the maximum FAR of 2.0, the maximum base height of 40'-0", or the maximum total building height of 50'-0"; and

WHEREAS, because the Building is not in compliance with these provisions of the C2-4 (R6B) zoning district and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order ("SWO") on March 27, 2008 halting work on the building; and

WHEREAS, it is from this order that the applicant appeals; and

WHEREAS, the applicant requests that the Board find that based upon the amount of financial expenditures, including irrevocable commitments, and the amount of work completed, the owner has a vested right to continue construction and finish the proposed development; 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, by letter dated November 20, 2008, DOB stated that the Permit was lawfully issued on December 5, 2007, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Permit lapsed by operation of law on the Enactment Date because the plans did not comply with the new C2-4 (R6B) zoning district regulations and DOB determined that the Building's foundation was not complete; and

WHEREAS, thus, the Board finds that the Permit was validly issued by DOB to the owner of the subject premises and was in effect until its lapse by operation of law on March 26, 2008; and

WHEREAS, however, on April 24, 2008, the applicant amended the building plans under a post approval amendment ("PAA") to reflect a four-story building that complies with the C2-4 (R6B) zoning district regulations; and

WHEREAS, the applicant continued as-of-right construction at the site pursuant to the PAA; and

WHEREAS, the validity of the Permit has not been challenged; and

WHEREAS, the Board notes that the applicant has submitted a request to DOB to withdraw the PAA, in order to pursue its claim that the Permit has vested pursuant to the common law of vested rights; and

WHEREAS, the Board notes that any work performed after the Enactment Date (and pursuant to the PAA) cannot be considered for vesting purposes; accordingly, only the work performed pursuant to the Permit has been considered; and

WHEREAS, the Board notes that when work proceeds under a valid permit, 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, Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) stands for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance;" and

WHEREAS, however, notwithstanding this general framework, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that "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 following work was completed: (1) 100 percent of the excavation; (2) 50 linear feet of underpinning along the western property line, constituting 100 percent of the underpinning; (3) 83 linear feet of shoring along the northern and western property lines, constituting 100 percent of shoring; and (4) approximately 27 cubic yards of concrete poured for the footings, constituting approximately 58 percent of the concrete for the footings; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: concrete pour tickets, photographs of the site, a timetable of the work performed, cancelled checks, accounting tables, and invoices for labor and materials; 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 found by New York State courts to support a positive vesting determination, a significant amount of work was performed at the site prior to the Enactment Date; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress was made prior to the Enactment Date, and that said work 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

WHEREAS, the applicant states that prior to the lapse of the Permit, the owner expended \$330,996.26, including hard and soft costs and irrevocable commitments for the entire project, out of the approximately \$2,600,000 budgeted for the

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proposed development; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices, receipts, and cancelled checks; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid \$254,418.28 for excavation, underpinning, shoring, foundation work, environmental remediation, and architectural and engineering fees prior to the Enactment Date; and

WHEREAS, the applicant states that the owner paid an additional \$64,850.94 after the Enactment Date for costs that were committed to the development under irrevocable contracts executed prior to that date; and

WHEREAS, the applicant further states that the owner also irrevocably owes an additional \$11,727.04 in connection with work performed at the site prior to the Enactment Date, which has not yet been paid; 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 the serious loss finding, the applicant contends that the loss of floor area that would result if vesting were not permitted is significant; and

WHEREAS, the applicant states that the decrease in the permissible FAR and building height under the new zoning would result in a 1,000 sq. ft. reduction in floor area, constituting approximately 14 percent of the sellable floor area; and

WHEREAS, the applicant represents that the loss of floor area and the reduction in the building height would result in the elimination of the penthouse, a decrease in the number of bedrooms and bathrooms in two of the units, a loss of private outdoor space, and a reduction in the height of the residential units on the second through fourth floors; and

WHEREAS, the applicant submitted a statement from a real estate broker, estimating the sales price of the penthouse floor area at \$780 per sq. ft. and the total loss attributable to the reduction in floor area and building height at \$1,126,710; and

WHEREAS, the applicant further states that the owner paid an additional \$1,490 in architectural fees to redesign the building in order to obtain the PAA, and that the \$50,000 in savings attributable to the use of the existing foundation would not offset the \$1,078,200 loss created by the reduction in floor area and building height of a complying building; and

WHEREAS, a serious loss determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning, but in the instant application, the determination is also grounded on the applicant's discussion of the diminution in income that would occur if the FAR and building height of the

new zoning were imposed; 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 date the Permit lapsed by operation of law; and

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under the common law and is entitled to the reinstatement of the Permit, and all other related permits necessary to complete construction; and

WHEREAS, the Board notes that the applicant will withdraw the PAA and re-establish the Permit under DOB's direction.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of New Building Permit No. 302220228, 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 for two years from the date of this resolution, to expire on January 27, 2011.

Adopted by the Board of Standards and Appeals, January 27, 2009.

261-08-BZY

APPLICANT – Eric Palatnik, P.C., for Henry Zheng, owner.
SUBJECT – Application October 21, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.

An appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R7-1/C1-2 Zoning District.

PREMISES AFFECTED – 140-75 Ash Avenue, between Kissena Boulevard and Bowne Streets, Block 5182, Lot 34, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Trevis Sauage.

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 §11-331 to renew a building permit and extend the time for the completion of the foundation of a seven-story mixed-use

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residential/commercial/community facility building; and

WHEREAS, this application was heard concurrently with a companion application under BSA Cal. No. 262-08-A, withdrawn prior to the date of decision, which was a request for a finding that the owner of the site has obtained a vested right to continue construction under the common law; and

WHEREAS, a public hearing was held on this application on December 16, 2008, after due notice by publication in *The City Record*, with a continued hearing on January 13, 2009, and then to decision on January 27, 2009; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 7, Queens, recommends disapproval of this application, citing concerns about neighborhood character and questioning whether substantial progress was made on the foundations; and

WHEREAS, the subject site is located on the north side of Ash Avenue between Kissena Boulevard and Bowne Street; and

WHEREAS, the site has a frontage of 100 feet and a depth of approximately 96 feet, and a total lot area of approximately 9,614 sq. ft.; and

WHEREAS, the site is proposed to be developed with a seven-story mixed-use building (the "Building") with commercial use on the first floor, community facility use on the second floor, and residential use on the third through seventh floors; and

WHEREAS, the Building is proposed to have a total floor area of 46,133 sq. ft. (4.8 FAR) and a total residential floor area of approximately 33,007 sq. ft. (3.43 FAR); and

WHEREAS, the site was formerly located within a C1-2 (R7-1) zoning district; and

WHEREAS, on April 28, 2008, New Building Permit No. 402510216-01-NB (the "Permit") was issued by the Department of Buildings ("DOB") permitting construction of the Building, and work commenced on May 12, 2008; and

WHEREAS, on September 24, 2008 (hereinafter, the "Enactment Date"), the City Council voted to enact the Waldheim Rezoning, which changed the zoning district to C1-3 (R7B); and

WHEREAS, the applicant represents that the Building complies with the former C1-2 (R7-1) zoning district parameters; specifically, the proposed FAR of 4.8; and

WHEREAS, because the site is now within a C1-3 (R7B) zoning district, the Building would not comply with the maximum FAR of 3.0; and

WHEREAS, because the Building is not in compliance with this provision of the C1-3 (R7B) zoning district and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on September 25, 2008 halting work on the building; and

WHEREAS, the applicant now applies to the Board to reinstate the Permit pursuant to ZR § 11-331, so that the proposed development may be fully constructed under the parameters of the prior C1-2 (R7-1) zoning district; 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 the Permit was issued to the owner by DOB on April 28, 2008, authorizing construction of the proposed Building; and

WHEREAS, by letter dated December 12, 2008, DOB states that the Permit was lawfully issued on April 28, 2008; and

WHEREAS, DOB initiated an audit of the Permit on November 14, 2008, and certain zoning and Building Code objections were raised (the "Objections"); and

WHEREAS, on November 18, 2008, DOB issued a letter to the owner providing notice of its intent to revoke the Permit based on the Objections; and

WHEREAS, on December 12, 2008, DOB issued a letter indicating that all of the objections identified by the audit had been satisfied by the owner; and

WHEREAS, thus, the Board finds that the Permit was lawfully issued by DOB on April 28, 2008; 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 one building, it meets the definition of minor development; and

WHEREAS, since the proposed development is a minor development, the Board must find that excavation was completed and substantial progress was made as to the

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required foundation; and

WHEREAS, the applicant states that excavation began on June 3, 2008 and was completed on June 23, 2008, and that substantial progress was made on the foundation as of the Enactment Date; and

WHEREAS, in support of this statement, the applicant has submitted construction logs documenting the amount and type of work performed each day of construction, and dated photographs of the site showing the progress of excavation; and

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 foundation was 79 percent complete as of the Enactment Date; and

WHEREAS, specifically, the applicant states that as of the Enactment Date, the following work had been completed: (1) 320 linear feet of shoring, constituting 100 percent of shoring; (2) 100 cubic yards of underpinning, constituting 100 percent of underpinning; (3) 378 cubic yards of concrete was poured and 37 tons of rebar was installed for footings, constituting 75 percent of the footings; and (4) 134 cubic yards of concrete was poured and 12.5 tons of rebar was installed for the foundation walls, constituting 50 percent of the foundation walls; and

WHEREAS, in support of this statement, the applicant has submitted concrete pour tickets, a pile log, and photographs of the foundation work as of the Enactment Date; and

WHEREAS, the applicant has also submitted financial documents indicating that the applicant spent \$577,650, or approximately 79 percent of the total estimated foundation cost of \$733,800 as of the Enactment Date; and

WHEREAS, the Board finds all of the above-mentioned submitted evidence sufficient and credible; and

WHEREAS, the Community Board noted that it found the data submitted by the applicant to be confusing, and that it therefore believed that substantial progress had not been made on the foundation as of the Enactment Date; and

WHEREAS, in response, the applicant submitted a revised "Foundation Component Summary Chart," clarifying the work performed and expenditures made as of the Enactment Date; 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 Permit, and all other related permits necessary to complete construction.

WHEREAS, because the Board finds that excavation was complete and that substantial progress had been made on the foundation, it concludes that the applicant has adequately

satisfied all the requirements of ZR § 11-331.

Therefore it is Resolved that this application to renew New Building Permit No. 402510216-01-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 27, 2009.

Adopted by the Board of Standards and Appeals, January 27, 2009.

262-08-A

APPLICANT – Eric Palatnik, P.C., for Henry Zheng, owner.
SUBJECT – Application October 21, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.

An appeal seeking a determination that the owner of the premises has acquired a common law vested right to continue the development commenced under the prior R7-1/C1-2 Zoning District.

PREMISES AFFECTED – 140-75 Ash Avenue, between Kissena Boulevard and Bowne Streets, Block 5182, Lot 34, Borough of Queens.

COMMUNITY BOARD # 7Q

APPEARANCES –

For Applicant: Trevis Saugage.

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 27, 2009.

153-08-A & 154-08-A

APPLICANT – Philip L. Rampulla, for Richard Salomone, owner.

SUBJECT – Application May 30, 2008 – Proposed construction not fronting on a legally mapped street contrary to General City Law Section 36. R1-2 Zoning District

PREMISES AFFECTED – 156 & 150 Forest Road, northwest of Dalemere Road, Block 869, Lots 50, 63 (Tent. 54,52), Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip L. Rampulla.

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 3, 2009, at 10 A.M., for decision, hearing closed.

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168-08-A

APPLICANT – Cozen O’Connor Attorneys, for South Brighton Development, LLC, owner.

SUBJECT – Application June 24, 2008 – Legalization of an existing building not fronting on a legally mapped street contrary to General City Law Section 36. R6(OP) zoning district.

PREMISES AFFECTED – 63 Brighton 2nd Place, east side of Brighton 2nd Place, 110’ north of Brighton 2nd Lane, Block 8662, Lot 157, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Peter Geis and Howard Hornstein.

ACTION OF THE BOARD – Laid over to March 3, 2009, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING TUESDAY AFTERNOON, JANUARY 27, 2009 1:30 P.M.

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

ZONING CALENDAR

119-07-BZ

CEQR #07-BSA-084K

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

SUBJECT – Application May 11, 2007 – Variance under (§72-21) to allow a four-story community facility building (UG4A) to violate regulations for use (§42-10), rear yard (§43-26) and parking (§44-21). M1-2 district.

PREMISES AFFECTED – 443 39th Street, northern side of 39th Street, midblock between 4th Avenue and 5th Avenue, Block 705, Lot 59, Borough of Brooklyn.

COMMUNITY BOARD #7BK

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 12, 2007, acting on Department of

Buildings Application No. 302325936, reads in pertinent part:

“Proposed conversion of commercial building to permit community facility use (Use Group 4A) in an M1-2 zoning district:

- is contrary to ZR Section 42-10 as the proposed use is not permitted as of right;
 - is contrary to ZR Section 44-21 as less than the minimum required parking spaces are provided;”
- and

WHEREAS, this is an application under ZR § 72-21, to permit, within an M1-2 zoning district, the legalization, conversion and enlargement of an existing three-story and mezzanine commercial building to a four-story community facility without parking, which is contrary to ZR §§ 42-10 and 44-21; and

WHEREAS, a public hearing was held on this application on January 29, 2007, after due notice by publication in the *City Record*, with continued hearings on March 18, 2008, June 17, 2008, August 19, 2008, October 28, 2008 and December 9, 2008, and then to decision on January 27, 2009; 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, Brooklyn, recommends approval of the application; and

WHEREAS, the application is brought on behalf of SCO Family of Services (“SCO”), a nonprofit social services organization; the building is proposed to be occupied by the Center for Family Life (“CFL”), a member organization of SCO; 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 has a lot area of 4,000 sq. ft.; and

WHEREAS, the site is occupied by a three-story and mezzanine commercial building with a floor area of 7,940 sq. ft.; and

WHEREAS, the existing building was built in 2001 and was initially occupied by a commercial use and by SCO as a site for employment and educational services for youth and adults; and

WHEREAS, SCO purchased the building in 2006; and

WHEREAS, SCO proposes to convert the building to a Use Group 4A community facility and to enlarge it by converting a first floor accessory parking area to office space and expanding a mezzanine level to a full third floor; and

WHEREAS, the building is proposed to have a community facility floor area of 15,120 sq. ft. (3.78 FAR) and no parking spaces (21 are required); and

WHEREAS, the applicant initially sought a variance to ZR § 43-26, as the building does not provide the required 20 foot rear yard; and

WHEREAS, the rear lot line of the subject site coincides with a boundary of a railroad right-of-way, thus, pursuant to ZR § 43-29 no rear yard is required; and

WHEREAS, applicant secured a pre-consideration from DOB confirming that no rear yard was required due to the

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adjacent railroad right of way, and withdrew the variance request; and

WHEREAS, the applicant represents that the variance request is necessitated by the unique conditions of the site that create an unnecessary hardship, specifically: (1) the inability to develop the site for a conforming use; and (2) the programmatic needs of SCO; and

WHEREAS, the applicant states that the small size of the site is a unique physical condition that creates an unnecessary hardship in developing the site in conformance with applicable regulations; and

WHEREAS, the applicant states that the site has a lot size of 4,000 sq. ft. which is too small to be feasible for a conforming manufacturing use; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a survey of the area bounded by Third Avenue to the west, Sixth Avenue to the east, 37th Street to the north, and 40th Street to the south, identifying the land uses of the properties within the study area; and

WHEREAS, the survey indicates 53 of the 142 properties within the study area were used for a conforming use, and that 27 of the 53 sites are comparable in size or smaller than the subject site; and

WHEREAS, the applicant represents that among the 27 conforming small sites, seven, constituting fewer than five percent of the lots within the study area had been developed for a conforming use within the past thirty years; and

WHEREAS, the Board notes that a finding of uniqueness, does not require that a given parcel be the only property so burdened by the condition(s) giving rise to the hardship, only that the condition is not so generally applicable as to dictate that the grant of a variance to all similarly situated properties would effect a material change in the district's zoning (see *Douglaston Civ. Assn. v. Klein*, 51 N.Y.2d 963, 965 (1980)); 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 states that the following are the programmatic needs which require the requested waivers: (i) the need for more space for service delivery; and (ii) the need for a location proximate to its headquarters; and

WHEREAS, as to the need for greater space, the applicant represents that because of the demographics of the community, there is a significant demand for employment, job training and English as a Second language ("ESL") services; and

WHEREAS, the applicant states that according to the 2000 Census, the community is predominately low-income, with 56 percent of households earning less than \$35,000 annually and one-third of all families with children living below the poverty line; and

WHEREAS, the applicant further states that the surrounding community is also characterized by low levels of educational attainment, with nearly half the persons over

the age of 16 failing to graduate from high school, and a large number of non-English speaking residents; and

WHEREAS, the applicant states its mission is to provide employment and training programs to youth and adults in the Sunset Park community and that 95 percent of its clients live in the surrounding neighborhood; and

WHEREAS, the applicant states because of the limited floor area of the existing building, it can serve only 1,200 persons annually; and

WHEREAS, the applicant further states that, as a result of its limited floor area, it provides ESL classes in a classroom of 304 sq. ft., computer training in a 293 sq. ft. lab; a job search resources in a 423 sq. ft. area and job readiness training in a 463 sq. ft. area; and

WHEREAS, the applicant represents that the small size of each program space limits the number of persons that can be served at the same time, thereby reducing the efficiency of its program and adding to its staff expense; and

WHEREAS, the applicant proposes to expand the number of persons served by its existing youth and adult employment programs, and English as a Second Language program; and

WHEREAS, the applicant states that the requested variances to parking and use will allow it to provide employment and training services to 500 additional families at the subject site; and

WHEREAS, at hearing, the Board requested additional information as to the proposed utilization of the program space; and

WHEREAS, in response, the applicant submitted floor plans indicating the specific allocation of space within the proposed building and a table showing the floor-by-floor square footage allocation of its programs; and

WHEREAS, according to the space breakdown, the proposed uses consist of office space for counseling and administrative services and classroom space for computer training, ESL, writing and language labs; and

WHEREAS, at hearing, the Board questioned the need for additional space, given that space occupied by two other nonprofit organizations at the subject building could be reallocated to the applicant; and

WHEREAS, the applicant states that SCO intends to recapture the spaces occupied by the two organizations when their leases expire and that, in the meantime, the tenant organizations provide ancillary mental health and housing counseling, and financial literacy services to SCO's clients; and

WHEREAS, the applicant further represents that the SCO also has a programmatic need to develop its satellite facility in close proximity to the Center for Family Life ("CFL") headquarters located at 345 43rd Street in Sunset Park; and

WHEREAS, the applicant states that the two centers share resources, including staff and training materials, and many clients attend classes at both centers; and

WHEREAS, the headquarters also provides a wide range of additional services, including parenting skills programs, workers' cooperatives, and a family counseling

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program that also must be conveniently located to serve the clients at the subject building; and

WHEREAS, the CFL headquarters is located four blocks from the subject building; and

WHEREAS, the applicant initially asserted that it was entitled to deference as an educational institution, or as a religious institution, due to its affiliation with the Roman Catholic Archdiocese of Brooklyn, whereby the requisite finding under ZR § 72-21(a) could be established by a showing that the proposed project furthers its mission; and

WHEREAS, however, the Board found that the applicant failed to qualify as an educational institution pursuant to ZR § 12-10, nor as a religious institution as defined by well-settled case law, and asked the applicant to establish the practical difficulty inherent in the site that prevents its development for a conforming use; and

WHEREAS, the Board agrees that the unique physical conditions cited above, when considered in the aggregate and in light of the applicant's programmatic needs, create practical difficulties and unnecessary hardship in developing the site in strict compliance with the applicable zoning regulations; thereby meeting the required finding under ZR § 72-21(a); and

WHEREAS, since SCO is a non-profit organization and the variance is needed to further its non-profit mission, the finding set forth in 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 proposed building will not alter the essential character of the neighborhood, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant submitted a breakdown of the various uses in the vicinity of the site which reflects a mix of commercial and residential uses; and

WHEREAS, the applicant further states that the two blocks to the east and west of the subjects site are located partially within R6 districts where the proposed Use Group 4A is permitted as of right, and that many of the lots adjacent to and across from the premises are developed with residential buildings; and

WHEREAS, the applicant states that the proposed community facility use is consistent with the character of the area; and

WHEREAS, the applicant represents that the Use Group 4A use would be permitted by a City Planning Commission special permit under ZR § 74-921 which permits community facility uses in M1 zoning districts provided that certain findings are made; and

WHEREAS, the Board notes that the proposed floor area is within the parameters for a community facility use under ZR § 74-921; and

WHEREAS, the applicant further represents that because its programmatic need for greater floor area necessitates a parking waiver, the request for a variance pursuant to ZR § 72-21 was filed instead of the special permit under ZR § 74-921; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the community facility use

will not impact nearby conforming uses; and

WHEREAS, the applicant represents that the parking waiver will not impact the surrounding neighborhood because 95 percent of the clients live in the Sunset Park neighborhood and the rate of car ownership is low; 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 inherent in the site's physical conditions and in its consequential inability to satisfy the programmatic needs of the applicant; and

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is caused by the size of the site, which renders it too small to be feasibly used for a conforming use, and by the applicant's programmatic needs; and

WHEREAS, the applicant represents that the height and bulk of the proposed building will be unchanged and that the floor area will remain below the maximum permitted FAR of 4.8; and

WHEREAS, the Board observes that the proposed use and bulk of the enlarged building is limited in scope and compatible with nearby development; and

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

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

WHEREAS, 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. 07BSA0854K, dated May 10, 2007; and

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

WHEREAS, the Office of Environmental Planning and Assessment of the Department of Environmental Protection ("DEP") has reviewed the following submissions from the Applicant: (1) August 2006 Phase I Environmental Site Assessment; (2) the May 2007 Environmental Assessment Statement; (3) a September 2008 Phase II Investigation Workplan; (4) a December 2008 Phase II Soil Vapor Intrusion Investigation Report; and (5) September 2008, October 2008, and December 2008 air permit search submissions; and

WHEREAS, the Phase II Soil Vapor Intrusion

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Investigation Report demonstrates that the proposed project would not pose a potential environmental or health risk to workers or future occupants of the site; DEP therefore determined that this project would not result in a significant adverse hazardous materials impact; and

WHEREAS, DEP determined that the air permit search submissions showed that all permitted emission sources within a 400-foot radius of the project site screen out the need for further stationary source analysis; and

WHEREAS, the maximum hourly incremental traffic from the proposed project was determined to be less than the mobile source screening threshold set forth in the CEQR Technical Manual, and therefore the project is not expected to create significant adverse impacts from mobile source emissions; and

WHEREAS, the proposed project would not result in any significant adverse air quality impacts; and

WHEREAS, based on noise measurements performed, the environmental assessment determined that a noise attenuation of 35 dBA would be required to achieve an interior noise level of 45 dBA or less in a closed window condition; and

WHEREAS, with the use of windows with a minimum outdoor/indoor transmission class ("OITC") rating of 35 for all facades, the building would not result in any significant adverse noise impacts; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-2 zoning district, the legalization, conversion and enlargement of a three-story and mezzanine commercial building to a four-story community facility without parking, which is contrary to ZR §§ 42-10 and 44-21, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 11, 2008"– one (1) sheets, "Received January 13, 2009"– seven (7) sheets, and "Received January 23, 2009"– two (2) sheets; and *on further condition*:

THAT the following shall be the parameters of the proposed building: four stories and a community facility floor area of 15,120 sq. ft. (3.78 FAR);

THAT no parking will be provided;

THAT, all windows on the building's façade shall have a minimum OITC (outdoor/indoor transmission class) rating of 35;

THAT this approval 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 prior to the issuance of any permits, DOB shall review the plans for compliance with all relevant light, air, and egress regulations;

THAT a certificate occupancy shall be obtained by January 27, 2011; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant 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 27, 2009.

42-08-BZ

APPLICANT – Eric Palatnik, P.C., for David Nikchemny, owner.

SUBJECT – Application February 28, 2008 – Special Permit (§73-622) for the enlargement of an existing two family residence to be converted to a single family residence. This application seeks to vary floor area, lot coverage, open space 923-141(b) and rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 182 Girard Street, corner of Girard Street and Oriental Boulevard, Block 8749, Lot 275, 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 Superintendent, dated February 11, 2008, acting on Department of Buildings Application No. 310064471, reads in pertinent part:

1. ZR 23-141(b). The proposed total floor area exceeded the permitted floor area.
2. ZR 23-141(b). The proposed lot coverage exceeded the permitted lot coverage.
3. ZR 23-141(b). The proposed open space is inadequate.
4. ZR 23-47. The proposed rear yard (22'-0") is contrary to the permitted;" and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 zoning district, the proposed enlargement of an existing two-family residence to be converted into a single-family home, which does not comply with the zoning requirements for floor area, lot

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coverage, open space and rear yard, contrary to ZR §§ 23-141(b) and 23-47; and

WHEREAS, a public hearing was held on this application on July 22, 2008, after due notice by publication in *The City Record*, with continued hearings on September 9, 2008, October 28, 2008 and November 25, 2008, and then to decision on January 27, 2009; 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 disapproval of this application; and

WHEREAS, residents of the Manhattan Beach community provided testimony in opposition to the proposal (hereinafter, the "Opposition"); and

WHEREAS, the subject site is located on the west side of Girard Street, between Hampton Avenue and Oriental Boulevard, in an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 6,240 sq. ft., and is occupied by a two-family home with a floor area of approximately 3,657 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 approximately 3,657 sq. ft. (0.59 FAR), to approximately 6,160 sq. ft. (0.99 FAR); the maximum floor area permitted is approximately 3,744 sq. ft. (0.60 FAR); and

WHEREAS, the proposed enlargement provides approximately 42 percent of lot coverage (a maximum of 35 percent is permitted) and approximately 58 percent of open space (a minimum of 65 percent 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, during the course of the public hearings, the Opposition provided testimony disputing the applicant's ownership of a strip of land which extends east from the rear lot line to a depth of 4'-0", claiming that the actual depth of the subject site is 100'-0", rather than 104'-0"; and

WHEREAS, the Opposition argues that the floor area of the proposed home is based on the 60'-0" by 104'-0" lot and the applicant should not be entitled to the increased floor area generated from the 60'-0" by 4'-0" strip of land which it allegedly does not own; and

WHEREAS, the Board notes that the Department of Finance has amended the tax map for the subject site to reflect a depth of 104'-0", and that the applicant provided evidence that real estate taxes were paid on the disputed 60'-0" by 4'-0" strip of land for fiscal year 2007/2008; and

WHEREAS, in addition, the applicant submitted a 1979 survey, a 2006 survey, and a policy of title insurance indicating that the depth of the subject zoning lot is 104'-0"; and

WHEREAS, in response to the Opposition's claims, the applicant initially provided a 2005 deed indicating that

the dimensions of the property measured 60'-0" by 100'-0", and subsequently provided a title report and a correction deed that indicate the boundaries to be 60'-0" by 104'-0"; and

WHEREAS, the Board notes that the information provided does not firmly establish the depth of the of the subject lot at 104'-0", further, the title report did not substantiate the increase from 100'-0" to 104'-0"; and

WHEREAS, the Board therefore rejects the submission of the title report and correction deed as inconclusive; and

WHEREAS, the Board further notes that, while it has received the aforementioned documents concerning fee title ownership, a determination regarding title is outside the scope of its jurisdiction; and

WHEREAS, the submission of the tax map showing the dimensions of the subject property is sufficient to establish the dimensions of the subject site for the purposes of filing an application for a special permit; 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 that were being retained; 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 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, lot coverage, open space and rear yard, contrary to ZR §§ 23-141(b) 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 20, 2008"-(10) sheets and "Received October 14, 2008"; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of approximately 6,160 sq. ft.; a lot coverage of approximately 42 percent; an open space of

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approximately 58 percent; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB shall confirm that the portions of the existing building shall be retained as illustrated on the BSA-approved plans; and

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, January 27, 2009.

251-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Cynthia Esses, owner.

SUBJECT – Application October 10, 2008 – Special Permit (§73-622) for the enlargement of an existing one family residence. This application seeks to vary side yards (§23-48) and less than the required rear yard (§23-47) in an R5 (OP) Special Ocean Parkway District.

PREMISES AFFECTED – 2153 Ocean Parkway, east side of Ocean Parkway between Avenue U and Avenue V, Block 7133, Lot 50, 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 Superintendent, dated September 22, 2008, acting on Department of Buildings Application No. 310191360, reads in pertinent part:

“The proposed enlargement of the existing one family residence in an R5 zoning district:

1. Creates non-compliance with respect to the side yards by not meeting the minimum requirements of Section 23-48 of the Zoning Resolution.
2. Creates non-compliance with respect to the rear yard by not meeting the minimum

requirements of Section 23-47 of the Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R5 zoning district within the Special Ocean Parkway District and partially within the Ocean Parkway Sub-district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for side yards and rear yard, contrary to ZR §§ 23-48 and 23-47; and

WHEREAS, a public hearing was held on this application on December 16, 2008, after due notice by publication in *The City Record*, and then to decision on January 27, 2009; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson, and

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

WHEREAS, the subject site is located on the east side of Ocean Parkway, between Avenue U and Avenue V, in an R5 zoning district within the Special Ocean Parkway District and partially within the Ocean Parkway Sub-district; and

WHEREAS, the applicant represents that, because only a portion of the zoning lot extending five feet from the rear lot line is within the Ocean Parkway Sub-district, and the distance from the lot line to the mapped district boundary is less than 25 feet, pursuant to ZR § 77-11, the regulations of the Ocean Parkway Sub-district are inapplicable; and

WHEREAS, the applicant further represents that the regulations of the Special Ocean Parkway District do not affect the instant proposal; and

WHEREAS, the subject site has a total lot area of 3,445 sq. ft., and is occupied by a single-family home with a floor area of 2,311 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 2,311 sq. ft. (0.67 FAR), to approximately 3,647 sq. ft. (1.06 FAR); the maximum floor area permitted is approximately 4,306 sq. ft. (1.25 FAR); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard with a width of 2’-6” along the northern lot line (two side yards, each with a minimum width of 5’-0” are 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 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, in an R5 zoning district within the Special Ocean Parkway District and partially within the Ocean Parkway Sub-district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for side yards and rear yard, contrary to ZR §§ 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 October 10, 2008”–(9) sheets and “Received December 30, 2008”–(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a side yard with a minimum width of 2’-6” 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, January 27, 2009.

257-08-BZ

CEQR #09-BSA-037M

APPLICANT – Slater & Beckerman, LLP, for 120 East 56th Street, LLC, owner; Susan Ciminelli, Inc., lessee.

SUBJECT – Application October 17, 2008 – Special Permit (§73-36) to allow a Physical Culture Establishment on the second floor in an existing 15-story commercial building.

The proposal is contrary to ZR Section 32-10. C5-2 district. PREMISES AFFECTED – 120 East 56th Street, between Park Avenue and Lexington Avenue, Block 1310, Lot 65, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Joshua Trauner.

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 December 12, 2008, acting on Department of Buildings Application No. 110324667, reads in pertinent part:

“Physical culture establishment (day spa) is not permitted as of right in C5-2 district and is contrary to ZR 32-10;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C5-2 zoning district, the establishment of a physical culture establishment (PCE) on the second floor of an existing 15-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 13, 2009 after due notice by publication in *The City Record*, and then to decision on January 27, 2009; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Commissioner Hinkson and 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 East 56th Street, between Park Avenue and Lexington Avenue, in a C5-2 zoning district; and

WHEREAS, the site is occupied by a 15-story commercial building; and

WHEREAS, the PCE will occupy approximately 5,509 sq. ft. of floor area, comprising the entire second floor of the existing building; and

WHEREAS, the PCE will be operated as the “Susan Ciminelli Day Spa;” and

WHEREAS, the applicant represents that the services at the PCE will include facilities for the practice of massage within a full service day spa, as well as programs for physical improvement; and

WHEREAS, the proposed hours of operation are: Monday through Saturday, from 9:00 a.m. to 6:00 p.m., and Sunday, from 12:00 p.m. to 5:00 p.m.; and

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

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

WHEREAS, the PCE will not interfere with any

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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. 098BSA036M, dated August 26, 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; 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 C5-2 zoning district, the establishment of a physical culture establishment on the second floor of an existing 15-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 11, 2008"- two (2) sheets; and *on further condition*:

THAT the term of this grant shall expire on January 27, 2019;

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 all signage shall comply with C5-2 zoning 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 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;

THAT substantial construction be completed in accordance with ZR § 73-70; 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 27, 2009.

178-07-BZ

APPLICANT – Dominick Salvati and Son Architects, for Bronx Jewish Boys, owners.

SUBJECT – Application July 12, 2007 – Variance (§72-21) to permit the proposed seven-story residential building above the existing three-story community facility building. The proposal is contrary to residential floor area and FAR and lot coverage (§23-141(b)), number of dwelling units (§23-222), rear yard (§23-47 & §24-36), sky exposure plane and setback, (§23-631(d)), required residential and community facility parking (§25-23 & §25-31). R5 district. PREMISES AFFECTED – 2261-2289 Bragg Street, 220' north from intersection of Bragg Street and Avenue W, Block 7392, Lot 57, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Mark McCarthy.

ACTION OF THE BOARD – Laid over to April 7, 2009, at 1:30 P.M., for adjourned hearing.

203-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gastar, Inc., owner.

SUBJECT – Application August 17, 2007 – Variance (§72-21) to allow a new thirteen (13) story mixed-use building containing twenty (20) dwelling units, ground floor retail and third and fourth floor community facility (medical) uses; contrary to bulk and parking regulations (§35-311 & §36-21). R6/C2-2 district.

PREMISES AFFECTED – 137-35 Elder Avenue (a/k/a 43-49 Main Street) located at the northwest corner of Main Street and Elder Avenue, Block 5140, Lot 40, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Richard Lobel and Robert Pauls.

ACTION OF THE BOARD – Laid over to March 17,

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2009, at 1:30 P.M., for continued hearing.

220-07-BZ

APPLICANT – Moshe M. Friedman, P.E., for Relly Bodansky, owner.

SUBJECT – Application September 25, 2007 – Variance (§72-21) to allow the erection of a new 4-story residential building containing 4 dwelling units on a site containing an existing legal, nonconforming 3-story multiple dwelling which is proposed to be razed; contrary to use regulations (§42-10). M1-1 district.

PREMISES AFFECTED – 847 Kent Avenue, east side of Kent Avenue, 300' north of intersection of Kent Avenue and Myrtle Avenue, Block 1898, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Moshe M. Friedman and Hershel Bodarsky.

For Opposition: Elba Cornier.

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 3, 2009 at 1:30 P.M., for decision, hearing closed.

284-07-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for K.S. Realty, Inc., owner; AGT Crunch New York, LLC, lessee.

SUBJECT – Application December 19, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment (Crunch Fitness) on portions of the cellar, and first floor, second floor, and the third floor of a mixed-use building. The proposal is contrary to § 32-10. C6-1 district.

PREMISES AFFECTED – 52-54 East 13th Street, south side of East 13th between Broadway and University Place, Block 564, Lot 11, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Ellen Hay.

ACTION OF THE BOARD – Laid over February 24, 2009, at 1:30 P.M., for postponed hearing.

40-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Laconia Land Corporation, owner.

SUBJECT – Application February 25, 2008 – Special Permit (§§11-411 & 11-413) to allow the re-instatement and extension the term, to amend the previous BSA approval of an Automotive Service Station (UG 16) to an Automotive Repair Facility (UG 16). The application seeks to subdivide the zoning lot and allow a portion to be developed as of right in a C1-2/R5 zoning district.

PREMISES AFFECTED – 3957 Laconia Avenue Northwest

corner of east 224th Street Block 4871, Lot 1, Borough of Bronx.

COMMUNITY BOARD #1BX

APPEARANCES –

For Applicant: Todd Dole.

ACTION OF THE BOARD – Laid over March 3, 2009, at 1:30 P.M., for adjourned hearing.

159-08-BZ

APPLICANT – Jay A. Segal, for Greenberg Traurig, LLF, for DJL Family Limited Partnership, owners.

SUBJECT – Application June 10, 2008 – Variance (§72-21) to allow a new seven (7) story residential building (UG 2) containing twelve (12) dwelling units and ground floor retail (UG 6); contrary to use regulations (§42-10 & §42-14 D(2)(b)). M1-5B district.

PREMISES AFFECTED – 68-70 Spring Street, south side of Spring Street between Crosby and Lafayette Streets, Block 482, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to February 10, 2009, at 1:30 P.M., for deferred decision.

161-08-BZ

APPLICANT – Eric Palatnik, P.C., for Oleg F. Kaplun, owner.

SUBJECT – Application June 10, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, open space and lot coverage (§23-141) and less than the required rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 136 Dover Street, between Hampton Street and Oriental Boulevard, Block 8735, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over February 24, 2009, at 1:30 P.M., for continued hearing.

162-08-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 150 East 93rd Street Corporation, owner.

SUBJECT – Application June 12, 2008 – Special Permit (§73-621) to allow for the enlargement of an existing building contrary to floor area and lot coverage regulations §23-145 and §35-31; C1-8X District.

PREMISES AFFECTED – 150 East 93rd Street, southeast corner of East 93rd Street and Lexington Avenue, Block 1521, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Fredrick A. Becker.

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For Opposition: Lo Van der Valk, Susan Kathryn Hefti, Charles Fastenberg, Julie Herzig and other.

ACTION OF THE BOARD – Laid over to March 3, 2009, at 1:30 P.M., for continued hearing.

206-08-BZ

APPLICANT – Eric Palatnik, P.C., for Paul Chait, owner.
SUBJECT – Application November 18, 2008 – Variance (§72-21) to permit the expansion of an existing three-story Use Group 3 yeshiva which includes sleeping accommodations. The proposal is contrary to ZR §24-111 (maximum floor area), §24-35 (side yard), §24-551 (side yard setback), and parking (§25-31). R2X zoning district.
PREMISES AFFECTED – 737 Elvira Avenue, southern side of Elvira Avenue, between Reads Lane and Anaapolis Street, Block 15578, Lot 8, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik, Rabbi Chaitstft Jr.

For Opposition: Jeanette Baruch.

ACTION OF THE BOARD – Laid over to February 24, 2009, at 1:30 P.M., for continued hearing.

215-08-BZ

APPLICANT – Davidoff Malito & Hutcher, LLP by Howard S. Weiss, for SoBRO Development Corp., owners.
SUBJECT – Application August 20, 2008 – Variance (§72-21) to allow a new ten (10) story mixed-use building containing ninety eight (98) dwelling units and ground floor retail use; contrary to use regulations (§32-00). C8-3 district.
PREMISES AFFECTED – 1778-1800 Southern Boulevard, intersection of East 174th Street, Boston Post Road and Southern Boulevard, Block 2984, Lots 1 & 7, Borough of Bronx.

COMMUNITY BOARD #3BX

APPEARANCES –

For Applicant: Howard Weiss and Victor Body-Lawson.

ACTION OF THE BOARD – Laid over February 24, 2009, at 1:30 P.M., for continued hearing.

223-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Joseph Maza, owner.

SUBJECT – Application August 29, 2008 – Variance (§72-21) to permit a commercial development (local retail, use group 6) within an R3-2 (SRD) zoning district.

PREMISES AFFECTED – 4553 Arthur Kill Road, west side of Arthur Kill Road, 142' south of the intersection with Kreisler Street, Block 7596, Lot 250, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to February 10, 2009, at 1:30 P.M., for continued hearing.

226-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Tiferes Shebitferes Corp., by David Smatena, owner.

SUBJECT – Application September 16, 2008 – Special Permit (§73-50) to legalize the vertical enlargement of an existing commercial building within the required 30 foot rear yard required along a residential district boundary line that is coincident with a rear lot line. C8-2 zoning district.
PREMISES AFFECTED – 172 Empire Boulevard, south side of Empire Boulevard between Bedford Avenue and Rogers Avenue, Block 1314, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #9BK

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 February 10, 2009 at 1:30 P.M., for decision, hearing closed.

227-08-BZ

APPLICANT – Slater & Beckerman, LLP, for Bronx Lebanon Hospital Center, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) to allow a 39,922 square foot enlargement to an existing non-profit hospital (UG 4); contrary to bulk regulations (§24-11, §23-633, §122-30). R8 District / Special Grand Concourse Preservation District.

PREMISES AFFECTED – Grand Concourse, East 173rd Street, Selwyn Avenue, Mt. Eden Parkway, Block 2823, Lot 1, Borough of Bronx.

COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Carole Slater, Robert Sanc Ho, Ben P. Lee and 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 10, 2009 at 1:30 P.M., for decision, hearing closed.

230-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for A and B Bistricher, LLC, by Elsa Bistricher, owner.

SUBJECT – Application September 5, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space (§23-141); and less than minimum rear yard requirement (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1019 East 23rd Street, East side

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of 23rd Street between Avenue J and Avenue K, Block 7605,
Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over March 17,
2009, at 1:30 P.M., for adjourned hearing.

234-08-BZ

APPLICANT – Eric Palatnik, P.C., for 1702 Avenue Z, Inc.,
owner.

SUBJECT – Application September 9, 2008 – Special
Permit (§73-36) to allow the proposed Physical Culture
Establishment at the cellar and a portion of the first and
second floors in a seven-story mixed-use building. The
proposal is contrary to ZR §32-10. C4-2 district.

PREMISES AFFECTED – 1702 Avenue Z, southeast of the
corner formed by Avenue Z and East 17th Street, Block
7462, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 17,
2009, at 1:30 P.M., for continued hearing.

250-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sari
Dana and Edward Dana, owners.

SUBJECT – Application October 10, 2008 – Special Permit
(§73-622) for the enlargement of an existing single family
residence. This application seeks to vary floor area (§23-
141) and less than the required rear yard (§23-47) in an R2X
(OP) Special Ocean Parkway District.

PREMISES AFFECTED – 1925 East 5th Street, east side of
East 5th Street between Avenues R and S, Block 6681, Lot
490, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to March 3,
2009, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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15-09-BZ

8-10 Astor Place, South side between Broadway and Lafayette Street., Block 545, Lot(s) 2, Borough of **Manhattan, Community Board: 2**. Special Permit (73-36) to legalize the operation of a physical culture establishment.

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 24, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 24, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

885-78-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 120 West 25th Realty Company, LLC, owner.
SUBJECT – Application November 25, 2008 – Amendment to a previously granted Variance (§72-21) to allow the transfer of development rights from the subject site (Lot 53) to an adjoining site (Lot 49) in an M1-6 zoning district.
PREMISES AFFECTED – 120 West 25th Street, south side of West 25th Street, between Sixth and Seventh Avenues, Block 800, Lot 53, Borough of Manhattan.
COMMUNITY BOARD #3M

771-89-BZ

APPLICANT – Mark D. Lipton, AIA, for William R. Burns, owner.
SUBJECT – Application January 14, 2008 – Extension of Term/waiver of a previously granted Variance (§72-21) to allow the change of use from a single family dwelling to (UG6) office use with accessory parking in an R3-2 zoning district which expired on September 18, 2000.
PREMISES AFFECTED – 2078 Richmond Avenue, west side of Richmond Avenue, 139.09’ south of Rivington Avenue, Block 2102, Lot 98, Borough of Staten Island.
COMMUNITY BOARD #2SI

200-01-BZ

APPLICANT – Davidoff Malito & Hutcher LLP by Ron J. Mandel, Esq., for Browne Associates, owner; Hillside Manor Rehabilitation and Extended Care Center, lessee.
SUBJECT – Application January 29, 2009 – Extension of Time to complete construction and to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) for the enlargement of an existing 11-story and penthouse rehabilitation/long term care facility (Hillside Manor), in an R6A/C2-4 Special Downtown Jamaica District zoning district, which expired on January 11, 2009.
PREMISES AFFECTED – 182-15 Hillside Avenue, northeast corner of Hillside Avenue and Avon Street, Block 9950, Lot 1, Borough of Queens.
COMMUNITY BOARD #8Q

APPEALS CALENDAR

83-08-A

APPLICANT – NYC Department of Buildings, for H. Patel, P.M. – Purvi Enterprises, LLC, owner.
SUBJECT – Application April 9, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 301279319 issued on January 17, 2007 as it was issued in error due to failure to comply with ZR §62-711 requiring waterfront certification. R5 SP Sheepshead Bay District.
PREMISES AFFECTED – 3218 Emmons Avenue, Emmons Avenue between Bringham Street, and Bragg Street, Block 8815, Lot 590, Borough of Brooklyn.
COMMUNITY BOARD #15BK

147-08-BZY

APPLICANT – Hui-Li Xu, for Beachway Equities, Inc., owner.
SUBJECT – Application May 23, 2008 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on April 30, 2008. R5 zoning district.
PREMISES AFFECTED – 95-04 Allendale Street, between Atlantic Avenue and 97th Avenue, Block 10007, Lot 108, Borough of Queens.
COMMUNITY BOARD #12Q

FEBRUARY 24, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 24, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

284-07-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for K.S. Realty, Inc., owner; AGT Crunch New York, LLC, lessee.
SUBJECT – Application December 19, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment (Crunch Fitness) on portions of the cellar, and first floor, second floor, and the third floor of a mixed-use building. The proposal is contrary to section 32-10. C6-1 district.
PREMISES AFFECTED – 52-54 East 13th Street, south side of East 13th between Broadway and University Place, Block 564, Lot 11, Borough of Manhattan.
COMMUNITY BOARD #2M

CALENDAR

188-08-BZ

APPLICANT – Rizzo Group, for Hotel Carlyle Owners Corp., owners; The Hotel Carlyle, lessee.

SUBJECT – Application July 14, 2008 – Special Permit (§73-36) and Special Permit (§73-52) to allow the legalization of a Physical Culture Establishment and to extend this use into an R8B district for the subject hotel which exists in the C5-1MP and R8B zoning districts. The proposal is contrary to ZR §32-10.

PREMISES AFFECTED – 35 East 76th Street, (975-983 Madison Avenue; 981 Madison Avenue; 35-53 East 76th Street) northeast corner of Madison Avenue and East 76th Street, Block 1391, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M
-----**229-08-BZ**

APPLICANT – Sheldon Lobel, P.C. for Edward Haddad, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) for the construction of a new single family home. This applications seeks to vary floor area (§23-141), less than the minimum side yards (§23-461) and the location of the required off street parking to the front yard (§25-62) in an R2X zoning district.

PREMISES AFFECTED – 866 East 8th Street, West side of East 8th Street, north of Avenue I, and adjacent to railroad, Block 6510, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #12BK
-----**269-08-BZ**

APPLICANT – MetroPCS New York, LLC, for LGA Hotel LLC, owner; MetroPCS New York, LLC, lessee.

SUBJECT – Application November 5, 2008 – Special Permit (§73-30) to allow an extension to an existing non-accessory radio tower.

PREMISES AFFECTED – 90-10 Grand Central Parkway, north side of 23rd Avenue, between 90th Street and 93rd Street, Block 1068, Lot 1, Borough of Queens.

COMMUNITY BOARD # 3Q
-----**303-08-BZ**

APPLICANT – Carl A. Sulfaro, Esq., for Luciano Calandra, owner; Lou-Cal Auto Service, Inc., lessee.

SUBJECT – Application December 10, 2008 – Special Permit filed pursuant to §11-411 of the zoning resolution to re-establish an expired variance which permitted the erection and maintenance of a gasoline service station with accessory uses (UG 16) C2-2/R5-B zoning district.

PREMISES AFFECTED – 34-67 Francis Lewis Boulevard, northeast corner of 35th Avenue, Block 6077, Lot 43, Borough of Queens.

COMMUNITY BOARD # 11Q
-----**304-08-BZ**

APPLICANT – Bryan Cave LLP, for TDS Acquisition LLC d/b/a Trevor Day School, owner.

SUBJECT – Application December 11, 2008 – Variance (§72-21) and Special Permit (§73-19) to allow a school in a C8-4 district contrary to bulk regulations (33-123, 33-451, 33-453, 33-454, 33-26). C8-4 District.

PREMISES AFFECTED – 312-318 East 95th Street, south side of 95th Street, 215 east of Second Avenue, 350' feet west of First Avenue, Block 1557, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #8M
-----**319-08-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Lawrence and Melvin Friedland, owners; IFC Center, lessee.

SUBJECT – Application December 31, 2008 – Special Permit (§73-201) for an expansion of an existing motion picture theater (IFC Center). C1-5 District.

PREMISES AFFECTED – 323/25 and 327 6th Avenue; 14 Cornelia Street, 75' front of 6th Avenue and 54 frontage on Cornelia Street, Block 589, Lots 19, 30, 31, Borough of Manhattan.

COMMUNITY BOARD #2M

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 3, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

239-97-BZ

APPLICANT – Kenneth H. Koons, for B.W. Partners Incorporated, owner.

SUBJECT – Application September 3, 2008 – Extension of Term for a UG16 automotive service station and UG8 parking lot, in an R-6 zoning district, which expires on July 13, 2009.

PREMISES AFFECTED – 1499 Bruckner Boulevard, north west corner of Wheeler Avenue, Block 3712, Lot 1, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES – None.

For Applicant: Rod Saunders.

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, and an amendment to legalize certain modifications to the previously approved site plan for a Use Group 16 automotive service station and a Use Group 8 parking lot; and

WHEREAS, a public hearing was held on this application on November 25, 2008, after due notice by publication in *The City Record*, with continued hearings on December 16, 2008, January 27, 2009, and then to decision on February 3, 2009; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by Commissioner Hinkson; and

WHEREAS, Community Board 9, Bronx, recommends approval of the proposal; and

WHEREAS, the site is located on the northwest corner of Bruckner Boulevard and Wheeler Avenue, in an R6 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 13, 1950, when, under BSA Cal. No. 37-50-BZ, the Board granted a variance permitting, in a residence use district, the reconstruction and extension of an accessory building to a gasoline service station to be used for a lubritorium, car wash and accessory store, and the parking and storage of motor vehicles on the unbuilt portion of the premises; and

WHEREAS, on June 29, 1954, under BSA Cal. No. 37-50-BZ, the Board amended the grant to permit the extension of the existing gasoline service station, to be used for the parking and storage 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 July 13, 1999, under the subject calendar number, the Board approved an application under ZR §§ 11-411, 11-412, and 11-413, to permit the removal of gasoline service pumps and pressurized gas tanks, and the change in use from a gasoline service station (Use Group 16) to a service station (Use Group 16), for a term of ten years; and

WHEREAS, the applicant now seeks a ten-year extension of the term of the variance, which expires on July 13, 2009; and

WHEREAS, at hearing, the Board questioned whether the site conditions were in compliance with the BSA-approved plans; specifically, whether the signage complied and whether the southernmost curb cut on Wheeler Avenue had been removed; and

WHEREAS, in response, the applicant submitted revised signage calculations, revised drawings, and photographs indicating that the signage complies with the BSA-approved plans and that the southernmost curb cut on Wheeler Avenue was removed; and

WHEREAS, the applicant also seeks to amend the grant to eliminate the restriction on the hours of operation for the parking lot, which ran from 6:00 a.m. to 8:00 p.m. under the previous grant, to reflect that the spaces are now offered for rental on a monthly basis and are no longer available for transient parking; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate, as well as the elimination of the restriction on the hours of operation for the parking lot, 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 July 13, 1999, 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, 2019, and to eliminate any restriction on the hours of operation for the parking lot, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received December 4, 2008”- (2) sheets; and *on further condition*:

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

THAT the term shall expire on July 13, 2019;

THAT the site be maintained free of debris and graffiti;

THAT the hours of operation for the automotive service station shall be limited to 8:00 a.m. through 8:00 p.m.;

THAT there shall be no limit on the hours of operation for the parking lot, and the spaces shall be offered for rental on a monthly basis;

THAT the above conditions 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)/configuration(s) not related to the relief granted.” (DOB Application No. 210028860)

Adopted by the Board of Standards and Appeals, February 3, 2009.

1228-79-BZ

APPLICANT – Harold Weinberg, P.E., for Mike Sedaghati, owner.

SUBJECT – Application December 5, 2008 – Extension of Term/waiver of a previously granted variance for the operation of a (UG6) retail store, in an R5 zoning district, which expired on July 21, 2005 and for an Extension of Time to obtain a Certificate of Occupancy which expired on May 21, 1997.

PREMISES AFFECTED – 2436 McDonald Avenue, between Avenue W and Village Road South, Block 7149, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg, Frank Sellitto.

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 10, 2009, at 10 A.M., for decision, hearing closed.

74-49-BZ

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

SUBJECT – Application – Pursuant to (§ 11-411) of the Zoning Resolution to request an extension of the term of a variance previously granted allowing a parking garage located in an M1-6 zoning district. The application seeks an amendment to increase the number of parking spaces and a waiver of the BSA's Rules of Practice and Procedure for an extension of time to obtain a Certificate of Occupancy.

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: Elizabeth Saphin and Calvin Wong.

For Opposition:

ACTION OF THE BOARD – Laid over to February 24, 2009, at 10 A.M., for continued hearing.

APPEALS CALENDAR

149-08-A

APPLICANT – Jack Lester, for Neighbors, et al, owner.

SUBJECT – Application May 29, 2008 – Appeal seeking to revoke permits and approvals for a 30 story mixed use building that allow violations of the zoning regulations on open space, parking, curb cuts and proper use group classification. R7-2/C1-5 zoning district.

PREMISES AFFECTED – 808 Columbus Avenue, 97th and 100th Street and Columbus Avenue, Block 1852, Lots 5, 15, 20, 23, 25, 31, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Jack Lester.

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:1

WHEREAS, the instant appeal comes before the Board in response to a determination of the Manhattan Borough Commissioner, dated May 2, 2008, to uphold the approval of New Building Permit No. 104464438 permitting the construction of a 29-story mixed-use multiple dwelling located in an R7-2 zoning district with a C1-5 overlay on a multiple building zoning lot; and

WHEREAS, the Final Determination reads, in pertinent part:

“As discussed below, the issues in your letter regarding the permit’s compliance with zoning regulations of open space and use group classification do not present a cause to revoke the permit.

First, your letter questions whether the allocation of open space per residential building is consistent with the Zoning Resolution’s (ZR) § 12-10 definition of “open space” that describes such space, in part, as “accessible to and usable by all persons occupying a dwelling unit . . . on the zoning lot.” The approved plans indicate that occupants of each unit of a building will have access to an amount of open space that meets the open space ratio applied to the building in accordance with ZR Sections 23-14 and 23-142, and therefore the permit application properly demonstrates the required amount of open space. Contrary to your claim, the ZR does not specify that open space on a multiple building zoning lot must be shared spaced that is commonly accessible to all occupants of the zoning lot.

. . . Your letter [also] challenges the Use Group 6 classification of the retail store proposed in the

1 Headings are utilized only in the interests of clarity and organization.

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new building. Your letter alleges that this establishment is a Whole Foods market that offers services not limited to grocery sales, and that its size and associated traffic classify it as a Use Group 10 variety store prohibited in the C1-5 district. Whole Foods Markets have been properly classified under ZR § 32-15 Use Group 6 in other locations in the City as food stores. There is no authority in the ZR for the Department to consider store size and traffic impact as factors that determine inclusion in the use group;" and

WHEREAS, a public hearing was held on this appeal on October 28, 2008, after due notice by publication in the *City Record*, with continued hearings on November 18, 2008 and December 16, 2008, and then to decision on February 3, 2009; 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

PARTIES AND SUBMITTED TESTIMONY

WHEREAS, this appeal is brought by residents of the subject site and surrounding area (collectively, the "appellants"); and

WHEREAS, subject site is owned by 808 Columbus, LLC (the "owner"); and

WHEREAS, the appellants, the Department of Buildings ("DOB") and the owner have been represented by counsel throughout this proceeding; and

WHEREAS, the following elected officials provided testimony in support of this appeal Borough President Scott M. Stringer, Congressman Charles B. Rangel, and Assembly Member Daniel J. O'Donnell; and

WHEREAS, representatives of the Park West Village Tenants Association, the Coalition to Preserve Park West North, the Park West Neighborhood History Group, and other local residents provided written and oral testimony in support of this appeal; and

WHEREAS, several neighborhood residents provided written and oral testimony in opposition to this appeal; and

THE SITE

WHEREAS, the subject site is located on a superblock (Block 1852) bounded by West 97th Street on the south, Columbus Avenue on the west, West 100th Street on the north, and Central Park West on the east; and

WHEREAS, the subject site is located on a Zoning Lot occupied by Park West Village, an existing housing development; and

WHEREAS, the Zoning Lot consists of Tax Lots 5, 20, 25, and 31; and

WHEREAS, the subject site is located on Columbus Avenue between West 97th Street and West 100th Street on Block 1852, Tax Lot 25; and

WHEREAS, the subject site is located in an R7-2 zoning

district with a C1-5 overlay on the Columbus Avenue frontage extending to a depth of 100 feet; and

WHEREAS, the subject site was formerly occupied by two one-story commercial buildings which have been demolished; and

WHEREAS, the subject site is proposed to be occupied with a 29-story mixed use commercial and residential building (the "proposed building"); and

WHEREAS, the cellar and subcellar of the proposed building are proposed to be occupied by a 324-car accessory parking garage, and a portion of the first floor and cellar are proposed to be occupied by a Use Group 6 supermarket; and

WHEREAS, the remainder of Zoning Lot, comprised of Tax Lots 5, 20, and 31 to the west of the subject site, is occupied by three 16-story residential buildings (the "existing buildings"); and

WHEREAS, the Park West Village development was constructed within the West Park Urban Renewal Area (the "Urban Renewal Area"), pursuant to a redevelopment plan for the area approved by the Board of Estimate on May 22, 1952 (the "Redevelopment Plan") in conjunction with the designation of the Urban Renewal Area; and

PROCEDURAL HISTORY

WHEREAS, as discussed above, the instant appeal concerns the issuance by DOB of New Building Permit No. 104464438 permitting development of a 29-story mixed-use building at the subject site; and

WHEREAS, in connection with the approval of the Permit, the owner requested and received several zoning reconsiderations of the project by DOB, including a reconsideration which allowed the open space required on the Zoning Lot pursuant to ZR § 23-142 to be allocated among the proposed building and the three existing buildings on the Zoning Lot (the "DOB Reconsideration"); and

WHEREAS, in letters to DOB dated July 27, 2007 and February 7, 2008, the Manhattan Borough President argued that the reconsiderations granted for the proposed building were based on an erroneous interpretation of the applicable provisions of the Zoning Resolution; and

WHEREAS, on May 2, 2008, the Manhattan Borough Commissioner issued the Final Determination, cited above, that forms the basis of the instant appeal; and

WHEREAS, on May 29, 2008, the appellants filed the instant appeal at the BSA; and

ISSUES PRESENTED

WHEREAS, the appellants contend that the proposed building violates open space requirements of the Zoning Resolution and the Redevelopment Plan, that the proposed supermarket is not permitted in the subject zoning district, and that its approval violates State and City environmental law, therefore, that the Permit should be revoked; and

WHEREAS, the appellants make the following primary arguments in support of their position that the Permit for the Proposed building should be revoked: (i) open space will not be usable and accessible to all residents of the Zoning Lot as required by the Zoning Resolution; (ii) the open space and height of the proposed building violates the Redevelopment Plan; (iii) the proposed supermarket is more appropriately

2 Park West Village also includes a second superblock which is not implicated by the instant appeal.

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classified as a department store or a variety store; and (iv) a required review of the potential environmental impacts of the proposed supermarket was not undertaken; and

WHEREAS, these four arguments are addressed below; and

Whether the Proposed Building Violates the Open Space Requirements of the Zoning Resolution

WHEREAS, the appellants assert that the proposed building violates the open space requirements for the following reasons: (i) open space will not be usable and accessible to all residents of the Zoning Lot as required by the Zoning Resolution; (ii) the allocation of open space among the residential buildings of the Zoning Lot violates a DOB directive; (iii) the intent of the Zoning Resolution is to permit access by all residents of a Zoning Lot to all open space on that Zoning Lot; and (iv) the open space allocation deprives existing residents of an equitable share of open space; and

WHEREAS, the appellants contend that DOB failed to ensure that open space sufficient to support the proposed building's floor area that is accessible to all the occupants of the Zoning Lot is provided as required by ZR §§ 23-142 and 12-10 and, therefore, the Permit should be revoked; and

WHEREAS, the appellants further contend that because rooftop open space above a one-story portion of the proposed building will be reserved for the residents of that building, DOB failed to ensure that the open space on the subject site will be accessible to all residents of the existing buildings as required by ZR § 12-10; and

WHEREAS, DOB states that an allocation of open space required for each building on a Zoning Lot is consistent with the requirements of the Zoning Resolution because ZR § 12-10 defines "open space" as "accessible to and usable by all persons occupying a dwelling unit . . . on the zoning lot" and

WHEREAS, DOB further states that the definition of open space must be read in the context of the calculation of open space set forth in ZR §§ 23-14 and 23-142, which require a minimum amount of open space with respect to "any building" on a zoning lot, rather than to all buildings on a zoning lot; and

WHEREAS, ZR § 23-142 provides that the permissible floor area of a building is dependent on a calculation of the "height factor" of a development and the amount of open space provided on its zoning lot; and

WHEREAS, the Building is proposed to provide 1,023,125 sq. ft. of residential floor area, and will have a residential lot coverage of 67,422 sq. ft., with a resulting height factor of 15; and

WHEREAS, ZR § 23-142 imposes a minimum open space ratio of 22.5 for residential construction in an R7-2 zoning district with a height factor of 15; and

WHEREAS, the owner represents that the residential floor area on the Zoning Lot generates a requirement of 230,203 sq. ft. of open space, and that the zoning calculations indicated that a total of 240,331 square feet of open space will be provided on the Zoning Lot; and

WHEREAS, DOB contends that the Permit is valid because the application documents for the proposed building demonstrate the required amount of open space on the Zoning

Lot and compliance with the open space requirements of ZR §§ 23-142 and 12-10; and

WHEREAS, the DOB Reconsideration allows the required open space to be allocated among the four residential buildings on the Zoning Lot, with open space that will be located on the roof of the one-story commercial portion of the proposed building to be dedicated to the residents of that building; and

WHEREAS, DOB further contends that ZR §§ 23-14 and 23-142 require open space with respect to a building, rather than to the zoning lot as a whole, and therefore were satisfied by the Permit application which provides the required amount of open space to each building on the Zoning Lot; and

WHEREAS, the owner states that residents of the existing buildings will have access to other open space at grade level that satisfies the applicable open space requirements of the Zoning Resolution; and

WHEREAS, the owner further states that the current open space at grade will be improved and that a significant amount of open space previously occupied by accessory parking will be landscaped; and

WHEREAS, DOB further states that the ZR § 12-10 definition of "open space" does not specify that open space on a multiple building dwelling lot must be common, centralized space that is shared by all occupants of the zoning lot; and

WHEREAS, the owner argues that neither ZR §§ 12-10, 23-14, nor any other provision of the Zoning Resolution, expressly concerns a condition involving multiple buildings on a zoning lot, nor requires that open space on a multi-building zoning lot be shared space that is commonly accessible to all the occupants of a zoning lot; and

WHEREAS, the owner contends that because the applicable open space requirements are expressed with reference to a single building, open space can therefore be allocated among buildings; and

WHEREAS, the owner points out that ZR § 23-14 states that "for any building on a zoning lot, the minimum required open space or open space ratio shall not be less than set forth in this Section . . ." and ZR § 23-142 likewise provides that "in the districts indicated, the minimum required open space ratio and the maximum floor area ratio for any building on a zoning lot shall be as set forth in the following table . . ."; and

WHEREAS, the owner further contends that there is no provision in the Zoning Resolution explicitly prohibiting an allocation of required open space among several buildings; and

WHEREAS, the appellants further argue that their contention that all open space on the subject site must be open to all residents of the Zoning Lot is supported by a Directive of DOB's Director of Operations dated May 28, 1968 (the "1968 Directive"); and

WHEREAS, the 1968 Directive includes the statement that "[s]ubdivision(b) shall be interpreted to mean that all open space shall be accessible to and usable by all the residents of the building or buildings;" and

WHEREAS, DOB argues that, rather than compelling the creation of common open space for occupants of all buildings on a multiple building zoning lot, the Directive allows the applicant to choose whether to allocate open space generated

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by each building to be accessible and usable only to the residents of that building or to be accessible to all residents of all the buildings; and

WHEREAS, DOB states that the Permit application indicates that the residents of each building will have access to an amount of open space that meets the open space ratio of ZR § 23-142 and therefore conforms to the 1968 Directive; and

WHEREAS, DOB states that there is no support for the appellant's claim that the only means of satisfying the requirement for open space on a multiple building zoning lot is to dedicate all open space to all buildings on the lot; and

WHEREAS, DOB further states that compliance with the statute is not undermined by limiting access and use of open space for the new building to its occupants; and

WHEREAS, the appellants contend that the intent of the Zoning Resolution was to permit access to all open space on a Zoning Lot to all residents of the Zoning Lot; and

WHEREAS, the owner argues that the goal of the open space provisions is to ensure that all persons residing on a zoning lot have access to a prescribed amount of open space, which is achieved when each building on a large zoning lot improved with multiple buildings is allocated at least as much accessible open space as would be required for that building if it were located on a separate zoning lot; and

WHEREAS, the Board notes that the purported intent of the Zoning Resolution is not clearly stated and that the Board is not permitted to construe the intent of the Zoning Resolution, but is limited to the "four corners" of the statute (see McKinney's N.Y. Consol L. Statutes § 94 (2008)); and

WHEREAS, the appellants contend that the open space allocation approved will produce and inequitable or disproportionate distribution of open space and that residents of the existing buildings will be thereby deprived of open space; and

WHEREAS, the Board notes that, as each of the existing buildings is allocated an amount of open space that is in excess of that which would be required under the Zoning Resolution if they were located on separate zoning lots, it cannot be seen how those residents would be deprived of an equitable share of open space by the proposed building; and

WHEREAS, the Board agrees that the open space proposed for the subject site does not violate the open space requirements of the Zoning Resolution; and

WHEREAS, the Board finds that the proposed open space complies with the requirements of ZR §§ 23-142 and 12-10; and

Whether the Proposed Building Violates Open Space Requirements and Height Limitations of the Redevelopment Plan

WHEREAS, as discussed above, the Park West Village development was constructed pursuant to the Redevelopment Plan initially approved by the City in 1952; and

WHEREAS, the appellants state that the development of Park West Village continues to be governed by the parameters set forth in the Redevelopment Plan; and

WHEREAS, the appellants contend that the most recently amended version of the Redevelopment Plan limits lot coverage by residential buildings to no more than 19 percent of

the Zoning Lot area and that the proposed building would reduce the amount of open space in violation of the Redevelopment Plan; and

WHEREAS, appellants further contend that the Redevelopment Plan limits the height of residential buildings to 150 feet or 20 stories; and

WHEREAS, the appellants further contend that DOB failed to assure that open space on the site and the proposed building height comply with the requirements of the Redevelopment Plan, and, therefore, the Permit should be revoked; and

WHEREAS, the Board notes that the appellants put forth no evidence concerning the square footage of open space allegedly required by the Redevelopment Plan, the open space presently existing on the Zoning Lot, or the open space projected after development of the proposed building, so that the Board is unable to confirm that the proposed building would result in less open space than is required by the Redevelopment Plan; and

WHEREAS, however, the owner states that the Redevelopment Plan is no longer in effect, so that terms therein concerning open space requirements or height limitations are inapplicable to the proposed building; and

WHEREAS, the owner further states that, pursuant to a 1952 redevelopment agreement executed by and between the designated developer of Park West Village and the City of New York (the "Redevelopment Agreement"), the Redevelopment Plan was to remain in effect for a period of forty years from the completion of the project; and

WHEREAS, the Redevelopment Agreement deemed the project completed on such date that the certificates of occupancy were issued for all the residential buildings provided for in the Redevelopment Plan; and

WHEREAS, a certificate of occupancy for the final building provided for in the Redevelopment Plan was issued on July 22, 1966, the owner states that the restrictions imposed by the Redevelopment Agreement therefore expired on July 22, 2006; and

WHEREAS, the expiration of the restrictions set forth in the Redevelopment Agreement was confirmed by the Department of Housing Preservation and Development ("HPD") in a later dated August 7, 2006 from a HPD Deputy Commissioner submitted into the record (the "August 7, 2006 HPD Letter"); and

WHEREAS, the Board notes that the August 7, 2006 HPD Letter confirms that a temporary certificate of occupancy was issued on July 22, 1966 for 765 Amsterdam Avenue, the last residential building of the development, and that the restriction period accordingly ended on July 22, 2006; and

WHEREAS, as the August 7, 2006 HPD Letter establishes that the Redevelopment Plan is no longer in effect, the Board finds that such Plan imposes no continuing legal requirements concerning open space or building height, as alleged by the appellants; and

WHEREAS, the Board further finds that the proposed building is therefore governed solely by the land use restrictions set forth in the Zoning Resolution, as well as the Building Code and other applicable laws and codes; and

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Whether the Proposed Supermarket is a Permitted Use in the Zoning District

WHEREAS, portions of the ground floor and cellar levels of the proposed building are proposed to be occupied by a Whole Foods supermarket with approximately 56,000 sq. ft. of floor area; and

WHEREAS, the proposed building is located in a zoning district with a C1-5 overlay, in which a Use Group 6 supermarket is a permitted use; and

WHEREAS, the appellants argue that the proposed food store was improperly classified as a Use Group 6 use and instead ought to have been classified either as a variety store, which is limited to 10,000 sq. ft. of floor area in a C1-5 district, or as a department store, which is a Use Group 10 use that is not allowed in a C1-5 district; and

WHEREAS, the appellants further argue that the introductory text of ZR § 32-15 provides that Use Group 6 consists primarily of retail stores that “provide for a wide variety of local consumer needs” and “have a small service area;” and

WHEREAS, the appellants contend that that the proposed Whole Foods store will draw customers from a wide geographic area and produce heavy pedestrian and vehicular traffic and the store, therefore, is not a Use Group 6 supermarket; and

WHEREAS, the appellants further contend that the location, size and delivery requirements of the proposed store are consistent with those of a department store and are inappropriate and incompatible with the surrounding residential community; and

WHEREAS, in support of this position, the appellants submitted an affidavit from an engineer (the “engineer’s affidavit”) stating that trucking activity at loading docks on West 97th Street will pose a safety risk to students of the public school located across the street and that a new north-south driveway running across the Zoning Lot from West 100th street to West 97th Street also raises significant traffic and safety issues which ought to have been evaluated before the Permit was approved; and

WHEREAS, the Board notes that DOB has classified Whole Foods as a supermarket under ZR § 32-15 which provides that Use Group 6(A) retail uses include “[f]ood stores, including supermarkets, grocery stores, meat markets or delicatessen stores;” and

WHEREAS, DOB states that Whole Foods stores in other City locations have all been classified under ZR § 32-15 as Use Group 6 food stores, and

WHEREAS, DOB states that since Whole Foods is a supermarket under ZR § 32-15 and is a permitted use under the zoning resolution in C1-5 districts, the agency had no authority to consider the store size and potential traffic impacts prior to issuance of the Permit (see Lighthouse Hill Civic Ass’n v. City of New York, 275 A.D.2d 322, 323 (2d Dep’t 2000); and

WHEREAS, the Board notes that Use Group 6(A) food stores, unlike Use Group 6(A) bakeries and variety stores, are not specifically restricted as to size; and

WHEREAS, the Board further notes that the appellants supplied no evidence to support the claim that the proposed

store is not a supermarket under the plain meaning of the text, nor was any evidence submitted supporting the claim that that the store is more appropriately categorized as a department or variety store; and

WHEREAS, the owner states that the Whole Foods supermarket is a permitted Use Group 6 use because the store will be devoted primarily to the sale of food and related items; and

WHEREAS, the owner further states that variety stores and department stores primarily offer an array of non-food items and DOB has not classified any type of food-oriented supermarket, regardless of its size, as a variety store or a department store; and

WHEREAS, the Manhattan Borough President testified that DOB recently classified a Costco store at 32-50 Vernon Boulevard, Queens as a Use Group 10 department store pursuant to ZR § 32-19 although Costco’s merchandise is primarily devoted to the sale of food and related items; and

WHEREAS, the Board notes that no evidence was provided demonstrating that the merchandise sold by Costco is analogous to that sold by Whole Foods; and

WHEREAS, the appellants argue that Whole Foods draws customers from a large service area and is therefore not a Use Group 6 use based on the introductory text of ZR § 32-15 describing Use Group 6 uses as retail stores or service establishments with a small service area; and

WHEREAS, the owner contends that the introductory text of ZR § 32-15 is a general descriptive statement concerning Use Group 6 uses that is controlled by the specific list of uses subsequently enumerated, which as noted, includes supermarkets and other types of food stores; and

WHEREAS, the owner further contends that this interpretation is supported by ZR § 32-00, the introductory section of the commercial district regulations, which explains that the Use Groups listed in that section “including each use listed separately therein, are permitted in Commercial Districts as indicated in ZR §§ 32-11 to 32-25. . . .” and reflects a legislative judgment that an establishment that falls within one of the uses listed therein is a lawful and valid Use Group 6 use, regardless of its size, its actual service area or the amount of traffic that it generates; and

WHEREAS, the owner argues that such an interpretation of ZR § 32-15 is consistent with the principle of statutory construction that the particular shall control the general and with the rules for construing the Zoning Resolution (see ZR § 12-01; see also McKinney’s Consol. L. of NY, Statutes § 238 (2008)); and

WHEREAS, the owner contends that issues raised by the engineer’s affidavit are not relevant to the question of whether the proposed Whole Foods store is a valid Use Group 6 use that is permitted in the subject zoning district on an as-of-right basis; and

WHEREAS, notwithstanding the foregoing, the owner states that the loading docks on West 97th Street that will service the Whole Foods store are required under ZR § 36-62 and curb cuts providing access to these loading docks are permitted as-of-right; and

WHEREAS, because no approvals were required for the

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operation of the loading docks, the owner further states that DOB was not obligated to review the traffic or other impacts associated with the Whole Foods store prior to approving the Permit and, indeed, lacked the legal authority to do so (see Schum v. City of New York, 161 A.D. 519, 520 (1st Dep't 1990)); and

WHEREAS, the owner also submitted an affidavit from its Director of Construction ("director's affidavit") which states that as a result of extensive meetings with community residents, measures have been taken ensure that that vehicles servicing the Whole Foods store will operate safely with minimal neighborhood impacts; and

WHEREAS, the director's affidavit further states that the north-south driveway will not provide vehicular access to the Whole Foods store and instead is designed to provide access to vehicles picking up or dropping off passengers at the existing buildings and that the plans for the driveway have been reviewed and approved by DOB, the Fire Department and the Department of Transportation; and

WHEREAS, the Board finds that the proposed store is a Use Group 6 supermarket which is a permitted use in the subject C1-5 zoning district because: (i) the Zoning Resolution provides that Use Group 6 includes supermarkets without limitation as to size; (ii) DOB has consistently characterized Whole Foods supermarkets as supermarkets; and (iii) the applicant has proffered no evidence to support its characterization of the Whole Foods store as a variety store or department store; and

Whether Environmental Review of the Proposed Building is Required

WHEREAS, the appellants argue that an environmental review pursuant to the State Environmental Quality Review Act ("SEQRA") and the City Environmental Quality Review ("CEQR") provisions, which considered the projects' impact on neighborhood character, light and air, open space and traffic, was required before approval of the Permit; and

WHEREAS, the appellants further argue that the Permit should be revoked because an environmental review of the potential impacts of the proposed building was not undertaken prior to its issuance; and

WHEREAS, the owner contends that under the applicable open space and use provisions of the Zoning Resolution, the building may be constructed as of right and therefore the approval of the Permit was a ministerial act within the meaning of SEQRA and CEQR and no environmental review under these regulatory provisions was required; and

WHEREAS, SEQRA and/or CEQR review is required when a governmental agency undertakes, funds or approves a defined "action" that may have a significant impact on the environment (see Env. Cons. L. § 8-0109(2); see also 6 NYCRR § 617.1(c)) (2009); and

WHEREAS, an "action" under SEQRA includes projects that "require one or more new or modified approval from an agency or agencies" (see 6 NYCRR 617(b) (1) (2009)) and an "action" under CEQR is define to include "non-ministerial decisions on licensing activities; and

WHEREAS, an "approval" is a discretionary decision by an agency to issue a permit, certificate, license, lease or other

entitlement to or otherwise authorize a proposed project or activity" (see Env. Cons. L. § 8-0105) (2009));

WHEREAS, "official acts of a ministerial nature, involving no exercise of discretion," are expressly excluded from the definition of an approval (see ECL § 8-0105(5)(2009)); and

WHEREAS, the owner states that such ministerial acts include the issuance of building permits, when such issuance is "predicated solely on the applicant's compliance or noncompliance" with local building codes (see 6 NYCRR § 617.5(c) (19)(2009)); and

WHEREAS, the owner further states that, in numerous instances, the courts have held that DOB's issuance of as-of-right construction permits is not subject to CEQR, which implements SEQRA in new York City SEQRA and CEQR (see e.g., Lighthouse Hill Civic Ass'n v. City of New York, 275 A.D.2d 322, 323 (2d Dep't 2000); Schum v. City of New York, 161 A.D. 519, 520 (1st Dep't 1990), Citizens for Preservation of Windsor Terrace v. Smith, 122 A.D. 2d 827, 828 (2d Dep't 1986); and Herald Square South Civic Ass'n v. Consol. Edison Co. of New York, 2003 N.Y. Slip Op. 515755U (Sup. Ct. N.Y. Co. May 24, 2003), aff'd 307 A.D.2d 213 (1st Dep't 2003)); and

WHEREAS, the Board finds that environmental review pursuant to SEQRA and/or CEQR to consider the projects' impact on neighborhood character, light and air, open space and traffic was not required because approval of the Permit was a ministerial act within the meaning of SEQRA and CEQR; and

WHEREAS, the Board finds that the instant appeal presents no evidence that DOB violated any law or regulation; and

WHEREAS, accordingly, the Board concludes that the plans for construction of the proposed building under New Building Permit No. 104464438 meet the requirements for open space under ZR §§ 23-142 and 12-10, that the proposed supermarket is a permitted use within the subject zoning district and, because the Proposed building was therefore permitted as of right, no environmental review of the Proposed building's impacts was required; and

Therefore it is Resolved, that the instant appeal, seeking a reversal of the determination of the Manhattan Borough Commissioner, dated May 2, 2008, to uphold the approval of New Building Permit No. 104464438, and the revocation of said Permit, is hereby denied.

Adopted by the Board of Standards and Appeals, February 3, 2009.

153-08-A

APPLICANT – Philip L. Rampulla, for Richard Salomone, owner.

SUBJECT – Application May 30, 2008 – Proposed construction not fronting on a legally mapped street contrary to General City Law Section 36. R1-2 Zoning District
PREMISES AFFECTED – 156 Forest Road, northwest of Dalemere Road, Block 869, Lot 50 (Tent. 54,52), Borough of Staten Island.

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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.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated May 15, 2008, acting on Department of Buildings Application No. 510034589, reads in pertinent part:

“GCL 36 – The street giving access to the proposed construction of a new residential building Use Group 1 in R1-2 zoning district is not duly placed on the official map of the City of New York and therefore is referred to the Board of Standards and Appeals for approval;” and

WHEREAS, a public hearing was held on this application on January 27, 2009, after due notice by publication in the *City Record*, and then to decision on February 3, 2009; and

WHEREAS, by letter dated December 9, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, in order to obtain FDNY approval, the applicant agreed to make changes to the roadbed and sidewalk that require approval of a Builder’s Pavement Plan by the Department of Transportation (“DOT”); and

WHEREAS, the site is within the Special Natural Area District (NA-1), the Board notes that a certification is required from the City Planning Commission pursuant to ZR § 105-40 prior to the issuance of a permit by the Department of Buildings (“DOB”); and

WHEREAS, the applicant represents that it will seek such certification; 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 15, 2008, acting on Department of Buildings Application No. 510034570, 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 January 6, 2009 ” – (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 a Builder’s Pavement Plan shall be filed and

approved by DOT prior to the issuance of any permits by DOB;

THAT the City Planning Commission shall certify the proposed development pursuant to ZR § 105-40 prior to the issuance of a permit by DOB;

THAT the approved plans shall 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 3, 2009.

154-08-A

APPLICANT – Philip L. Rampulla, for Richard Salomone, owner.

SUBJECT – Application May 30, 2008 – Proposed construction not fronting on a legally mapped street contrary to General City Law Section 36. R1-2 Zoning District PREMISES AFFECTED – 150 Forest Road, northwest of Dalemere Road, Block 869, Lot 63 (Tent. 54,52), 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.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated May 15, 2008, acting on Department of Buildings Application No. 510034570, reads in pertinent part:

“GCL 36 – The street giving access to the proposed construction of a new residential building Use Group 1 in R1-2 zoning district is not duly placed on the official map of the City of New York and therefore is referred to the Board of Standards and Appeals for approval;” and

WHEREAS, a public hearing was held on this application on January 27, 2009, after due notice by publication in the *City Record*, and then to decision on February 3, 2009; and

WHEREAS, by letter dated December 9, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, in order to obtain FDNY approval, the applicant agreed to make changes to the roadbed and sidewalk that require approval of a Builder’s Pavement Plan by the Department of Transportation (“DOT”); and

WHEREAS, the site is within the Special Natural Area District (NA-1), the Board notes that a certification is required from the City Planning Commission pursuant to ZR § 105-40

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prior to the issuance of a permit by the Department of Buildings (“DOB”); and

WHEREAS, the applicant represents that it will seek such certification; 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 15, 2008, acting on Department of Buildings Application No. 510034570, 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 January 6, 2009” – (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 a Builder’s Pavement Plan shall be filed and approved by DOT prior to the issuance of any permits by DOB;

THAT the City Planning Commission shall certify the proposed development pursuant to ZR § 105-40 prior to the issuance of a permit by DOB;

THAT the approved plans shall 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 3, 2009.

263-08-BZY

APPLICANT – Slater & Beckerman, LLP, for Wilshire Hospitality, LLC, owner.

SUBJECT – Application October 24, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.

An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R7-1/C1-2 Zoning District.

PREMISES AFFECTED – 29-23 40th Road, Block 402, Lots 12 & 35, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Neil Weisbard.

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 3, 2009.

264-08-A

APPLICANT – Slater & Beckerman, LLP, for Wilshire Hospitality, LLC, owner.

SUBJECT – Application October 24, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. R7B/C1-3.

An appeal seeking a determination that the owner of said premises has acquired a common law vested right to continue development commenced under the prior R7-1/C1-2 Zoning District.

PREMISES AFFECTED –30-02 40th Avenue, Block 402, Lots 12 & 35, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Neil Weisbard.

ACTION OF THE BOARD – Appeal granted.

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 construction of a proposed development of a 14-story hotel under the common law doctrine of vested rights; and

WHEREAS, this application was heard concurrently with a companion application under BSA Cal. No. 263-08-BZY, withdrawn prior to the date of decision, which was a request for a finding that the owner of the site had obtained a vested right to continue construction under ZR § 11-331; and

WHEREAS, a public hearing was held on this application December 16, 2008, after due notice by publication in *The City Record*, with a continued hearing on January 13, 2009, and then to decision on February 3, 2009; and

WHEREAS, the site was inspected by Chair Srinivasan and Vice-Chair Collins; and

WHEREAS, Community Board 1, Queens, recommends disapproval of this application; 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 site is proposed to be developed with a

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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 "Enactment 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"; and

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 Enactment 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, it is from this order that the applicant appeals; and

WHEREAS, the applicant requests that the Board find that based upon the amount of financial expenditures, including irrevocable commitments, and the amount of work completed, the owner has a vested right to continue construction and finish the proposed development; 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, DOB initiated a special audit review of the Permit and issued a letter to the owner dated October 27, 2008 providing notice of its intent to revoke the Permit ("Notice of Intent") based on certain zoning and Building Code objections (the "Objections"); and

WHEREAS, on December 4, 2008, DOB rescinded the Notice of Intent, based on the applicant's resolution of the Objections; and

WHEREAS, by letter dated December 9, 2008, DOB stated that the Permit was lawfully issued on July 17, 2008, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Permit lapsed by operation of law on the Enactment Date because the plans did not comply with the new M1-3/R7X zoning district regulations and DOB determined that the Building's foundation was not complete; and

WHEREAS, thus, the Board finds that the Permit was validly issued by DOB to the owner of the subject premises and was in effect until its lapse by operation of law on October 7, 2008; and

WHEREAS, the Board notes that when work proceeds under a valid permit, 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, Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) stands for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance;" and

WHEREAS, however, notwithstanding this general framework, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that "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 initially stated that prior to the Enactment Date, the following work was completed: (1) 100 percent of the excavation; (2) 100 percent of the underpinning; (3) 100 percent of shoring, lagging and sheeting; and (4) installation of 68 piles of the required 138, constituting approximately 49 percent of the pilings; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site, accounting tables, invoices for labor and materials, and affidavits of the architect, construction manager and owner's representative; and

WHEREAS, at hearing, the Board asked the applicant to clarify whether the premises was fully excavated and to explain why there were two ramps within the excavated area of the site; and

WHEREAS, a response by the applicant states that the premises is fully excavated and that one ramp was constructed pursuant to the DOB Site Safety Plan and the second ramp, to the rear of the premises, was created to allow for the transport of materials to the rear driveway which is 14 feet above grade and is used for the storage of construction materials; and

WHEREAS, on September 2, 2008, DOB issued Violation No. 090208CEXNDCO1 for failure to maintain plans at the subject site (the "September 2, 2008 SWO") and ordered that work on the Building be stopped; and

WHEREAS, on September 2, 2008, DOB partially rescinded the September 2, 2008 SWO to permit piling work on "Exposure 4," and

WHEREAS, the December 4, 2008 letter from DOB states that on September 16, 2008, an inspector observed and photographed piling work that was not permitted by the partial rescission and urged that the illegally performed work not be considered by the Board, and

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WHEREAS, the applicant states that the unauthorized work was performed due to a misunderstanding as to the exposure considered by DOB to be Exposure 4; and

WHEREAS, the Board notes that any work performed after the September 2, 2008 SWO, other than that explicitly permitted by the partial rescission, cannot be considered for vesting purposes; accordingly, the Board asked for further clarification of the amount of construction performed pursuant to the Permit before the issuance of the September 2, 2008 SWO; and

WHEREAS, in response, the applicant submitted a table establishing that, prior to the issuance of the September 2, 2008 SWO, the following work was completed: 242 linear feet of shoring and lagging, 151 linear feet of underpinning; 390 linear feet of wooded forms for footings, and 26 of the 138 piles (including two piles on Exposure 4 permitted by the partial rescission of the SWO); 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 found by New York State courts to support a positive vesting determination, a significant amount of work was performed at the site prior to the Enactment Date; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress was made prior to the Enactment Date, and that said work 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

WHEREAS, the applicant stated that prior to the lapse of the Permit, the owner expended \$7.2 million, including hard and soft costs and irrevocable commitments for the entire project, out of the approximately \$17 million budgeted for the proposed development; and

WHEREAS, at hearing the Board noted that the budgeted expenditures included site acquisition costs of \$5,511,960 which, for the purposes of its analysis, the Board cannot consider and directed the applicant to revise its statement of substantial expenditures accordingly; and

WHEREAS, the applicant submitted a revised statement of substantial expenditures to exclude the land acquisition cost and now estimates the actual construction costs for the proposed construction, both soft and hard, at approximately \$11,488,040; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid \$1,251,606.60 for excavation, soil removal, shoring, underpinning, rebar, form work and piles prior to the Enactment Date; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices and cancelled checks; and

WHEREAS, the applicant states that the owner also

irrevocably owes an additional \$854,781.40 in connection with work performed at the site prior to the Enactment Date, which has not yet been paid; and

WHEREAS, the Board considers the expenditure of \$1,256,388 in actual costs and irrevocable commitments 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 the serious loss finding, the applicant contends that in order to comply with the new zoning, the height of the building would have to be reduced to 125'-0" from 142'-8", resulting in the loss of two stories; and

WHEREAS, the applicants states the loss of two stories if vesting were not permitted is significant; and

WHEREAS, the applicant states that the decrease in the permissible building height under the new zoning would result in the elimination of 24 hotel rooms, constituting approximately 16 percent of the hotel's rooms; and

WHEREAS, the applicant further states that, in order to realize a reasonable rate of return on the premises, the owner entered into a franchise agreement with Marriot International and that the elimination of 24 hotel rooms would jeopardize that franchise agreement; and

WHEREAS, the applicant further states that Marriot International would be unlikely to maintain the franchise agreement for a hotel with a reduced room count, given a rejection by the corporation of an earlier proposal for a 117-room hotel; and

WHEREAS, the applicant represents that Marriot International may also hold the owner in default of the franchise agreement if it were required to eliminate 24 rooms and the owner would then be liable for liquidated damages estimated at \$396,000, as well as other consequential legal costs; and

WHEREAS, the applicant states that the Marriot franchise is essential to ensuring the financial feasibility of the hotel because access to Marriot's global reservation system can allow it to achieve an average daily hotel rate of between \$150 and \$200 and an occupancy rate of 65 percent; and

WHEREAS, the applicant further states that the anticipated rate would drop to an average of approximately \$105 and the occupancy rate would decline to 50 percent without such a franchise agreement; and

WHEREAS, the applicant further states that, due to market conditions, there are no alternative franchises that can permit the applicant to achieve a reasonable rate of return; and

WHEREAS, at hearing, the Board asked the applicant to explain why the savings on franchise fees that would result from the independent operation of the proposed hotel did not offset the reduced revenue generated by the reduced number of rooms; and

WHEREAS, in response, the owner's Director of

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Operations testified that the Marriot name and the company's global reservation system ensures higher room and occupancy rates that generate a financial return far in excess of the expense of the franchise royalty and marketing fees; and

WHEREAS, the applicant further states that without the Marriot brand recognition, the applicant would incur fees which can approach 25 percent of the room rate, depending on the prominence of the listing, for the placement of its hotel on independent on-line reservation systems such as Orbitz or Expedia.com; and

WHEREAS, at hearing the Board asked whether it was possible to redesign the Building to comply with the M1-3/R7X bulk regulations while achieving the same number of hotel rooms; and

WHEREAS, in response, the applicant states that the hotel cannot be redesigned to accommodate the same number of rooms due to the combined effect of the height limitation of the M1-3/R7X district and the dimensional requirements of hotel rooms; and

WHEREAS, the applicant further states the second through 14th floors of the proposed hotel will each contain approximately 12 rooms per floor, and that each room has a width of 11'-6"; and

WHEREAS, the applicant represents that relocating the 24 hotel rooms to a 12 story complying building would reduce the width of each room to approximately 9'-8", which would be too narrow to accommodate the furniture required for a hotel room; and

WHEREAS, at hearing the Board also asked why a reduction of 24 hotel rooms would cause a financial loss when a submission by the applicant projected the occupancy of the Building at only 65 percent; and

WHEREAS, in response, the applicant states that the projected occupancy rate for the hotel represents an average occupancy rate for an entire year which contemplates a peak occupancy during high seasons and weekends of nearly 100 percent; and

WHEREAS, the applicant further represents that the loss of income from 24 rooms during these peak periods would be significant and would cause the applicant to suffer a serious financial loss; and

WHEREAS, a serious loss determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning, but in the instant application, the determination is also grounded on the applicant's discussion of the diminution in income that would occur if the building height of the new zoning were imposed; 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 date the Permit lapsed by operation of law; and

WHEREAS, accordingly, based upon its consideration

of the arguments made by the applicant, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under the common law and is entitled to the reinstatement of the Permit, and all other related permits necessary to complete construction; and

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of New Building Permit No. 410123021, 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 for two years from the date of this resolution, to expire on February 3, 2011.

Adopted by the Board of Standards and Appeals, February 3, 2009.

19-08-BZY

APPLICANT – Edward Lauria, P.E., for Nicholas Valentino, owner.

SUBJECT – Application January 18, 2008 – Extension of time to complete construction (§ 11-332) of a minor development commenced under the prior zoning district regulations. C4-1 SRD

PREMISES AFFECTED – 3871 Amboy Road, north side of Amboy Road, west of Greaves Avenue, Block 4633, Lot 294, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Edward Lauria.

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 24, 2009, at 1:30 P.M., for decision, hearing closed.

305-08-A

APPLICANT – NYC Economic Development Corp.

OWNER: Department of Small Business Services

SUBJECT – Application December 12, 2008 – for a variance of flood plain regulations under Sec. G107 of Appendix G. of the NYC Building Code.

PREMISES AFFECTED – East River Waterfront Esplanade, East side of South Street, 24' south of Maiden Lane, Block 36, Lots 25 & 30, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Michael E. Levine, CB1, Nicole Dooskin, EDC, Cliff McMillan, ARUP, Chad Burke Shop.

For Administration: James Colgate, Department of Buildings.

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 March 3,
2009, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 3, 2009
1:30 P.M.

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

ZONING CALENDAR

61-08-BZ

CEQR #08-BSA-069K

APPLICANT – The Law Office of Fredrick A. Becker, for
429-441 86th Street, LLC, owner; TSI Bay Ridge 86th Street,
LLC dba New York Sports Club, lessee.

SUBJECT – Application March 25, 2008 – Special Permit
(§73-36) to allow the operation of a Physical Culture
Establishment on the second and third floors of an existing
building. The proposal is contrary to ZR §32-10. C4-2A
(BR) district.

PREMISES AFFECTED – 439 86th Street, north side of 86th
Street and east of 4th Avenue, Block 6035, Lot 64, Borough
of Brooklyn.

COMMUNITY BOARD #10BK

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 Brooklyn Borough
Superintendent, dated August 28, 2008, acting on
Department of Buildings Application No. 302332964, reads
in pertinent part:

“Physical culture establishment in a C4-2 zoning
district is contrary to Zoning Resolution § 32-10
and therefore must be referred to the Board of
Standards and Appeals;” and

WHEREAS, this is an application under ZR §§ 73-36
and 73-03, to permit, on a site within a C4-2 zoning district,
the legalization of a physical culture establishment (PCE) on
the second and third floors of an existing three-story
commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this
application on July 29, 2008 after due notice by publication
in *The City Record*, with continued hearings on September
9, 2008 and January 13, 2009 and then to decision on
February 3, 2009; 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

MINUTES

WHEREAS, Community Board 10, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of 86th Street, between 4th Avenue and 5th Avenue, in a C4-2 zoning district; and

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

WHEREAS, the PCE will occupy 17,172 sq. ft. of floor area on the second and third floors of the existing building; and

WHEREAS, the PCE will be operated as “New York Sports Club;” and

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

WHEREAS, the proposed hours of operation of the PCE are: Monday through Thursday, from 5:00 a.m. to 11:00 p.m.; Friday, from 5:00 a.m. to 9:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 9:00 p.m.; and

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

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

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

WHEREAS, at hearing, the adjoining neighbor testified that the PCE’s rooftop air conditioning units generate excessive noise; and

WHEREAS, the Board directed the applicant to work with the adjoining neighbor to address the noise issue; and

WHEREAS, in response, the applicant submitted letters indicating that noise tests will be conducted in the adjoining neighbor’s unit during the summer; and

WHEREAS, the Board notes that applicant submitted DOB permits for the air conditioning units; and

WHEREAS, the applicant represents that the air conditioning units will comply with New York City Noise Code requirements; and

WHEREAS, by letter dated April 28, 2008, the Fire Department (“FDNY”) states that it has reviewed the application and recommends that the existing sprinkler system be interconnected to the proposed Interior Fire Alarm System (IFA) and that the PCE local alarm be activated when any sprinkler in the building is triggered; and

WHEREAS, in response, the applicant states that it will comply with the FDNY recommendations; 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 June 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 June 1, 2008 and the date of this grant, when the PCE operated without the special permit; 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. 08BSA069K, dated March 1, 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; 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 C4-2 zoning district, the legalization of a physical culture establishment on the second and third floors of an existing 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 March 25, 2008”-Three (3) sheets; “Received July 23, 2008”-One (1) sheet; and “Received August 27, 2008”-One (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on June 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 a certificate of occupancy shall be obtained by February 3, 2010;

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THAT the rooftop mechanical units shall comply with the requirements of the New York City Noise Code;

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 and in accordance with the FDNY recommendations;

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 substantial construction be completed in accordance with ZR § 73-70; 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 3, 2009.

207-08-BZ

CEQR #09-BSA-016Q

APPLICANT – Eric Palatnik, P.C., for Cheon Park, owner.
SUBJECT – Application August 11, 2008 – Variance (§72-21) to permit the expansion on the first floor of an existing day care center. The proposal is contrary to ZR Section 24-34 (front yard), R4 district.

PREMISES AFFECTED – 40-69 94th Street, northern corner of the intersection formed by 41st Avenue and 94th Street, Block 1587, Lot 1, 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 Superintendent, dated August 5, 2008, acting on Department of Buildings Application No. 410049576, reads, in pertinent part:

“Proposed conversion of a portion of the first floor from UG 2 to UG 3 increases the degree of non-compliance of the front yard and is contrary to ZR Section 24-34 and therefore must be referred to the BSA;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an R4 zoning district, the extension of an existing preschool located on a portion of the cellar floor onto a portion of the first floor of a four-story mixed-use residential/community facility building, which is contrary to

ZR § 24-34; and

WHEREAS, a public hearing was held on this application on January 13, 2009, after due notice by publication in the *City Record*, and then to decision on February 3, 2009; 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, Queens, recommends approval of the application; and

WHEREAS, this application is brought on behalf of Bilingual SEIT and Pre-school, Inc. (the “School”), a private bilingual preschool for developmentally and learning disabled children; and

WHEREAS, the applicant represents that the School is State-licensed, privately owned, and fully funded by the New York City Department of Education and the New York State Education Department; and

WHEREAS, the site is located on the northeast corner of 94th Street and 41st Avenue, within an R4 zoning district; and

WHEREAS, the site has a rectangular shape with 100 feet of frontage on 94th Street and a depth of 60 feet, and a total lot area of 6,000 sq. ft.; and

WHEREAS, the subject site is occupied by a four-story and cellar mixed-use residential/community facility building, with the School occupying 4,117 sq. ft. of floor area in the cellar, and residential uses occupying 19,520 sq. ft. of floor area on the first through fourth floors; and

WHEREAS, the School proposes to expand the existing Use Group 3 preschool to include 2,356 sq. ft. of floor area on the first floor of the building, for a total floor area of 6,473 sq. ft.; and

WHEREAS, the applicant represents that the School is a permitted use in the underlying district; however, the proposed expansion requires a bulk variance because it increases the degree of non-compliance with the front yard requirements; and

WHEREAS, the existing, legally non-complying building has the following parameter: no front yards (two front yards with minimum depths of 10’-0” each are required for a Use Group 2 residential use in the underlying R4 district); and

WHEREAS, the proposed expansion of the School onto the first floor of the subject building would increase the degree of non-compliance of the front yards (two front yards with minimum depths of 15’-0” each are required for Use Group 3 community facility use in the underlying R4 district); and

WHEREAS, the proposal provides for three additional classrooms on the first floor; and

WHEREAS, the applicant states that the school has a programmatic need to accommodate current enrollment while allowing for future growth; and

WHEREAS, the applicant further states that the educational program provided by the School includes speech, physical, and occupational therapy, counseling services for students with developmental and learning disabilities, and bilingual education in Spanish, Korean, and Chinese for students age three and four; and

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WHEREAS, in order to meet its programmatic need, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant represents that the front yard waiver is necessary to provide the program space necessary to adequately serve its current enrollment of 73 students; and

WHEREAS, the applicant states that the School currently has only four substandard-sized classrooms, with floor areas ranging between 465 sq. ft. and 478 sq. ft., that are located in the cellar of the subject building; and

WHEREAS, by letter dated March 13, 2008, the New York City Department of Education determined that preschool students with disabilities to be served by the School's program are unable to be appropriately served by the currently approved preschool programs in New York City and its environs; and

WHEREAS, the applicant represents that currently over 300 children in the area have resorted to home education due to the lack of adequate classroom space; and

WHEREAS, by letter dated April 29, 2008, the New York State Education Department approved the School's request to expand its current programs for preschool students with disabilities; and

WHEREAS, the applicant states that the proposed expansion onto the first floor of the existing building will provide an additional 2,356 sq. ft. of floor area for the School and allow it to serve a projected increase in enrollment of 51 students; and

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, 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 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 not a non-profit educational 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 feasibility study which analyzed an "as-is" option under the existing, legally non-complying four-story residential building with a Use Group 3 community facility use in the cellar; and

WHEREAS, the feasibility study concluded that the "as-is" option would generate a negative rate of return because the pre-existing non-complying condition provides limited light and air to the first floor space to be occupied by the School,

while other units on the ground floor have light and air on two exposures; and

WHEREAS, based upon the above, the Board has determined that there is no reasonable possibility that 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, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant states that the expansion of the School onto the first floor of the subject building will not change the envelope of the existing legally non-complying building; and

WHEREAS, the applicant provided a 400-foot radius diagram indicating that the bulk and height of the subject building is compatible with the bulk and height of the homes in the surrounding neighborhood, which have heights ranging between two and six stories; and

WHEREAS, the applicant further represents that the increased number of students at the school will not cause a significant traffic increase in the vicinity of the subject building due to the availability of street parking adjacent to the subject site; and

WHEREAS, the applicant notes that the proposal will provide an additional entrance for the School on the first floor, thereby reducing pedestrian traffic at the existing entrance which is shared with the residential tenants of the building; and

WHEREAS, the applicant further notes that there is a separate entrance to the cellar via a ramp located on the northern side of the building; and

WHEREAS, the applicant states that there will be no internal connection between the first floor and cellar because each floor will accommodate a different age group; 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 front yard waiver is 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

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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 Sections 617.2 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. 09BSA016Q, dated December 2, 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, 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 R4 zoning district, the expansion of an existing preschool (Use Group 3) onto the first floor of a four-story mixed-use residential/community facility building, which is contrary to ZR § 24-34, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 8, 2008,"-(3) sheets; and *on further condition*:

THAT any change in the use, occupancy, or operator of the School requires review and approval by the Board;

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

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, February 3, 2009.

177-07-BZ

APPLICANT – Maurice Dayan, owner.

SUBJECT – Application July 6, 2007 – Variance (§ 72-21) to construct a two story, two family residential building on a vacant corner lot. This application seeks to vary the front yard requirement on one street frontage (§ 23-45) in an R-5 zoning district.

PREMISES AFFECTED – 886 Glenmore Avenue, corner of Glenmore Avenue and Milford Street, Block 4208, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 3, 2009, at 1:30 P.M., for postponed hearing.

45-08-BZ

APPLICANT – Rampulla Associates Architects, for 65 Androvette Street, LLC, owner.

SUBJECT – Application February 29, 2008 – Variance (§72-21) to construct a four-story, 108 unit age restricted residential building contrary to use regulations (§42-00, §107-49). M1-1 District / Special South Richmond Development District.

PREMISES AFFECTED – 55 Androvette Street, north side Androvette Street, corner of Manley Street, Block 7407, Lots 1, 80, 82, (Tent. 1), Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phil L. Rampulla, Rebecca Pytosh and Raymond Masucci.

For Opposition: Dennis D. Dell'Angelo.

ACTION OF THE BOARD – Laid over to March 3, 2009, at 1:30 P.M., for continued hearing.

99-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) to construct a three story with cellar single family home on an irregular triangular lot what does not meet the rear yard requirement (§23-47) in an R3-2 (SRD) zoning district.

PREMISES AFFECTED – 102 Drumgoole Road, South side of Drumgoole Road, 144.62 ft. west of the intersection of Drumgoole Road and Wainwright Avenue, Block 5613, Lot 221, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam Rothkrug

ACTION OF THE BOARD – Laid over to February 24, 2009, at 1:30 P.M., for continued hearing.

134-08-BZ

APPLICANT – Eric Palatnik, P.C., for Asher Goldstein, owner.

SUBJECT – Application April 30, 2008 – Variance (§72-

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21) to construct a third floor to an existing two story, two family semi-detached residence partially located in an R-5 and M1-1 zoning district.

PREMISES AFFECTED – 34 Lawrence Avenue, Lawrence Avenue, 80' west of McDonald Avenue, Block 5441, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik and Menachem Schmekrer.

ACTION OF THE BOARD – Laid over to March 3, 2009, at 1:30 P.M., for continued hearing.

169-08-BZ

APPLICANT – James Chin & Associates, LLC, for Jeffrey Bennett, owner.

SUBJECT – Application June 24, 2008 – Variance (§ 72-21) to allow the residential redevelopment of an existing five-story commercial building. Six residential floors and six (6) dwelling units are proposed; contrary to use regulations (§42-00 & § 111-104 (e)). M1-5 (TMU- Area B-2) district.

PREMISES AFFECTED – 46 Laight Street, north side of Laight Street, 25' of frontage on Laight Street, Block 220, Lot 35, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Ivan Khoury and Alexaner Harrow, R.A.

For Opposition:

ACTION OF THE BOARD – Laid over to March 24, 2009, at 1:30 P.M., for continued hearing.

173-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Royal One Real Estate, LLC, owner.

SUBJECT – Application July 1, 2008 – Variance (§ 72-21) to allow a new twelve (12) story hotel building containing ninety nine (99) hotel rooms; contrary to bulk regulations (§ 117-522). M1-5/R7-3 Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area C.

PREMISES AFFECTED – 42-59 Crescent Street, northeast corner of the intersection of Crescent Street and 43rd Avenue, Block 430, Lots 37, 38, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Adam Rothkrug, Reuben Elberg, Joseph Rosario and William Whitacre.

ACTION OF THE BOARD – Laid over to March 17, 2009, at 1:30 P.M., for continued hearing.

198-08-BZ

APPLICANT – Mitchell S. Ross, Esq., for Pamela Equities Corp., owner; New York Health & Racquet Club, lessees.

SUBJECT – Application July 24, 2008 – Special Permit (§73-36) to allow the proposed physical culture establishment in the subcellar, cellar, first, second, and the

second mezzanine floors in a 12-story and penthouse mixed-use building. The proposal is contrary to ZR §32-10. C6-4A district.

PREMISES AFFECTED – 268 Park Avenue South (aka 268-276 Park Avenue South) west side of Park Avenue South at East 21st Street, Block 850, Lot 39, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Mitchell Ross.

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 February 10, 2009, at 1:30 P.M., for decision, hearing closed.

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 warehouse/ commercial vehicle storage building (UG 16); contrary to use regulations (§22-00). R3X 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: Thomas Buscher, Gerda Soria, Nancy Adams and Kathleen Cronin.

ACTION OF THE BOARD – Laid over to March 17, 2009, at 1:30 P.M., for an adjourned hearing.

236-08-BZ

APPLICANT – Sheldon Lobel, for Joey Aini, owner.

SUBJECT – Application September 18, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (§23-141) and the permitted perimeter wall height (§23-631) in an R2X (OPSD) zoning district.

PREMISES AFFECTED – 1986 East 3rd Street, west side of East 3rd Street, 100' south of Avenue S, Block 7105, Lot 152, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Elizabeth Safian and Warren Meister.

ACTION OF THE BOARD – Laid over to March 3, 2009, at 1:30 P.M., for continued hearing.

258-08-BZ

APPLICANT – Rizzo Group, for Robert G. Friedman, owner; Mid City Gym and Tanning LLC, lessee.

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SUBJECT – Application October 20, 2008 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment on the cellar in a 41-story mixed-use building. The proposal is contrary to ZR § 32-10. C6-4 district.

PREMISES AFFECTED – 343-349 West 42nd Street, located on 42nd Street, mid-block between 8th Avenue and 9th Avenue, Block 1033, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Kenneth Barbina.

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 February 24, 2009, 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 October 28, 2008, under Calendar No. 268-07-BZ and printed in Volume 93, Bulletin Nos. 41-43, is hereby modified to read as follows:

268-07-BZ

CEQR #08-BSA-036K

APPLICANT – Eric Palatnik, P.C., for Congregation Adath Jacob, owner.

SUBJECT – Application March 21, 2008 – Variance (§72-21) to permit the development of a new Use Group 4 synagogue with two accessory Use Group 4 apartments (for Rabbi and visiting dignitaries). The proposal is contrary to §24-11 (Total Floor Area and Lot Coverage), §24-35 (Side Yard), §24-36 (Rear Yard), §24-551 (Setback), and §25-31 (Community facility parking). R5 district.

PREMISES AFFECTED – 1644 48th Street, south side of 48th Street, between 16th and 17th Avenues, Block 5448, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 9, 2008, acting on Department of Buildings Application No. 310051467, reads, in pertinent part:

1. Proposed total floor area is contrary to ZR 24-11;
2. Proposed lot coverage is contrary to ZR 24-11;
3. Proposed side yard is contrary to ZR 24-35;
4. Proposed rear yard is contrary to ZR 24-36;
5. Proposed community facility parking is contrary to ZR 25-31;
6. Proposed required setback for tall residential buildings is contrary to ZR 24-551;”

and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R5 zoning district, a three-story and cellar building to be occupied by a synagogue (Use Group 4) and accessory Rabbi’s residence, which does not comply with rear and side yard, side setback, and parking requirements for community facilities, contrary to ZR §§ 24-35, 24-36, 25-31, 24-551; and

WHEREAS, a public hearing was held on this application on May 13, 2008, after due notice by publication in *The City Record*, with continued hearings on September 16, 2008 and then to decision on October 28, 2008; 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, subject to certain conditions; and

WHEREAS, certain members of the community provided testimony in support of the proposal; and

WHEREAS, two adjacent property owners initially opposed the application but later withdrew their opposition to the proposed variance; and

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

WHEREAS, the subject premises is located on the south side of 48th Street between 16th Avenue and 17th Avenue within an R5 zoning district and has a lot area of approximately 4,007 sq. ft.; and

WHEREAS, the subject site is currently vacant; and

WHEREAS, the proposal provides for the following uses: (1) a mikvah bath and multi-purpose room on the cellar level; (2) a synagogue on the first floor; and (3) an accessory Rabbi’s residence on the second floor and third floor; and

WHEREAS, the applicant initially proposed a synagogue building with the following parameters: approximately 8,272 sq. ft. of community facility floor area; an FAR of 2.06 (2.0 FAR is the maximum permitted); a lot coverage of 76 percent (50 percent is the maximum permitted); a rear yard of 2’-0” (a 30’-0” rear yard is required above the first floor or 23’-0”); a staircase encroachment into the side yard, and a balcony encroachment into the front yard; and

WHEREAS, the proposal was revised during the hearing process; the current proposal provides for a synagogue building with approximately 7,368 sq. ft. of floor area, an FAR of 1.84, a lot coverage of 61 percent, a rear setback above the first floor of 12’-0” and a complying rear yard above the second floor, and the elimination of the encroachments into the side yard and front yard; and

WHEREAS, additionally, the applicant proposes: two side yards, each with a width of 4’-0” (two side yards with minimum widths of 8’-0” each are required); a bulkhead encroachment into the side setback; and no accessory parking (12 accessory parking spaces are required); 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 110 families; and (2) to provide a residence for the Synagogue’s rabbi; and

WHEREAS, the applicant further states that its existing synagogue located nearby at 1569 47th Street consists of approximately 31,600 sq. ft. of floor area on a zoning lot containing 10,000 sq. ft. of lot area, which is far in excess of its needs; and

WHEREAS, the applicant represents that the expense of maintaining its existing building has forced it rent out space to other users and it therefore seeks a synagogue building which can better accommodate the size of its congregation; 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

MINUTES

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 applicant provided a submission briefing the prevailing New York State case law on religious deference; and

WHEREAS, the Board notes that under well-established precedents of the courts, a Rabbi's residence on the site of a religious institution is construed to be a religious use entitled to deference by a zoning board (see Jewish Recon. Syn. v. Vill. of Roslyn, 38 N.Y.2d 283 (1975)); and

WHEREAS, the subject site has a width of 40'-0"; and

WHEREAS, the applicant states that the variances to lot coverage, rear yard, side yard and side yard setback would enable the Synagogue to develop the site with a building with viable floor plates; and

WHEREAS, at hearing, the Board asked the applicant to demonstrate the necessity for the side yard waivers; and

WHEREAS, the applicant submitted plans indicating the occupancy of the synagogue and demonstrating the inability to accommodate the congregation within a complying structure; 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 and floor area are permitted in the subject zoning district; and

WHEREAS, the applicant represents that the scale and bulk of the Synagogue is consistent with the with the scale of the two-and-a-half-story homes that characterize the area; and

WHEREAS, the applicant submitted photographs of nearby homes which were compatible with the scale and bulk of the proposed Synagogue; and

WHEREAS, the Board directed the applicant to explore other designs to improve compatibility with adjacent buildings; and

WHEREAS, specifically, the Board suggested that the applicant provide a complying rear yard above the second floor by shifting the bulk of the building to its front; and

WHEREAS, in response, the applicant re-designed the

building to provide a 12'-0" rear setback above the second floor and a complying rear yard above the second floor; and

WHEREAS, at hearing the Board also questioned the necessity for the proposed encroachments of a staircase into the side yard and of a balcony into the front yard; and

WHEREAS, the applicant submitted revised plans showing the relocation of the staircase to the rear of the structure and eliminating the balcony; and

WHEREAS, as to traffic and parking impacts, 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 Fridays and Saturdays when they are not permitted to drive; and

WHEREAS, a submission by the applicant indicates that 95 percent of the congregation live within three-quarters of a mile from the subject site; and

WHEREAS, in response to concerns by the Board regarding egress, the applicant redesigned the building to include an exterior staircase at the rear of the second and third floors; and

WHEREAS, additionally, the applicant agreed to include the following changes to the proposal: (1) the addition of an interior garbage storage area; and (2) the addition of translucent privacy windows; 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, during the hearing process the applicant revised the proposal to provide a 12'-0" rear setback above the first floor and a complying rear yard above the second floor, thereby reducing the overall floor area by 755 sq. ft. and providing additional light and air to adjacent homes; and

WHEREAS, the applicant also eliminated proposed encroachments into the side yard and front yard; and

WHEREAS, the Board considered the modifications noted above and finds the requested waivers to be the minimum necessary to afford the Synagogue 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 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. 08BSA036K, dated March 18, 2008; and

MINUTES

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, a three-story and cellar building to be occupied by a synagogue and accessory Rabbi's residence, which does not comply with rear and side yard, side setback, and parking requirements for community facilities, contrary to ZR §§ 24-35, 24-36, 25-31, and 24-551, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 22, 2008" – Eight (8) sheets; and *on further condition*:

THAT the building parameters shall be: floor area of 7,368 sq. ft. an FAR of 1.84; a lot coverage of 61 percent; a rear yard at the first floor of 2'-0", a rear setback above the first floor of 12'-0"; a complying rear yard above the second floor; two side yards of 4'-0"; an encroachment into the side setback; and no accessory parking;

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 (U.G.4) and Rabbi's residence;

THAT no commercial catering shall take place onsite;

THAT garbage shall be stored inside the building except when in the designated area for pick-up;

THAT landscaping shall comply with the regulations for a community facility building in a residential district set forth in ZR §§ 24-05 and 24-06;

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, October 28, 2008.

***The resolution has been corrected by: (i) addition of the DOB objections to proposed floor area and lot coverage contrary to ZR § 24-11; (ii) identification of the proposed development as a Use Group 4 Synagogue; and (iii) correction of the FAR and square footage. Corrected in Bulletin No. 6, Vol. 94, dated February 12, 2009.**

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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February 19, 2009

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16-09-BZ

459 Broadway, South west corner of Broadway and Grand Street., Block 231, Lot(s) 30, Borough of **Manhattan, Community Board: 2**. Special Permit (73-36) to legalize the operation of a physical culture establishment.

17-09-BZ

5421 Beverly Road, North side of Beverly Road, between East 54th Street and East 55th Street., Block 4739, Lot(s) 33, Borough of **Brooklyn, Community Board: 17**. Special Permit (73-03 & 73-30) to allow a non-accessory radio facility and all accessory equipment.

18-09-BZ

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19-09-A

132-55 34th Avenue, North side of 34th Avenue, approximately 75' east of the intersection formed by Collins Place and 34th Avenue., Block 4946, Lot(s) 126, Borough of **Queens, Community Board: 7**. Construction within mapped street, contrary to Section 35 of the General City Law.

20-09-BZ

54-44 Little Neck Parkway, Northwest of the intersection of Little Neck Parkway and Nassau Bopulevard., Block 8256, Lot(s) 108, Borough of **Queens, Community Board: 11**. Special Permit (73-03 & 73-30) to allow a non-accessory radio tower.

21-09-BZ

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22-09-A

663 Highland Place, East side of Highland Place partially in the bed of mapped Beach 202nd Street., Block 16350, Lot(s) 300, Borough of **Queens, Community Board: .** Construction within a bed of a mapped street, contrary to Section 35 , Article 3 of the General City Law.

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 3, 2009, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 3, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

66-90-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for A.H.G. Realty Corporation, owner.

SUBJECT – Application February 9, 2009 – Extension of Time/waiver to obtain an Certificate of Occupancy for a UG16 Gasoline Service Station (Mobil), in an R-5 zoning district, which expired on December 31, 2008.

PREMISES AFFECTED – 43-07 Astoria Boulevard, north east corner of 43rd Street, Block 780, Lot 18, Borough of Queens.

COMMUNITY BOARD #1Q

332-98-BZ

APPLICANT – Law Office of Howard Goldman, LLC, for Workmen's Circle Home & Infirmary, owners.

SUBJECT – Application January 30, 2009 – Extension of Time/waiver to Complete Construction of a previously approved Variance (72-21) for the enlargement of a (UG3) existing nursing home, in an R5 zoning district, which expired on April 13, 2003.

PREMISES AFFECTED – 3155 Grace Avenue, bounded by Grace, Hammersley, Ely and Burke Avenues, Block 4777, Lots 2 & 57, Borough of Bronx.

COMMUNITY BOARD #12BX

215-06-BZ

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

SUBJECT – Application January 28, 2009 – Extension of Time/waiver to obtain a Certificate of Occupancy for an existing gasoline service station (Exxon) with accessory convenience store, in a C1-2/R4 zoning district, which expired on January 24, 2008.

PREMISES AFFECTED – 202-06 Hillside Avenue, southeast corner of Hillside Avenue and 202nd Street, Block 10496, Lot 52, Borough of Queens.

COMMUNITY BOARD #3Q

142-08-A

APPLICANT – Eric Palatnik, P.C., for George Kraff, owner.

SUBJECT – Application May 9, 2008 – Proposed construction of a three story residential building which does not front on an officially mapped street contrary to General City Law Section 36. R6-OP Zoning District.

PREMISES AFFECTED – 225 Brighton 2nd Lane, corner of Brighton 2nd Lane and Brighton 2nd Place, Block 8662, Lots 153, Borough of Brooklyn.

COMMUNITY BOARD #13BK

272-08-A

APPLICANT – Elizabeth Safian, Sheldon Lobel, P.C., for Brighton 2nd Place, LLC, owner.

SUBJECT – Application November 5, 2008 – Proposed construction of residential building not fronting on a legally mapped street contrary to General City Law Section 36. R6 Zoning District.

PREMISES AFFECTED – 35 Brighton 2nd Place, premises is located on the west side of Brighton 2nd Place approximately 120 feet north of Brighton 2nd Lane, Block 8662, Lots 230, 232, 234, Borough of Brooklyn.

COMMUNITY BOARD #13BK

307-08-BZY

APPLICANT – Howard Zipser, Akerman Senterfitt LLP, for 163 Orchard Street LLC, owner.

SUBJECT – Application December 17, 2008 – Extension of time to complete construction (11-331) of a minor development commenced prior to the amendment of the zoning district regulations. C4-4A Zoning District.

PREMISES AFFECTED – 163 Orchard Street, through lot between Orchard and Houston Street between Stanton and Rivington Street, Block 416, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #3M

CALENDAR

MARCH 3, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 3, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

269-06-BZ/193-08-A

APPLICANT – Joseph Margolis, for Bruno Salvo, owner.
SUBJECT – Application October 4, 2006 – Variance (§72-21) to permit the conversion of 11,000 sf of vacant space into retail/commercial space. The proposal is contrary to section 22-00. R3-2 district (South Richmond Special District).

SUBJECT – Application July 15, 2008 – Proposed construction of retail/commercial space located in an existing shopping center not fronting on a mapped street contrary to General City Law Section 36. R3-2 Zoning District.

PREMISES AFFECTED – 125 Greaves Lane, between Timber Ridge drive on the east and Greaves Lane on the west, Block 4645, Lot 425, Borough of Staten Island.

COMMUNITY BOARD #3SI

177-07-BZ

APPLICANT – Manish S. Savani, for Maurice Dayan, owner.

SUBJECT – Application July 6, 2007 – Variance (§72-21) to construct a two story, two family residential building on a vacant corner lot. This application seeks to vary the front yard requirement on one street frontage (23-45) in an R-5 zoning district.

PREMISES AFFECTED – 886 Glenmore Avenue, corner of Glenmore Avenue and Milford Street, Block 4208, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #7BK

88-08-BZ

APPLICANT – Alfonso Duarte, for Naresh M. Gehi, owner.

SUBJECT – Application April 11, 2008 – Variance pursuant to §72-21 to allow the commercial office conversion of an existing residential building; contrary to use regulations §22-00. R5 District.

PREMISES AFFECTED – 101-17 Lefferts Boulevard, East side, 150 ft. south of 101st Avenue, Block 9487, Lot 68, Borough of Queens.

COMMUNITY BOARD #9Q

310-08-BZ

APPLICANT – Friedman & Gotbaum, LLP, for Convent of the Sacred Heart, owner.

SUBJECT – Application December 18, 2008 – Special Permit (73-19) to allow construction of a school building in a C8-4 zone, contrary to use regulations. C8-4 District.

PREMISES AFFECTED – 406 East 91st Street, south side of East 91st Street, 94' west of First Avenue, Block 1570, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #8M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 10, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

889-55-BZ

APPLICANT – J & H Management Corporation, owner.
SUBJECT – Application October 22, 2008 – Application filed pursuant to §11-411 to extend the term of Automotive Repair Facility for 10 years which expired on May 1, 2008. The application seeks a Waiver of the Rules of Practice and Procedure for an Extension of Time to obtain a Certificate of Occupancy. The subject site is located in a C1-2/R3-2 zoning district.

PREMISES AFFECTED – 69-15 164th Street, Block 9631, Lot 38, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.3
Negative:.....0
Absent: Vice-Chair Collins and Commissioner Ottley-Brown.....2

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 repair facility with accessory uses, which expired on May 1, 2008; and

WHEREAS, a public hearing was held on this application on January 27, 2009 after due notice by publication in *The City Record*, and then to decision on February 10, 2009; and

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

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

WHEREAS, the site is located on the east side of 164th Street between 69th Avenue and Jewel Avenue, in a C1-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 3, 1957 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; and

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

WHEREAS, most recently, on July 13, 2004, the Board granted an extension for a term of five years from the expiration of the prior grant, to expire on May 1, 2008, and amended the grant to permit a change in use from a gasoline service station to automobile repairs with hand tools only, and discontinued the following uses: auto body work, transmission work, lubritorium, auto-washing, offices, automobile sales, and the parking and storage of motor vehicles; and

WHEREAS, the applicant now requests a ten-year extension of term; and

WHEREAS, the applicant further requests that the Board reinstate the following uses which are accessory to the automobile repair facility use and were discontinued in the previous grant: lubritorium, auto-washing, offices, and the parking and storage of motor vehicles; 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 reinstatement of accessory uses which were discontinued in the previous resolution 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 16, 1958, so that as amended this portion of the resolution shall read: “to extend the term for ten years from May 1, 2008, to expire on May 1, 2018, and to permit the reinstatement of the following uses: lubritorium, auto-washing, offices, and the parking and storage of motor vehicles; *on condition* that all use and operations shall substantially conform to plans filed with this application marked “Received October 22, 2008”-(1) sheet; and *on further condition:*

THAT the term of the grant shall expire on May 1, 2018;

THAT the following uses shall not be permitted on the site: (1) automobile sales; (2) auto body work; and (3) transmission work;

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

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. 410162755)

Adopted by the Board of Standards and Appeals February 10, 2009.

MINUTES

719-56-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Victory Service Station Incorporated, lessee.

SUBJECT – Application July 2, 2008 – Extension of Term/waiver for a gasoline service station (Mobil) in a C2-1/R3-2 zoning district which expired on April 27, 2007 and Extension of Time to obtain a Certificate of Occupancy which expired on October 26, 2000.

PREMISES AFFECTED – 2525 Victory Boulevard, northwest corner of Willowbrook Road, Block 1521, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Arthur Sullivan and Walter T. Gorman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice Chair Collins and Commissioner Ottley-Brown.....2

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 gasoline service station 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 September 9, 2008, after due notice by publication in *The City Record*, with continued hearings on October 28, 2008, December 16, 2008, and January 27, 2009, and then to decision on February 10, 2009; 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, with conditions; and

WHEREAS, the site is located on the northwest corner of the intersection at Victory Boulevard and Willowbrook Road, within a C2-1 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 25, 1957 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied as a gasoline service station with accessory uses 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, the grant was extended on October 26, 1999 for a term of ten years from the expiration of the prior grant, to expire on April 27, 2007; a condition of the grant was that a new certificate of occupancy be obtained by October 26, 2000; and

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the stipulated date due to

administrative oversight during the merger of the corporate owner; and

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

WHEREAS, the applicant states that some site improvements encroach upon widening lines established by the City of New York for Victory Boulevard and Willowbrook Road; and

WHEREAS, the applicant represents that it will begin relocating the improvements behind the widening lines by late February 2009 and will complete the work by late April 2009; and

WHEREAS, at hearing, the Board requested that the applicant: (1) remove fencing and dead trees from the site's frontage along Montauk Place; (2) remove stored cars from the site; and (3) eliminate a curb cut on Victory Boulevard located approximately 60 feet west of Willowbrook Road; and

WHEREAS, in response, the applicant submitted photographs showing that cars are no longer stored on the site and that the outer fencing along Montauk Place has been removed; and

WHEREAS, in addition, the applicant represents that it will replace the dead trees along Montauk Place by the end of February and plant new trees by late-April 2009, and that the curb cut on Victory Boulevard located approximately 60 feet west of Willowbrook Road will be removed by late-April 2009; 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 June 25, 1957, so that as amended this portion of the resolution shall read: "to extend the term for ten years from April 27, 2007, to expire on April 27, 2017, and to grant an extension of time to obtain a certificate of occupancy to February 10, 2010; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked "Received October 14, 2008"- (5) sheets; and *on further condition*:

THAT the term of the grant shall expire on April 27, 2017;

THAT a certificate of occupancy shall be obtained by November 10, 2009;

THAT all improvements on the site shall be relocated behind the widening lines established for Victory Boulevard and Willowbrook Road;

THAT the dead trees located on the site's frontage along Montauk Place shall be replaced with new trees;

THAT the curb cut on Victory Boulevard located approximately 60 feet west of Willowbrook Road shall be eliminated and the curbing restored;

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

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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. 510027506)

Adopted by the Board of Standards and Appeals, February 10, 2009.

1228-79-BZ

APPLICANT – Harold Weinberg, P.E., for Mike Sedaghati, owner.

SUBJECT – Application December 5, 2008 – Extension of Term/waiver of a previously granted variance for the operation of a (UG6) retail store, in an R5 zoning district, which expired on July 21, 2005 and for an Extension of Time to obtain a Certificate of Occupancy which expired on May 21, 1997.

PREMISES AFFECTED – 2436 McDonald Avenue, between Avenue W and Village Road South, Block 7149, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice Chair Collins and Commissioner Ottley-Brown.....2

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 retail store (Use Group 6), and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on January 13, 2009, after due notice by publication in *The City Record*, with a continued hearing on February 3, 2009, and then to decision on February 10, 2009; 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 15, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the west side of McDonald Avenue, between Avenue W and Village Road South, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 24, 1980 when, under the subject calendar number, the Board granted a variance to permit the enlargement of a machine shop (Use Group 16) for a term of 15 years; and

WHEREAS, on May 21, 1996, the Board extended the variance for a term of ten years from the expiration of the

prior grant and amended the grant to legalize the change of occupancy from a machine shop (Use Group 16) to a retail store (Use Group 6); a condition of the grant was that a new certificate of occupancy be obtained by May 21, 1997; and

WHEREAS, the applicant now seeks a ten-year extension of the term of the variance, which expired on June 24, 2005, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board requested that the applicant remove the sign from the prior retail use located on the south side of the building; and

WHEREAS, in response, the applicant submitted photographs indicating that the sign has been removed; 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 June 24, 1980, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 24, 2005, to expire on June 24, 2015, and to grant an extension of time to obtain a certificate of occupancy to August 10, 2009; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked “Received December 5, 2008”-(6) sheets and “January 7, 2009”-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on June 24, 2015;

THAT a certificate of occupancy shall be obtained by August 10, 2009;

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. 310161641)

Adopted by the Board of Standards and Appeals, February 10, 2009.

245-03-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Allied Enterprises LLC, owner.

SUBJECT – Application November 25, 2008 – Extension of Term of a previously granted special permit for an accessory drive-thru to an existing eating and drinking establishment (McDonald's), in an R3-2/C1-2 zoning district, which expired on December 9, 2008.

PREMISES AFFECTED – 160-11 Willets Point Boulevard, northeast corner of Francis Lewis Boulevard, Block 4758, Lot 100, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on

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condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of the term of a special permit allowing a drive-through facility at an existing eating and drinking establishment, which expired on December 9, 2008; and

WHEREAS, a public hearing was held on this application on January 13, 2009, after due notice by publication in *The City Record*, and then to decision on February 10, 2009; and

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

WHEREAS, Council Member Tony Avella provided testimony in support of this application, with conditions; and

WHEREAS, the site is located on the northeast corner of Francis Lewis Boulevard and Willets Point Boulevard, within a C1-2 (R3-2) zoning district; and

WHEREAS, the site is occupied by an existing eating and drinking establishment (a McDonald's fast food restaurant), with a drive-through facility with a ten-vehicle reservoir capacity, and 15 accessory parking spaces; and

WHEREAS, on December 9, 2003, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-243, authorizing the drive-through facility for the existing restaurant for a period of five years; and

WHEREAS, the applicant requests an additional five-year extension of term; and

WHEREAS, the applicant states that the hours of operation of the drive-through facility are: Sunday through Thursday, from 6:00 a.m. to 12:00 a.m.; and Friday and Saturday, from 6:00 a.m. to 1:00 a.m.; and

WHEREAS, Council Member Avella raised concerns about traffic congestion on Francis Lewis Boulevard caused by patrons queuing along Willets Point Boulevard during the facility's peak hours; and

WHEREAS, in response, the applicant agreed to: (i) install signage restricting the curb cut along Willets Point Boulevard to an entrance only; (ii) install a speed bump at the exit of the drive-through; and (iii) to hire an additional employee to expedite service; and

WHEREAS, the applicant submitted photographs evidencing the installation of the new sign and the speed bump; and

WHEREAS, based upon the above, the Board finds that the applicant's application for an extension of term is appropriate, so long as the restaurant complies with all conditions set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens and amends* the resolution, said dated December 9, 2003, so that as amended this portion of the

resolution shall read: "to extend the term for five years from December 9, 2008, to expire on December 9, 2013; *on condition* that all use and operations shall substantially conform to plans filed with this application and marked "Received November 25, 2008"--(3) sheets and "January 23, 2009"--(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on December 9, 2013;

THAT all signage shall comply with C1 zoning district regulations;

THAT there shall be no change in the operator of the subject eating and drinking establishment without the prior approval of the Board;

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

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;

THAT the Department of Buildings must ensure compliance 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. 401574060)

Adopted by the Board of Standards and Appeals, February 10, 2009.

51-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Rivoli Realty Corporation, owner.

SUBJECT – Application December 29, 2008 – Extension of Time to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) to permit the operation of a PCE in a portion of the cellar and the legalization of a dance studio in the cellar and first floor of an existing commercial building, in an C1-2/R2 zoning district, which expired on December 12, 2008.

PREMISES AFFECTED – 188-02/22 Union Turnpike, south side of Union Turnpike between 188th and 189th Street, Block 7266, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of time to obtain a certificate of occupancy, which expired on December 12, 2008, for a physical culture

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establishment (PCE) and dance studio; and

WHEREAS, a public hearing was held on this application on January 27, 2009, after due notice by publication in *The City Record*, and then to decision on February 10, 2009; and

WHEREAS, the site is located on the south side of Union Turnpike, between 188th Street and 189th Street, within a C1-2 (R2) zoning district; and

WHEREAS, on December 12, 2006, under the subject calendar number, the Board granted a variance to permit the operation of a PCE and the legalization of the existing dance studio at the subject site, with certain conditions; and

WHEREAS, the PCE occupies approximately 8,647 sq. ft. of floor area in the cellar; the existing dance studio occupies 1,198 sq. ft. of floor area on the first floor and approximately 3,473 sq. ft. of floor area in the cellar of a one-story commercial building; and

WHEREAS, one condition of the grant was that a new certificate of occupancy be obtained by December 12, 2008; and

WHEREAS, the applicant represents that the owner's failure to obtain the certificate of occupancy within the stipulated time was due to construction delays beyond its control; and

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

WHEREAS, the applicant represents that an extension of approximately 15 months is necessary to finalize a lease agreement with a new tenant, complete the construction of the PCE, and secure the certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board finds that an extension of time to obtain a certificate of occupancy until May 10, 2010 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, 2006, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a certificate of occupancy to May 10, 2010; *on condition* that all use and operations shall substantially conform to all BSA-approved drawings associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by May 10, 2010;

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. 402279495)

Adopted by the Board of Standards and Appeals, February 10, 2009.

617-56-BZ

APPLICANT – Kenneth H. Koons, R.A., for John O'Dwyer,

owner.

SUBJECT – Application December 4, 2008 – Extension of Term/waiver for the continued use of a (UG8) parking lot which expired on September 27, 2007 in an R6 (C1-3, C2-3) zoning district.

PREMISES AFFECTED – 3120 Albany Crescent, east side, 72.7' north of West 231st Street, Block 3267, Lot 15, Borough of Bronx.

COMMUNITY BOARD #15BX

APPEARANCES –

For Applicant: Ron Saunders.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown2

ACTION OF THE BOARD – Laid over to February 24, 2009, at 10 A.M., for decision, hearing closed.

395-60-BZ

APPLICANT – Sheldon Lobel, P.C., for Ali A. Swati, owner.

SUBJECT – Application December 22, 2006 – Pursuant to ZR §11-411 & §11-413 for an Extension of Term/Amendment/waiver for the change of use from a (UG16) gasoline service station to (UG16) automotive repair establishment; to remove a portion of the subject lot from the scope of the granted variance and to request a UG6 designation for the convenience store, in an R-5 zoning district, which expired on December 9, 2005 and an Extension of Time to obtain a Certificate of Occupancy which expired on January 19, 2000.

PREMISES AFFECTED – 2557-2577 Linden Boulevard, north side of Linden Boulevard between Euclid Avenue and Pine Street, Block 4461, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Elizabeth Sephian.

ACTION OF THE BOARD – Laid over to April 21, 2009, at 10 A.M., for continued hearing.

337-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Giuseppe LaSorsa, owner.

SUBJECT – Application November 10, 2008 – Extension of Term/waiver for the continued operation of a one story (UG16) Automotive Repair Shop and a two story (UG6) business and (UG2) dwelling unit on a portion of the site, which expired on June 2, 2002, in a C1-2/R4 zoning district and an Extension of Time/waiver to obtain a Certificate of Occupancy which expired on March 29, 1987.

PREMISES AFFECTED – 1415/17 East 92nd Street, northeast corner of East 92nd Street and Avenue L, Block 8238, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #18BK

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APPEARANCES –

For Applicant: Elizabeth Sephian.

ACTION OF THE BOARD – Laid over to March 17, 2009, at 10 A.M., for an continued hearing.

218-96-BZ

APPLICANT – Mitchell S. Ross, Esq. for The Armenian Apostolic Church.

SUBJECT – Application January 16, 2009 – Extension of Time to complete construction/waiver for a one story rear enlargement above the basement of an existing community use facility (The Armenian Prelacy), which expired on January 11, 2007, located in an R8B zoning district.

PREMISES AFFECTED – 138 East 39th Street, South side, 123.4 feet east of Lexington Avenue, Block 894, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Mitchell Ross.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown2

ACTION OF THE BOARD – Laid over to February 24, 2009, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

141-07-A

APPLICANT – Hakime Altine, for Charles Macena, owner.
SUBJECT – Application May 29, 2007 – Proposed construction of a two story one family residential building in the bed of mapped street (Hook Creek Boulevard) contrary to General City Law Section 35. R2 Zoning.

PREMISES AFFECTED – 129-48 Hookcreek Boulevard, situated on the West side of Hookcreek Boulevard, Block 12891, Lot 10, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Hakime Altine.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated January 7, 2008, acting on Department of Buildings Application No. 402408630, reads in pertinent part:

“A new application for a proposed new building is hereby submitted to be processed. The building will be in the bed of a mapped street contrary to General City Law Section 35;” and

WHEREAS, this application requests permission to build a two-story, single-family home partially in the bed of two mapped streets: (i) Hook Creek Boulevard between 129th Avenue and 130th Avenue; and (ii) 130th Avenue between Hook Creek Boulevard and 244th Street; and

WHEREAS, a public hearing was held on this application on June 17, 2008, after due notice by publication in the *City Record*, with continued hearings on July 15, 2008, September 9, 2008, October 28, 2008, November 25, 2008, January 13, 2009, and February 10, 2009; the hearing was then closed and set for decision February 10, 2009; and

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

WHEREAS, the applicant originally proposed to build a two-story mixed-use residential/community facility building on the site; and

WHEREAS, Community Board 13, Queens, recommended disapproval of the original application; and

WHEREAS, the applicant subsequently revised its proposal and now seeks to build a two-story single-family home; and

WHEREAS, in response, Community Board 13, Queens, withdrew its earlier objections to the application; and

WHEREAS, by letter dated June 14, 2007, the Fire Department states that it has reviewed the application and has no objections; and

WHEREAS, by letter dated September 13, 2007, the Department of Environmental Protection (“DEP”) states that it has reviewed the application and advises the Board that there is an existing 15-inch diameter combined sewer and an existing eight-inch diameter city water main in Hook Creek Boulevard between 129th Avenue and 130th Avenue, and there is an 18-inch diameter combined sewer and an eight-inch diameter city water main in 130th Avenue between Hook Creek Boulevard and 244th Street; and

WHEREAS, DEP also notes that Amended Drainage Plan No. 42 (5), 42S (15), 42SW (7), 41SD calls for a future 15-inch diameter combined sewer in Hook Creek Boulevard between 129th Avenue and 130th Avenue, and a future 18-inch diameter combined sewer in 130th Avenue between Hook Creek Boulevard and 244th Street; and

WHEREAS, DEP requested that the applicant provide a survey showing the width of Hook Creek Boulevard and 130th Avenue at the above locations, and the distances between the proposed development, mapped lines and existing sewers and water mains; and

WHEREAS, in response, the applicant submitted a revised survey indicating that the 100-foot total width of Hook Creek Boulevard and the approximately 38’-8” of Hook Creek Boulevard remaining between 129th Avenue and 130th Avenue

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will be available for the purpose of installation, maintenance and/or reconstruction of the existing 15-inch diameter combined sewer, eight-inch diameter city water main and future 15-inch diameter combined sewer; and

WHEREAS, the revised survey also indicates that the 60-foot total width of 130th Avenue and the approximately 36'-10" of 130th Avenue remaining between Hook Creek Boulevard and 244th Street will be available for the purpose of installation, maintenance and/or reconstruction of the existing 18-inch diameter combined sewer, eight-inch diameter city water main and future 18-inch diameter combined sewer; and

WHEREAS, by letter dated March 31, 2008, DEP states that it has reviewed the revised site plan and has no further objections; and

WHEREAS, by letter dated January 15, 2009, the Department of Transportation ("DOT") states that the applicant's property is not included in the agency's ten-year capital plan; and

WHEREAS, therefore, no transportation improvements requiring the street are contemplated; 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 Superintendent, dated January 7, 2008, acting on New Building Permit No. 402408630-01-NB, is hereby modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawings filed with the application marked "Received January 8, 2009 -(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 DOB shall review the proposed lot subdivision prior to the issuance of any permit;

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

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

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

Adopted by the Board of Standards and Appeals, February 10, 2009.

270-08-A

APPLICANT – NYC Department of Buildings.
OWNER OF RECORD: Johnny Ubiles.
SUBJECT – Application November 5, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 200983962F issued on February 8, 2008 as it was issued in error due to failure to comply with Special Flood Hazard

Area requirements as set forth in the Building Code and Department of Buildings TPN #1/04. R3A Zoning District. PREMISES AFFECTED – 221 Betts Avenue (aka 221B Betts Avenue) west side of Betts Avenue, north of Gildersleeve Avenue, Block 3460, Lot 58, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Amandus Derr, Department of Buildings.
For Opposition: John Ubiles.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3
Negative:.....0
Absent: Vice-Chair Collins and Commissioner Ottley-Brown2

ACTION OF THE BOARD – Laid over to February 24, 2009, at 10 A.M., for decision, hearing closed.

271-08-A

APPLICANT – NYC Department of Buildings.
OWNER OF RECORD: Pedro Febres.
SUBJECT – Application November 5, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 200983962F issued on February 8, 2008 as it was issued in error due to failure to comply with Special Flood Hazard Area requirements as set forth in the Building Code and Department of Buildings TPN #1/04. R3A Zoning District. PREMISES AFFECTED – 221 A Betts Avenue, west side of Betts Avenue, north of Gildersleeve Avenue, Block 3460, Lot 59, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES –

For Applicant: Amandus Derr, Department of Buildings.
For Opposition: Pedro Febres.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3
Negative:.....0
Absent: Vice-Chair Collins and Commissioner Ottley-Brown2

ACTION OF THE BOARD – Laid over to February 24, 2009, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 10, 2009
1:30 P.M.**

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

ZONING CALENDAR

159-08-BZ

CEQR #08-BSA-091M

APPLICANT – Jay A. Segal, for Greenberg Traurig, LLF, for DJL Family Limited Partnership, owners.

SUBJECT – Application June 10, 2008 – Variance (§72-21) to allow a new seven (7) story residential building (UG 2) containing twelve (12) dwelling units and ground floor retail (UG 6); contrary to use regulations (§42-10 & §42-14 D(2)(b)). M1-5B district.

PREMISES AFFECTED – 68-70 Spring Street, south side of Spring Street between Crosby and Lafayette Streets, Block 482, Lot 19, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jay Segal.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated May 15, 2008, acting on Department of Buildings Application No. 110146486, reads in pertinent part:

“Proposed residential use within an M1-5B zone is not permitted;

Proposed commercial use (UG6) below the floor level of the second story is contrary to ZR 42-14(D)

(2) (b);” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-5B zoning district, a seven-story and penthouse residential building with 12 dwelling units and ground floor retail use, which is contrary to ZR §§ 42-10 and 42-14(D)(2)(b); and

WHEREAS, a public hearing was held on this application on September 23, 2008, after due notice by publication in the *City Record*, with continued hearings on October 28, 2008, November 18, 2008, December 16, 2008, and January 27, 2009, and then to decision on February 10, 2009; 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, recommends approval of the application; and

WHEREAS, a number of area residents testified in opposition to the application; and

WHEREAS, additionally, a group of neighbors represented by counsel testified at hearing and made submissions into the record in opposition to the application (the “Opposition”); the arguments made by the Opposition related to the required findings for a variance, and are addressed below; and

WHEREAS, the subject premises is located on the south side of Spring Street between Lafayette Street and Crosby Street, and has 4,766 sq. ft. of lot area; and

WHEREAS, the site is located within an M1-5B zoning district and is occupied by a one-story commercial building which will be demolished; and

WHEREAS, the applicant proposes a seven-story, 12-unit residential building with ground floor retail use, a floor area of 23,830 sq. ft. (5.0 FAR), a street wall height of 94’-0”, a total building height of 106’-0”, and a rear yard of between 7’-4” and 8’-11” at the first floor and between approximately 31’-10” and 32’-2” above the first floor; and

WHEREAS, the applicant initially proposed a seven-story building with a street wall height of 112’-0” and a total building height of 124’-0”; during the hearing process, the building height was reduced, reflecting the parameters now proposed; and

WHEREAS, as to the proposed building: (1) the cellar level will be occupied by commercial space and mechanicals, (2) the first floor will be occupied by the building lobby and retail use, (3) the second floor through sixth floor will each be occupied by two residential units; and (4) the seventh floor and penthouse level will be occupied by two duplex units; and

WHEREAS, further, the proposed building will provide a 30’-0” setback above the seventh floor on the Spring Street frontage at a height of 94’-0”; and

WHEREAS, the applicant states that the small size of the subject site is a unique physical condition that creates an unnecessary hardship in developing the site in conformance with applicable regulations; and

WHEREAS, the applicant states that the site has a frontage of approximately 50’-0” and an irregular depth of between approximately 85’-2” and 88’-4”, for a total lot area of 4,725 sq. ft.; and

WHEREAS, the applicant represents that the size of the site would not accommodate efficient floor plates for a conforming commercial office development; and

WHEREAS, the applicant represents that the small size of the site results in a floor plate of no more than 3,625 sq. ft., of which a disproportionate share is devoted to the building core (elevators, stairways, and bathrooms); and

WHEREAS, the applicant further represents that the core of a conforming development would average approximately 630 sq. ft. per floor which is the same size as the core of a building with floor plates of approximately 7,250 sq. ft.; and

WHEREAS, the applicant states that the core of a

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conforming development on the subject site would result in a 17 percent loss of rentable area per floor, while the loss of rentable area for the same size core in a building with floor plates of 7,250 sq. ft. would be nine percent per floor; and

WHEREAS, the applicant further states that the fixed cost of construction of the core and its operating expenses relative to the floor plate are significantly higher per square foot on a lot of this size than on a lot with a floor plate of 7,250 sq. feet; and

WHEREAS, as to the uniqueness of the site conditions, the applicant submitted an analysis of development within an area bounded by Broadway to the west, East 4th Street to the north, Bleecker Street to the south and the Bowery to the east, within the M1-5B zoning district (the "study area"); and

WHEREAS, of the approximately 400 lots within the study area, the analysis indicates that 22 sites (5.5 percent) other than the subject site had lot areas of less than 5,000 sq. ft. and were either vacant or occupied by one-story buildings; and

WHEREAS, the Opposition contends that the applicant has failed to establish the uniqueness of the subject site; and

WHEREAS, the Board notes that the incidence of 22 lots within a 400-lot study area sharing the same "unique conditions" as the subject site is not, in and of itself, sufficient to defeat a finding of uniqueness; and

WHEREAS, under New York law, a finding of uniqueness does not require that a given parcel be the only property so burdened by the condition(s) giving rise to the hardship, only that the condition is not so generally applicable as to dictate that the grant of a variance to all similarly situated properties would effect a material change in the district's zoning (see Douglaston Civ. Assn. v. Klein, 51 N.Y.2d 963, 965 (1980)); 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 that analyzed: (1) a conforming six-story and penthouse office building; and (2) the proposed seven-story and penthouse residential building; and

WHEREAS, the feasibility study indicated that a conforming office building would not result in a reasonable return, while the proposed residential building would result in a reasonable return; and

WHEREAS, at hearing, the Board asked the applicant to provide a financial analysis supporting the 16'-0" floor-to-floor height initially proposed; and

WHEREAS, in response, the applicant provided a revised financial analysis comparing the proposed building to buildings with: (i) a 14'-0" floor-to-floor height; and (ii) a 12'-0" floor-to-floor height, which concluded that the lower floor-to-floor heights were not feasible; and

WHEREAS, however, the Board noted that other buildings in the area have 13'-0" floor-to-floor heights and were marketable; and

WHEREAS, the applicant revised the proposal to lower the floor-to-floor height to the 13'-0" reflected in the current

proposal; and

WHEREAS, the Opposition contends that feasibility analysis is inadequate in that it fails to evaluate the use of the subject site as joint living work quarters for artists (JLWQA); and

WHEREAS, a response by the applicant notes that the subject site cannot be developed for JLWQA use because, in the subject M1-5B zoning district, JLWQA use is permitted as-of-right only in buildings constructed prior to December 15, 1961 and the proposed building would be newly constructed; and

WHEREAS, the Opposition additionally contends that the feasibility analysis did not demonstrate that the site is burdened by a hardship because it failed to demonstrate the infeasibility of the use currently existing on the site and of all alternative permissible uses; and

WHEREAS, the applicant submitted a financial analysis that indicated that current use of the site did not yield a reasonable return because the site is significantly underdeveloped; and

WHEREAS, the Board notes that an applicant is not required to examine each permissible use, particularly when there is evidence that certain uses are unlikely to provide a reasonable return given the property's physical characteristics (see Red Hook/Gowanus Chamber of Commerce v. BSA, 49 A.D.3d 749 (2d Dep't 2008)); 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 further represents that the proposed building of 12 dwelling units is limited in scope, and that the proposed unit size and residential use are consistent with the character of the area; and

WHEREAS, the applicant states that 22 of the 26 zoning lots on the subject block contain residential use or JLWQA use; and

WHEREAS, the applicant further states that nearby residential uses include a six-story residential building immediately to the east of the subject site and two five-story residential buildings to its immediate north on Spring Street; and

WHEREAS, the applicant represents that among the 105 zoning lots located within a 400-foot radius of the subject site, 76 of the zoning lots contain residential or JLWQA uses, including a number of apartment buildings along Mulberry Street, and converted loft buildings along Crosby, Broome, and Lafayette Streets; and

WHEREAS, the applicant states that the proposed unit size of 1,200 sq. ft. is consistent with the unit sizes permitted

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by JLWQA regulations as well as by the provisions of ZR § 74-712 governing the minimum unit size in historic districts; and

WHEREAS, the applicant further represents that ground floor retail uses are consistent with the neighborhood character; and

WHEREAS, the applicant states that the height and bulk are compatible with the area, noting that the proposed building is lower in height than the adjacent building to its west, which has a height of approximately 140 feet; and

WHEREAS, the applicant further states that the proposed 5.0 FAR is permitted in the subject zoning district; and

WHEREAS, the applicant represents that the proposed building envelope complies with the M1-5B/R7X Mixed Use District bulk requirements, except that the street wall height of 94 feet exceeds the 85-foot maximum permitted street wall height in an R7X district; and

WHEREAS, the applicant initially proposed a seven-story and penthouse building with floor-to-floor heights of 16'-0"; and

WHEREAS, the Board notes that the 400-foot radius diagram submitted by the applicant demonstrates that the area surrounding the subject site is largely characterized by five-story and six-story buildings; and

WHEREAS, during the hearing process, the Board asked the applicant to explore the feasibility of reducing the floor-to-floor heights to make the height of the building more compatible with that of buildings in the surrounding area; and

WHEREAS, in response, the applicant reduced the floor-to-floor height of each of the second through seventh floors of the subject building by three feet, thereby resulting in an 18-foot reduction in the building height; and

WHEREAS, the Opposition raised concerns that the proposed building would eliminate natural light and views from residential units in adjacent buildings with lot line windows; and

WHEREAS, at hearing, the applicant noted that the same lot line windows would be blocked by a conforming commercial development; and

WHEREAS, in a submission, the applicant further states that lot line windows cannot legally be used to satisfy light and air requirements and, therefore, the occupants lack a legally protected right to their maintenance; and

WHEREAS, based upon its review of submitted maps and photographs and its inspection, the Board agrees that the proposed building's reduced height, bulk and design are compatible with other buildings in the neighborhood; and

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

WHEREAS, the 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 applicant submitted copies of 1959 and 1970 deeds for the conveyance of the subject site which establish that the lot has not been subdivided since December

15, 1961; and

WHEREAS, the Opposition contends that the applicant's hardship is instead created by its purchase of the subject building with knowledge of the restrictions on its development; and

WHEREAS, the Board notes that the purchase of a zoning lot subject to the restriction sought be varied is specifically not a self-created hardship under ZR § 72-21(d); furthermore, New York courts have consistently held that the purchase of land burdened by obsolete improvements is not a self-created hardship (see Citizens Sav. Bank v. Bd. of Zoning App., 238 A.D. 2d 874 (3d Dep't 1997); see generally, Fiore v. Zoning Bd. of Apps. of Town of Southeast, 21 N.Y. 2d 393 (1968); Matter of Commco, Inc. v. Amelkin, 109 A.D.2d 794, 796 (2d Dep't 1985), and Polsinello v. Dwyer, 160 A.D. 2d 1056, 1058 (3d Dep't 1990)); 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, during the hearing process, the applicant reduced floor-to-floor heights of the second through seventh floors of the subject building by three feet, thereby resulting in an 18-foot reduction in the building height; and

WHEREAS, the applicant asserts, and the Board agrees, that the waiver associated with the proposed building represents the minimum variance; and

WHEREAS, the Board observes that the proposed building of 12 dwelling units is limited in scope; and

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

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

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

WHEREAS, the Bureau of Environmental Planning and Analysis of the New York City Department of Environmental Protection ("DEP") has reviewed the following submissions by the applicant: a May 2008 EAS and a May 2008 Phase I Environmental Site Assessment Report; and

WHEREAS, the May 2008 EAS and a May 2008 Phase I Environmental Site Assessment Report specifically examined the proposed action for Hazardous Materials; and

WHEREAS, the May 2008 EAS determined that there could be potential hazardous materials impacts during construction and occupancy of the proposed residential building due to historical land uses and recommends that a Phase II Environmental Investigation be performed to identify measures to prevent possible adverse impacts related to such materials; and

WHEREAS, applicant proposes to submit a hazardous materials sampling protocol prepared by a qualified consultant and including a health and safety plan, (as approved by DEP the "Sampling Protocol") for the Project,

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and to test and identify any potential hazardous materials pursuant to the approved Sampling Protocol for the Project and, if such hazardous materials are found, to submit a hazardous materials remediation plan for the Project, including a health and safety plan, (as approved by DEP, the "Remediation Plan") for approval by DEP prior to the commencement of any construction or demolition activities at the site; and

WHEREAS, applicant proposes to restrict the manner in which the Subject Property may be developed or redeveloped by having the implementation of the Sampling Protocol and Remediation Plan, if any, performed to the satisfaction of DEP; and

WHEREAS, prior to the issuance of any building permit by DOB that would result in grading, excavation, foundation, alteration, building or other permit respecting the Subject Property which permits soil disturbance, applicant proposes to obtain from DEP either: (A) a Notice of No Objection ("Notice of No Objection") for the Project upon the occurrence of the following: (i) applicant has completed the project-specific DEP approved Sampling Protocol to the satisfaction of DEP; and (ii) DEP has determined in writing that the results of such sampling demonstrate that no hazardous materials remediation is required for the proposed project, or (B) a Notice to Proceed ("Notice to Proceed") for the Project in the event that DEP has determined in writing that: (i) the project-specific Remediation Plan has been approved by DEP and (ii) the permit(s) respecting the Subject Property that permit grading, excavation, foundation, alteration, building or other permit respecting the Subject Property which permits soil disturbance or construction of the superstructure for the Project facilitate the implementation of the DEP approved Remediation Plan; and

WHEREAS, prior to the issuance of any temporary or permanent Certificate of Occupancy by DOB, applicant proposes to obtain from DEP either: (A) a Notice of Satisfaction ("Notice of Satisfaction") for the Project in the event that DEP determines in writing that the DEP approved project-specific Remediation Plan has been completed to the satisfaction of DEP, or (B) a Notice of No Objection ("Notice of No Objection") for the Project in the event that DEP determines in writing that the work has been completed as set forth in the project-specific DEP approved Sampling Protocol and the results of such sampling demonstrate that no hazardous materials remediation is required for 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, 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 M1-5B zoning district, a seven-story and penthouse residential building with 12 dwelling units and ground floor retail use, which is contrary to ZR §§ 42-10 and 42-14D(2)(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 December 2, 2008"–(14) sheets; and *on further condition*:

THAT the following shall be the parameters of the proposed building: a 12-unit residential building with ground floor retail use, a floor area of 23,830 sq. ft. (5.0 FAR), a street wall height of 94'-0", a total building height of 106'-0", and a rear yard of between 7'-4" and 8'-11" at the first floor and between approximately 31'-10" and 32'-2" above the first floor;

THAT, prior to the issuance of any building permit that would result in grading, excavation, foundation, alteration, building or other permit respecting the Subject Property which permits soil disturbance for the Project, the applicant or successor shall obtain from DEP, as applicable, either a Notice of No Objection, Notice to Proceed, or Notice of Satisfaction and shall comply with all DEP requirements to obtain such Notices; and

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until the DEP shall have issued a Notice of No Objection, or Notice of Satisfaction; and

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, February 10, 2009.

163-08-BZ

CEQR #08-BSA-095K

APPLICANT – Sheldon Lobel, P.C., for Congregation Kol Torah, owner.

SUBJECT – Application June 13, 2008 – Variance (§72-21 to permit the construction of a two-story and attic community facility building (Congregation Kol Torah). The proposal is contrary to ZR §24-11 (floor area, FAR ad lot coverage), §24-34 (front yard), §24-35 (side yards), and §25-30 (minimum parking requirements). R2 district.

PREMISES AFFECTED – 2022 Avenue M, southwest corner of the intersection of Avenue M and East 21st Street,

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Block 7656, Lot 31, 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, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 14, 2008, acting on Department of Buildings Application No. 3100132996, reads, in pertinent part:

1. Provides floor area greater than the maximum permitted pursuant to ZR Section 24-11;
2. Provides floor area ratio greater than the maximum permitted pursuant to ZR Section 24-11;
3. Provides lot coverage greater than the maximum permitted pursuant to ZR Section 24-11;
4. Provides front yards less than the minimum required pursuant to ZR Section 24-34;
5. Provides side yards less than the minimum required pursuant to ZR Section 24-35;
6. Provides less than the minimum number of parking spaces required pursuant to ZR Section 25-30;"

and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R2 zoning district, a two-story and attic building to be occupied by a synagogue (Use Group 4) and accessory Rabbi's residence, which does not comply with floor area, floor area ratio, lot coverage, front and side yard, and parking requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35, and 25-30; and

WHEREAS, a public hearing was held on this application on November 25, 2008, after due notice by publication in *The City Record*, with continued hearings on January 13, 2009 and then to decision on February 10, 2009; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of the application with conditions; and

WHEREAS, members of the community provided testimony in opposition to the proposal; and

WHEREAS, this application is being brought on behalf of Congregation Kol Torah, a non-profit religious entity (the "Synagogue"); and

WHEREAS, the subject premises is located on the

southwest corner of the intersection of Avenue M and East 21st Street within an R2 zoning district and has a lot area of approximately 5,200 sq. ft.; and

WHEREAS, the subject site is occupied by a two-story detached single-family home which is proposed to be demolished; and

WHEREAS, the proposal provides for the following uses: (1) a multi-purpose room and mechanical space on the cellar level; (2) a synagogue on the first and second floor; and (3) an accessory Rabbi's residence on the attic level; and

WHEREAS, the applicant initially proposed a synagogue building with the following parameters: approximately 9,840 sq. ft. of community facility floor area; an FAR of 1.89 (0.50 FAR is the maximum permitted); a lot coverage of 75 percent (60 percent is the maximum permitted); one front yard of 10'-0" on Avenue M and one front yard of 0'-6" on East 21st Street (two 15'-0" front yards are required); two 0'-6" side yards (two side yards with respective minimum depths of 15'-0" and 8'-0" are required); and one accessory parking space; and

WHEREAS, the proposal was revised during the hearing process; the current proposal provides for a synagogue building with approximately 9,583 sq. ft. of floor area, an FAR of 1.84, a lot coverage of 73 percent, one front yard of 10'-0" on Avenue M and one front yard of 1'-6" on East 21st Street; a complying 10'-8" side yard extending west from the East 21st Street frontage, and a 2'-6" side yard extending south from the Avenue M frontage; and two accessory parking spaces; 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 current congregation of approximately 200 members and their children, and the future growth in the congregation's membership; (2) to provide space for family study and other classes; (3) to accommodate life cycle events; and (4) to provide a residence for the Synagogue's rabbi; and

WHEREAS, the applicant further states that its existing synagogue located nearby at 2016 Avenue M consists of approximately 855 sq. ft. of floor area, which is inadequate to serve the current congregation and cannot be expanded; and

WHEREAS, the applicant represents that the proposed synagogue can accommodate the religious services and programs of the synagogue and will better accommodate the size of its congregation; 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, the applicant provided a submission

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briefing the prevailing New York State case law on religious deference; and

WHEREAS, the Board notes that under well-established precedents of the courts, a Rabbi's residence on the site of a religious institution is construed to be a religious use entitled to deference by a zoning board (see Jewish Recon. Syn. v. Vill. of Roslyn, 38 N.Y.2d 283 (1975)); 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 width of the site creates an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, the subject site has a width of 40'-0"; and

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

WHEREAS, the applicant provided plans indicating that an as-of-right development on this zoning lot would result in floor plates with a width of 17'-0" which would be narrow and inefficient and which would necessarily allocate a significant portion of both space and floor area toward circulation space; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical conditions, when considered in conjunction with the programmatic needs of 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 and height are permitted in the subject zoning district; and

WHEREAS, the applicant represents that the scale and bulk of the Synagogue is consistent with the scale of the two- and- a-half-story homes that characterize the area; and

WHEREAS, the applicant further represents that the subject site is within 70 feet of an R7A district which is characterized by numerous residential and commercial buildings with floor area in excess of that proposed; and

WHEREAS, at hearing the Board asked the applicant to identify buildings in the surrounding area which are compatible with the scale and bulk of the proposed Synagogue; and

WHEREAS, the applicant identified seven buildings located within a 400-foot radius of the

subject site with FARs exceeding 2.08; and

WHEREAS, as to traffic and parking impacts, the applicant noted that the impacts would be minimal as most of the congregants live nearby and would walk to services, specifically to worship services on Fridays and Saturdays when they are not permitted to drive; and

WHEREAS, a submission by the applicant indicates that 93 percent of the congregation live within three-quarters of a mile from the subject site; and

WHEREAS, the applicant represents that this proposal would meet the requirements of a parking waiver for a locally-oriented house of worship at the City Planning Commission, pursuant to ZR § 25-35; and

WHEREAS, the Synagogue is located in an R2 zoning district, a waiver pursuant to ZR § 25-33 would be permitted if fewer than ten spaces were required; and

WHEREAS, the applicant represents that, based on the applicable formula and the rated capacity of the largest room of assembly, one parking space would be required, thereby qualifying the Synagogue for a waiver under ZR § 25-35; and

WHEREAS, at hearing, the Board raised concerns regarding a garage at the rear of the Synagogue which was proposed to be built to a distance of only six inches from the adjoining property on East 21st Street; and

WHEREAS, in response to the Board's concerns, the applicant revised the plans to remove the garage and accommodate two off-street parking spaces within an open yard area; and

WHEREAS, in response to fire and life safety measures recommended by the Fire Department, the applicant has agreed to install a sprinkler system and smoke detection system throughout the entire building that activates an audible alarm and will be connected to a Fire Department approved central station; and

WHEREAS, in response to concerns raised by the community board, the applicant agreed to maintain existing plantings on the Avenue M and East 21st Street frontages and to engage in no food preparation on the cellar level of the building; and

WHEREAS, the applicant additionally agreed to provide interior storage of trash until collection; 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, during the hearing process the applicant revised the proposal to (i) eliminate a proposed garage, thereby providing a complying side yard to the south and eliminating the needed for a side yard waiver; (ii) to

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increase the side yard extending west from East 21st Street; (iii) to reduce the overall floor area by 257 sq.; (iv) to decrease the lot coverage; and (v) to provide an additional accessory parking space; and

WHEREAS, the Board considered the modifications noted above and finds the requested waivers to be the minimum necessary to afford the Synagogue 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 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. 08BSA095K, dated October 16, 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, 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 R2 zoning district, a two-story and attic building to be occupied by a synagogue (Use Group 4) and accessory Rabbi's residence, which does not comply with floor area, floor area ratio, lot coverage, front and side yard, and parking requirements for community facilities, contrary to ZR §§ 24-11, 24-34, 24-35, 25-30, *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 7, 2009" – Seven (7) sheets and "Received January 23, 2009" – Two (2) sheets and *on further condition*:

THAT the building parameters shall be: 9,583 sq. ft. of floor area, an FAR of 1.84, a lot coverage of 73 percent, one front yard of 10'-0" on Avenue M and a front yard of 1'-6" on East 21st Street; a 10'-8" side yard extending to a depth 40'-5"

from the East 21st Street frontage and a 2'-6" side yard extending to a depth of approximately 133'-0" from the Avenue M frontage; and two accessory parking spaces;

THAT the use shall be limited to a house of worship (U.G. 4) and an accessory Rabbi's residence;

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

THAT accessory uses shall not include the utilization of a room or other space for the operation of a business engaged in preparing or serving food or beverages for functions, occasions or events;

THAT alarmed smoke detection and sprinkler systems shall be installed throughout the entire building which are connected to a Fire Department approved central station, as indicated on the BSA-approved plans; and

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

THAT garbage shall be stored inside the building except when in the designated area for pick-up;

THAT existing plantings will be maintained on the Avenue M and East 21st Street frontages;

THAT landscaping shall comply with the regulations for a community facility building in a residential district set forth in ZR §§ 24-05 and 24-06;

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, February 10, 2009.

198-08-BZ

CEQR #09-BSA-012M

APPLICANT – Mitchell S. Ross, Esq., for Pamela Equities Corp., owner; New York Health & Racquet Club, lessees.

SUBJECT – Application July 24, 2008 – Special Permit (§73-36) to allow the proposed physical culture establishment in the subcellar, cellar, first, second, and the second mezzanine floors in a 12-story and penthouse mixed-use building. The proposal is contrary to ZR §32-10. C6-4A district.

PREMISES AFFECTED – 268 Park Avenue South (a/k/a 268-276 Park Avenue South) west side of Park Avenue South at East 21st Street, Block 850, Lot 39, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Application granted on

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condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated June 30, 2008, acting on Department of Buildings Application No. 110150559, reads in pertinent part:

“Proposed physical culture establishment on the subcellar, cellar, first, second, and second mezzanine floors is not permitted as-of-right in C6-4A zoning district and it is contrary to ZR 32-10. BSA special permit is required 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 C6-4A zoning district, the establishment of a physical culture establishment (“PCE”) on the subcellar and cellar levels, the first and second floors, and the second floor mezzanine of an existing 12-story and penthouse mixed-use residential/commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 16, 2008 after due notice by publication in *The City Record*, with continued hearings on January 13, 2009 and February 3, 2009, and then to decision on February 10, 2009; 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 5, Manhattan, states that it has no objection to this application; and

WHEREAS, a resident of the neighboring building testified in opposition to this application, citing concerns with sound attenuation; and

WHEREAS, the subject site is located at the northwest corner of the intersection at Park Avenue South and East 21st Street, in a C6-4A zoning district; and

WHEREAS, the site is occupied by a 12-story mixed-use residential/commercial building; and

WHEREAS, the PCE will occupy a total of 14,991 sq. ft., with 7,685 sq. ft. of area in the subcellar and cellar, 380 sq. ft. of floor area on the first floor, 6,126 sq. ft. of floor area on the second floor, and 800 sq. ft. of floor area on the second floor mezzanine; and

WHEREAS, the PCE will be operated as a “New York Health and Racquet Club;” and

WHEREAS, the applicant represents that the services at the PCE will include facilities for classes, instruction and programs for physical improvement, body building, and aerobics; and

WHEREAS, the proposed hours of operation are from 6:00 a.m. to 11:00 p.m., seven days per week; and

WHEREAS, at hearing, the Board asked the applicant to describe the sound attenuation measures to be undertaken

by the PCE; and

WHEREAS, in response, the applicant submitted a study which assessed the likelihood of sound/vibration transmission from the PCE to the upstairs apartments and to the condominium building located immediately to the west of the premises; and

WHEREAS, the sound attenuation study made specific recommendations to minimize any sound/vibration transmissions, including: (1) the installation of one-inch thick, double-glazed non-operable windows on the second floor and second floor mezzanine; (2) the installation of one-inch thick rubber flooring; and (3) use of a distributed speaker system with moderated volume units, rather than clustered loudspeakers in centralized locations; and

WHEREAS, the applicant represents that it will comply with the recommendations of the sound attenuation study; 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, at hearing, the Board asked the applicant to clarify why the second floor mezzanine is not listed on the building’s certificate of occupancy; and

WHEREAS, in response, the applicant submitted revised drawings indicating that the second floor mezzanine was permitted under ZR § 54-41 due to the demolition of a former first floor mezzanine; and

WHEREAS, the Board neither approves nor disapproves the creation of a new second floor mezzanine, which is subject to approval by DOB; 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. 09BSA012M, dated July 28, 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

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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 C6-4A zoning district, the establishment of a physical culture establishment on the subcellar and cellar levels, the first and second floors, and the second floor mezzanine of an existing 12-story and penthouse mixed-use residential/commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 21, 2009"-(5) sheets "Received December 31, 2008"-(1) sheet and "Received December 5, 2008"-(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 10, 2019;

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 all signage shall comply with C6-4A zoning regulations;

THAT DOB shall review the second floor mezzanine for compliance with ZR § 54-41;

THAT all second floor and second floor mezzanine windows shall be non-operable, one-inch thick and double-glazed in accordance with the BSA-approved plans;

THAT one-inch thick rubber flooring shall be installed throughout the exercise rooms of the second floor and second floor mezzanine of the PCE;

THAT a distributed speaker system shall be used with moderated volume units;

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;

THAT substantial construction be completed in

accordance with ZR § 73-70; 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 10, 2009.

226-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Tiferes Shebitiferes Corp., by David Smatena, owner.

SUBJECT – Application September 16, 2008 – Special Permit (§73-50) to legalize the vertical enlargement of an existing commercial building within the required 30 foot rear yard required along a residential district boundary line that is coincident with a rear lot line. C8-2 zoning district. PREMISES AFFECTED – 172 Empire Boulevard, south side of Empire Boulevard between Bedford Avenue and Rogers Avenue, Block 1314, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated September 4, 2008, acting on Department of Buildings Application No. 302285569, reads in pertinent part:

"Proposed rear yard is contrary to ZR § 33-292;"

and

WHEREAS, this is an application under Z.R. §§ 73-50 and 73-03, to permit, on a site in a C8-2 zoning district abutting an R5 zoning district, the legalization of an enlargement to a one-story commercial building which encroaches on a required 30-foot rear yard, contrary to Z.R. § 33-292; and

WHEREAS a public hearing was held on this application on December 16, 2008 after due notice by publication in *The City Record*, with a continued hearing on January 27, 2009, and then to decision on February 10, 2009; 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 9, Brooklyn recommends disapproval of this application; and

WHEREAS, several residents of the community testified in opposition to this application; and

WHEREAS, the site is located on the south side of Empire Boulevard, between Rogers Avenue and Bedford

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Avenue; and

WHEREAS, the site has 120 feet of frontage on Empire Boulevard and a depth of 100 feet, and a total lot area of 12,000 sq. ft.; and

WHEREAS, the subject site is occupied by a one-story commercial building housing a building supply company (the "Company"); and

WHEREAS, the existing building has a floor area of 12,000 sq. ft. and a height of 15 feet; and

WHEREAS, the existing building is built to the rear lot line; and

WHEREAS, the subject site is located within a C8-2 zoning district that abuts an R5 zoning district to its rear; and

WHEREAS, pursuant to ZR §33-292, a rear yard at grade level with a minimum depth of 30 feet is required on a zoning lot within a commercial district that abuts a residential district; and

WHEREAS, therefore, the existing building does not comply with ZR § 33-292; and

WHEREAS, the applicant represents that the rear yard encroachment is a legal pre-existing condition; and

WHEREAS, on June 27, 2007, Permit No. 302285569-01-AL (the "Permit") was issued by the Department of Buildings ("DOB"), permitting a two-story vertical enlargement of the existing building; and

WHEREAS, pursuant to the Permit, the front portion of the existing building is being enlarged by two stories, to a height of 60'-0" from the front lot line extending south to a depth of 61'-5"; and

WHEREAS, the rear portion of the subject building, extending north by 38'-7" from the rear lot line (the "Rear Portion") is enlarged to a height of 33'-4"; and

WHEREAS, on July 22, 2008, DOB issued a Stop Work Order ("SWO") halting construction; and

WHEREAS, on November 10, 2008, DOB partially rescinded the SWO in order to allow construction to continue on the two-story enlargement to the front portion of the building; and

WHEREAS, the applicant proposes to legalize the vertical enlargement to the Rear Portion of the building to a height of 23 feet, thereby increasing the degree of non-compliance by eight feet; and

WHEREAS, under Z.R. § 73-50, the Board may grant a waiver of rear yard requirements set forth in Z.R. § 33-29 in appropriate cases; and

WHEREAS, the applicant represents that the amount of storage space in the existing building is inadequate and that the enlargement of the Rear Portion is necessary for the installation of additional storage racks; and

WHEREAS, the applicant further represents that the subject special permit is necessary to increase the capacity and operational efficiency of the Company; and

WHEREAS, the applicant states that the vertical enlargement will not increase the floor area of the Rear Portion of the building; and

WHEREAS, the applicant represents that the use of the Rear Portion of the building for storage will not create any fumes, odors, or other activities that would negatively

impact the adjacent residential zoning district, and there will be no openings within the masonry construction that would enable noise to be heard outside the building; and

WHEREAS, the applicant further represents that strict compliance with Z.R. § 33-292 could create a disadvantage for the adjacent residential properties in that the lack of storage space would result in a greater number of pickups and deliveries to and from the site, creating noise and particulates; and

WHEREAS, the applicant states that under ZR § 33-23, the proposed enlargement would be a permitted obstruction because it does not exceed one-story or 23 feet above curb level; and

WHEREAS, the applicant further states that in C1 through C7 zoning districts, ZR § 33-292 would permit such an obstruction, and that only in C8 zoning districts is such an obstruction not permitted; and

WHEREAS, the applicant represents that the additional restriction for the C8 zoning district is due to the more noxious uses permitted in the district; and

WHEREAS, the applicant further represents that the existing and proposed use is more analogous to uses permitted in a C7 zoning district; thus, it is appropriate for such a use to exist in this rear yard so long as it is limited to one-story and does not exceed 23 feet in height, as it is compatible with the adjacent residential uses; and

WHEREAS, the Board finds that the rear yard waiver will not have an adverse affect on the surrounding area; and

WHEREAS, at hearing, the Board requested that the applicant provide information regarding the materials to be used for the façade of the Rear Portion of the building; and

WHEREAS, in response, the applicant submitted photographs of the materials to be used, which indicate that the façade will be compatible with adjacent residential buildings; and

WHEREAS, therefore the Board has determined that the application meets the requirements of Z.R. § 73-03(a) in that the disadvantages to the community at large are outweighed by the advantages derived from such special permit; and that the adverse effect, if any, will be minimized by appropriate conditions; and

WHEREAS, the proposed project will not interfere with any pending public improvement project and therefore satisfies the requirements of Z.R. §73-03(b); and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§73-50 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 to grant a special permit under Z.R. §§ 73-50 and 73-03, to permit, on a lot within a C8-2 zoning district abutting an R5 zoning district, the legalization of the proposed enlargement of a one-story commercial building, which will encroach within the 30-foot open area required along district boundaries coincident with rear lot lines of two adjoining zoning lots, contrary to Z.R. § 33-292, *on condition* that all work shall

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substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received November 18, 2008" – (5) sheets; and *on further condition*;

THAT no mechanical equipment shall be located on the roof of the building within the 30-foot encroachment area;

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

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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, February 10, 2009.

227-08-BZ

CEQR #09-BSA-022X

APPLICANT – Slater & Beckerman, LLP, for Bronx Lebanon Hospital Center, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) to allow a 39,922 square foot enlargement to an existing non-profit hospital (UG 4); contrary to bulk regulations (§24-11, §23-633, §122-30). R8 District / Special Grand Concourse Preservation District.

PREMISES AFFECTED – Grand Concourse, East 173rd Street, Selwyn Avenue, Mt. Eden Parkway, Block 2823, Lot 1, Borough of Bronx.

COMMUNITY BOARD #4BX

APPEARANCES –

For Applicant: Carole Slater.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated August 27, 2008, acting on Department of Buildings Application No. 201038910, reads in pertinent part:

1. Proposed floor area (FAR) exceeds amount permitted by ZR 24-11.
2. Proposed lot coverage exceeds amount permitted by ZR 24-11.
3. Proposed front wall at east and north elevation exceeds height permitted by ZR 23-633”;

and

WHEREAS, this is an application under ZR § 72-21, to permit the proposed enlargement of a 17-story building for the Bronx-Lebanon Hospital Medical College to be occupied by community facility use (Use Group 4), on a site located partially within an R8 zoning district and partially within the Special Grand Concourse Preservation District, which does not comply with zoning requirements concerning floor area, lot coverage, and wall height, contrary to ZR §§ 24-11 and 24-633; and

WHEREAS, a public hearing was held on this application on January 27, 2009, after due notice by publication in the *City Record*, and then to decision on February 10, 2009; and

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

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

WHEREAS, this application is brought on behalf of the Bronx-Lebanon Hospital Center (the "Hospital"), a not-for-profit medical center and educational institution; and

WHEREAS, the subject site is located on the block bounded by East 173rd Street to the north, Selwyn Avenue to the east, Mt. Eden Parkway to the south, and the Grand Concourse to the west, with a total lot area of 53,368 sq. ft., and

WHEREAS, the site is currently occupied by a 17-story existing community facility (Use Group 4) building with a floor area of 338,952 sq. ft.; and

WHEREAS, the applicant proposes to extend the first through sixth floors of the existing building at the interior of its Zoning Lot, to extend the second through sixth floors at the northeast corner of the Zoning Lot and to extend the 11th floor at the eastern end of the Zoning Lot ("the proposed enlargement"); and

WHEREAS, the proposed enlargement increases the floor area of the existing building by 39,922 sq. ft.; and

WHEREAS, the subject site is located partially within an R8 zoning district and partially within the Special Grand Concourse Preservation District; and

WHEREAS, the applicant states that, pursuant to ZR § 122-30, the enlargement of a community facility building within the Special Grand Concourse Preservation District must comply with the bulk regulations of an R8X district; and

WHEREAS, Tax Lot 1 is divided by a zoning district boundary, pursuant to ZR § 122-70, the bulk regulations of the R8X district apply to the entire Zoning Lot; and

WHEREAS, the applicant proposes a total floor area of 378,874 sq. ft. (7.10 FAR) (the maximum permitted FAR in the R8X district is 6.0), and a street wall height of 92'-0" at the east and west elevations of the Hospital (a maximum of 85'-0" is permitted); and

WHEREAS, the proposed enlargement will have an average lot coverage of 74.4 percent (75 percent is the maximum permitted), and a lot coverage of 82.3 percent on a portion of the Zoning Lot which is subject to the corner lot regulations (a lot coverage of 80 percent is the maximum permitted in that portion of the Zoning Lot); therefore, a variance in the lot coverage requirements of ZR § 24-11 is

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necessary to permit the proposed enlargement; and

WHEREAS, the applicant represents that the variance request is necessitated by the programmatic needs of the Hospital, which seeks to expand its existing facilities and enhance the quality of its medical services to better meet increasing community demand for health care; and

WHEREAS, specifically, the applicant states that the following are the programmatic space needs of the Hospital: (1) to accommodate the increased demand for endoscopy, obstetrical/gynecological (“ob/gyn”), clinical/inpatient, ambulatory care, operating room, and radiology services; and (2) to provide additional space for nursing administration classrooms and storage; and

WHEREAS, as to patient demand, the applicant submitted information about the specific medical needs of the community, which encompasses the South Bronx neighborhoods of Highbridge-Morrisania, Hunts Point-Mott Haven, and the Central Bronx neighborhood of Crotona-Tremont, all with significant low income populations; and

WHEREAS, specifically, these communities are among the poorest in the nation and are federally designated as Medically Underserved Areas and Health Professional Shortage Areas; and

WHEREAS, the applicant states that more than one-third of the residents of these communities reported “fair” to “poor” overall health status, and notes that drug-related hospitalizations are three times higher than in New York City as a whole, mental health-related hospitalizations are 20 percent to 50 percent higher, and infant mortality rates are nearly 50 percent higher than the national average; and

WHEREAS, the applicant further states that the Hospital is the largest voluntary, not-for-profit health care system serving this community and that 231,500 individual patients were treated in 926,022 visits to the Hospital during 2006; and

WHEREAS, the applicant represents that the proposed enlargement will enable the Hospital to treat more than 76 additional patients per day and to provide additional nursing administrative classrooms and storage space; and

WHEREAS, the applicant further states that the services to be expanded must be integrated with the Hospital’s existing services, staff residences and support operations and that such services cannot be relocated to other locations within the Hospital due to a lack of space; and

WHEREAS, the applicant represents that as these services are provided within the existing main building, the Hospital must satisfy its programmatic needs by extending the first through sixth floors and the 11th floor of that building; and

WHEREAS, the applicant represents that the proposed enlargement requires the construction of additional floor area within the existing interior yard and over a loading dock on the northeast portion of the Zoning Lot, thereby necessitating a variance to the floor area and lot coverage requirements of ZR § 24-11; and

WHEREAS, the applicant further represents that the height of the sixth floor of the building to be enlarged is 12 feet, and the enlargement must be aligned with the floors of the existing building; and

WHEREAS, the applicant states that compliance with the street wall height regulations would limit the proposed sixth

floor to a ceiling height of five feet which would be insufficient to accommodate the classrooms or storage needs of the Hospital proposed for its sixth floor, and would not align with the existing building; and

WHEREAS, the applicant therefore seeks a variance of seven feet from the street wall height regulations of ZR §23-633 to permit construction of a sixth floor with a floor to ceiling height of 12 feet; and

WHEREAS, the applicant states that the need to enlarge the main Hospital building creates a practical difficulty and unnecessary hardship complying with the bulk requirements of the subject zoning district because the existing development on the Zoning Lot exceeds the permitted floor area, therefore any proposed expansion necessarily increases the degree of non-compliance with the zoning requirements; and

WHEREAS, the applicant concludes that the floor area, lot coverage, and wall height relief is required to meet the programmatic imperatives of the Hospital; and

WHEREAS, in analyzing the applicant’s waiver requests, the Board notes at the outset that the Hospital, as a non-profit educational institution, may use its programmatic needs 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) (hereinafter, “*Cornell*”)); and

WHEREAS, the Board notes that the Hospital is a New York State chartered educational institution providing a significant educational program; and

WHEREAS, the applicant states that the Hospital is an affiliated primary teaching hospital of the Albert Einstein College of Medicine of Yeshiva University offering 14 graduate programs with approximately 300 resident students; and

WHEREAS, accordingly, the Board finds it appropriate to give deference to the Hospital’s programmatic needs; and

WHEREAS, the Board observes that such deference has been accorded to comparable institutions in numerous other Board decisions, certain of which were cited by the applicant in its submission; and

WHEREAS, here, the waivers will facilitate construction of a building that will meet the specific needs of the Hospital; and

WHEREAS, specifically, as set forth above, the applicant represents that the proposed enlargement will enable the Hospital to treat more than 76 additional patients per day; and

WHEREAS, in sum, the Board concludes that the need for the waivers to accommodate the Hospital’s programmatic needs has been fully explained and documented by the applicant; and

WHEREAS, based upon the above, the Board finds that the as-built condition of the Zoning Lot, when considered in conjunction with the programmatic need of the Hospital to

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increase its services, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Hospital is a not-for-profit organization and the proposed development will be in furtherance of its mission; and

WHEREAS, the applicant represents that the proposed 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 further represents that the bulk of the proposed project is compatible with that of the immediate area surrounding the subject site, noting that the area is developed with a mix of medium to high density institutional and residential buildings; and

WHEREAS, specifically, the applicant states that east of the subject site is a 20-story Hospital staff residence and a future nine-story ambulatory care facility and, to its north on Selwyn Avenue and East 173rd Street are six-story multiple dwelling buildings; and

WHEREAS, the applicant states the additional floor area will be distributed across the Zoning Lot thereby reducing the impact of the increased bulk; and

WHEREAS, the applicant further states that the proposed extensions of the first through sixth floors into the interior portion of the lot will have a minimal impact on the surrounding community, due to their limited height and location in the interior of the Zoning Lot; and

WHEREAS, the applicant represents that the impact on neighborhood character from the extension of the second through sixth floors on the northeast corner of the Zoning Lot will be similarly limited, given the height of the proposed enlargement and its location at least 60 feet from the nearest affected property; and

WHEREAS, the applicant further represents that the impact of the proposed enlargement on the surrounding area is also limited by its location on a block bounded by very wide streets, as the Grand Concourse to the west of the site has a width of 182 feet and Mount Eden Parkway, to its south, has a width of 185 feet; and

WHEREAS, the Board notes that because the proposed enlargement will be located at the intersection of two wide streets, the floor area and height non-compliances will have minimal impact and that the lot coverage waiver should have limited to no impact, given that it will enable the extension of the existing building into an interior portion of the subject site which is surrounded by other portions of the existing main building; and

WHEREAS, the proposed uses of the enlarged floor area conform to the use regulations for community facilities in the underlying R8 district; 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 Hospital and the constraints of the subject site; and

WHEREAS, the applicant represents that the proposed expansion will create a minimum degree of non-compliance with the floor area, lot coverage and street wall height regulations of the Zoning Resolution; and

WHEREAS, specifically, the applicant states that the proposed floor area ratio of 7.10 is approximately 18 percent above the permitted FAR, and

WHEREAS, the applicant notes that the Hospital's Zoning Lot is within an R8 district but because it is mapped within the Special Grand Concourse Preservation District, the maximum FAR is reduced from 6.5 to an FAR of 6.0; if the R8 zoning regulations were applied, the floor area would exceed the permitted floor area by only ten percent; and

WHEREAS, the proposed street wall height of 92 feet is only seven feet greater than the maximum street wall height permitted, and the total lot coverage of 74.4 percent is below the maximum permitted lot coverage, but since a portion of the site is deemed to be a corner with a lot coverage of 82.3 percent, the proposed lot coverage of the subject site is considered to be 2.3 percent greater than is permitted; and

WHEREAS, additionally, the Board finds that this proposal is the minimum necessary to afford the owner relief, since the proposed enlargement is designed to address the Hospital's programmatic needs; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

WHEREAS, the project is classified as an Unlisted action pursuant to Section 617 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. 09BSA022X, dated December 4, 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, 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

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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 R8X zoning district, the proposed enlargement of a 17-story building for the Bronx-Lebanon Hospital Medical College to be occupied by community facility use (Use Group 4), on a site located partially within an R8 zoning district and partially within the Special Grand Concourse Preservation District, which does not comply with zoning requirements concerning floor area, lot coverage, and wall height, contrary to ZR §§ 24-11 and 24-633, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 10, 2008" – (10) sheets; and *on further condition*:

THAT the enlarged building will have the following parameters: a total floor area of 378,874 sq. ft., and FAR of 7.10, an overall lot coverage of 74.4 percent and a lot coverage of 82.3 percent on the portion of the Zoning Lot located within 100 feet of the intersection of Mt. Eden Parkway and Selwyn Avenue and within 100 feet of the intersection of East 173rd Street and Selwyn Avenue; and a street wall height of 92 feet, 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;

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, February 10, 2009.

289-08-BZ

CEQR #09-BSA-046K

APPLICANT – Dennis D. Dell'Angelo, for Ephraim Nierenberg, owner.

SUBJECT – Application November 21, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (23-141); side yards (23-461); and less than the required rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 966 East 23rd Street, west side of East 23rd, 220' north of Avenue J, Block 7586, Lot 75, 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, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown.....2

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated October 30, 2008, acting on Department of Buildings Application No. 301760912, reads:

1. Proposed FAR and OSR constitutes an increase in the degree of existing non-compliance contrary to Section 23-141 of the NYC Zoning Resolution.
2. Proposed horizontal enlargement provides less than the required side yards contrary to ZR Section 23-46 and less than the required rear yard contrary to ZR Section 23-47;" and

WHEREAS, this is an application under Z.R. §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, open space ratio, and side and rear yards, contrary to Z.R. §§ 23-141, 23-46, and 23-47; and

WHEREAS, a public hearing was held on this application on January 13, 2009 after due notice by publication in *The City Record*, and then to decision on February 10, 2009; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins 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 23rd Street, between Avenue I and Avenue J, in an R2 zoning district; and

WHEREAS, on July 26, 2005, under BSA Cal. No. 392-04-BZ, the Board granted a special permit to permit the enlargement of the existing single-family home; and

WHEREAS, the owner declined to build pursuant to the BSA-approved plans and instead has filed the subject application seeking approval of the revised plans; 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 2,121 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 approximately 2,121 sq. ft. (0.53 FAR) to approximately 3,862 sq. ft. (0.97 FAR); the maximum floor area permitted is 2,000 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 proposed enlargement will maintain the existing non-complying side yard with a width of 4'-0" along the northern lot line (two side yards, each with a minimum width of 5'-0" are 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 which

MINUTES

portions of the original home were being retained; and

WHEREAS, in response, the applicant submitted revised plans showing the portions of the existing home that were being retained; 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 Z.R. § 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 floor area, open space ratio, and side and rear yards, contrary to Z.R. §§ 23-141, 23-46, and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 14, 2008"-(9) sheets and "January 23, 2009"-(3) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of approximately 3,862 sq. ft. (0.97 FAR); an open space ratio of 61 percent; a side yard with a minimum width of 4'0" 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 confirm that the portions of the existing building shall be retained as illustrated on the BSA-approved plans; and

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 10, 2009.

63-08-BZ

APPLICANT – Eric Palatnik for Royal Palace, lessee. Manton Holding , owner

SUBJECT – Application March 27, 2008 – Special Permit (§73-244) to legalize an eating and drinking establishment with entertainment and a capacity of more than 200 persons with dancing within a C4-2 zoning district.

PREMISES AFFECTED – 116-33 Queens Boulevard, Between 77th and 78th Avenues, Block 2268, Lot 23, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Charlotte Picot, George Megrath, Carole Keit, Nancy Jorisch, Ameilia M. Clancy and James Messemer.

ACTION OF THE BOARD – Laid over to March 31, 2009, at 1:30 P.M., for continued hearing.

133-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Pilot Realty Co., owner.

SUBJECT – Application April 25, 2008 – Special Permit (§§73-48 & 73-49) to allow rooftop parking above the first floor of an existing one and two-story commercial building and waive limitation on number of vehicles in a group parking facility, located in an M1-1 zoning district.

PREMISES AFFECTED – 1601 Bronxdale Avenue, northeast side of Bronxdale Avenue between Pierce and Van Nest Avenues, Block 4042, Lot 200, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to March 17, 2009, at 1:30 P.M., for continued hearing.

216-08-BZ

APPLICANT – Eric Palatnik, P.C., for Valeri Gerval, owner.

SUBJECT – Application August 22, 2008 – Special Permit (§73-622) In-Part Legalization for the enlargement and modification of a single family home. This application seeks to vary floor area, open space and lot coverage (§23-141) and side yard (§23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 1624 Shore Boulevard, Shore Boulevard and Oxford Street, Block 8757, Lot 88, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to March 17, 2009, at 1:30 P.M., for continued hearing.

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223-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Joseph Maza, owner.

SUBJECT – Application August 29, 2008 – Variance (§72-21) to permit a commercial development (local retail, use group 6) within an R3-2 (SRD) zoning district.

PREMISES AFFECTED – 4553 Arthur Kill Road, west side of Arthur Kill Road, 142' south of the intersection with Kreisler Street, Block 7596, Lot 250, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Hiram A. Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Hinkson and Commissioner Montanez.....3

Negative:.....0

Absent: Vice-Chair Collins and Commissioner Ottley-Brown2

ACTION OF THE BOARD – Laid over to March 3, 2009, at 1:30 P.M., for decision, hearing closed.

228-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sephardic Mikvah Israel by Isaac Hidary, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) to permit the construction of a one-story mikvah (ritual bath). The proposal is contrary to ZR §§ 24-34 (front yards) and 24-35 (side yards). R3-2 district.

PREMISES AFFECTED – 2802 Avenue R, a/k/a 1801-1811 East 28th Street, southeast corner of Avenue R and East 28th Street, Block 6834, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman, Rabbi David Maslaton, Renell Maslaton, Rabbi David Cohen, Martin Shamula, Yaacov Benn Heim, Judy Shacalo, Aileen Nachun, Moshe Nachum, Ben Picciotto, Meyer David, Joey Nasar and David Ozelrey. For Opposition: Eric Palatnik, Stuart Klein, M. Cohen, Wadih Pharum, Sharon S., Samuel Levy, Joseph H. Setaro, Marie Poplaro, Anthony Giacobbe and Ed Jaworski.

ACTION OF THE BOARD – Laid over to March 17, 2009, at 1:30 P.M., for continued hearing.

253-08-BZ

APPLICANT – Law Office of Fredrick A. Becker for Paula Digrazia and Lisa Tapani, owner.

SUBJECT – Application October 15, 2008 – Variance (§72-21) to legalize a prior enlargement at the rear of the home and to allow for a new enlargement to an existing single family home on a narrow zoning lot. This variance seeks to vary floor area ratio, open space lot coverage (§23-141(b)); side yards (§23-461(a)) & (§23-48) and less than the required rear yard (§23-47) in an R-4 zoning district.

PREMISES AFFECTED – 2623 East 11th Street, East side of East 11th Street between Avenue Z and William Court, Block 7455, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to February 24, 2009, at 1:30 P.M., for continued hearing.

275-08-BZ

APPLICANT – Eric Palatnik, P.C., for South Side House LLC, owner.

SUBJECT – Application November 20, 2008 – Special Permit (§73-36) to allow a physical culture establishment on the ground floor of an existing building. The proposal is contrary to ZR §42-10. M1-2/R6 (MX8) district.

PREMISES AFFECTED – 98 South 4th Street, south side of South 4th Street, between Bedford Avenue and Berry Street, Block 2443, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Administration: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Laid over to March 17, 2009, at 1:30 P.M., for continued hearing.

276-08-BZ

APPLICANT – Alfonso Duarte, for Kesey LLC, owner; Beljanski Wellness Center Inc., lessee.

SUBJECT – Application November 12, 2008 – Special Permit (§73-36) to allow a physical culture establishment on the sixth floor in a seven-story office building. The proposal is contrary to ZR §32-10. C5-2 district.

PREMISES AFFECTED – 150 East 55th Street, south side, 155' east of Lexington Avenue, Block 1309, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Alfonso Duarte, Wojciech Oktawiec and Kevin McCarthy.

ACTION OF THE BOARD – Laid over to March 17, 2009, at 1:30 P.M., for continued hearing.

291-08-BZ

APPLICANT – Moshe M. Friedman, for Eva Hershovic, owner.

SUBJECT – Application November 24, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area ratio (§23-141(a)) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 3141 Bedford Avenue, West side 140' south of the intersection of Bedford Avenue & Avenue J, Block 7607, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe Friedman.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Commissioner Hinkson and

MINUTES

Commissioner Montanez.....3
Negative:.....0
Absent: Vice-Chair Collins and Commissioner Ottley-
Brown2

ACTION OF THE BOARD – Laid over to March 3,
2009, 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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March 6, 2009

DIRECTORY

MEENAKSHI SRINIVASAN, *Chair*

CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

SUSAN M. HINKSON

EILEEN MONTANEZ

Commissioners

Jeffrey Mulligan, *Executive Director*

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23-09-BZ

114 Amherst Street, West side of Amherst Street between Hampton Avenue and Oriental Boulevard., Block 8732, Lot(s) 71, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of an existing two family home to be converted to a single family home. This application seeks to vary open space, lot coverage and floor area (23-141(b)) and rear yard (23-47) in an R3-1 zoning district.

24-09-BZ

78-10 164th Street, Located on the western side of 164th Street between 78th Avenue and 78th Road., Block 6851, Lot(s) 9,11,12,23,24, Borough of **Queens, Community Board: 8**. Variance to allow the construction of a three-story addition to an existing health care facility, contrary to use regulations

25-09-BZ

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26-09-BZ

97 Crooke Avenue, North side of Crooke Avenue, approximately 164 feet west of Ocean Avenue., Block 5059, Lot(s) 51, Borough of **Brooklyn, Community Board: 14**. Variance (72-21) to permit the construction of a nine-story community facility building. The proposal is contrary to ZR section 24-36. R7-1 district.

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126 First Place, South side of First Place, 300 feet east of intersection of First Place and Court Street., Block 459, Lot(s) 17, Borough of **Brooklyn, Community Board: 6**. Extension of Time (11-332) to complete construction under the prior zoning district.

28-09-BZ

133 Taaffe Place, East side of Taaffe Place 142'-2.5" north of intersection of Taaffe Place and Myrtle Avenue., Block 1897, Lot(s) 04, Borough of **Brooklyn, Community Board: 3**. Variance to permit a multiple dwelling, contrary to use regulations.

29-09-BZ

44 Brunswick Street, Northwest corner of Brunswick Street and Richmond Hill Road., Block 2397, Lot(s) 212, Borough of **Staten Island, Community Board: 2**. Variance to allow a synagogue and Rabbi's residence, contrary to bulk regulations.

30-09-BZ

136-33 37th Avenue, North side of 37th Avenue between Main Street and Union Street., Block 4977, Lot(s) 95, Borough of **Queens, Community Board: 7**. Special Permit (73-44) to reduce parking spaces for commercial and medical offices uses.

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

CALENDAR

MARCH 17, 2009, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 17, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

316-73-BZ

APPLICANT – Vassalotti Associates Architects, for 31-02 68th Realty Corporation, owner.

SUBJECT – Application February 9, 2009 – Extension of Term for the continued operation of a (UG16) Gasoline Service Station (Husky) in an R4 zoning district which expired on January 8, 2009.

PREMISES AFFECTED – 31-02 68th Street, south west corner of 68th Street and 31st Avenue, Block 1138, Lot 27, Borough of Queens.

COMMUNITY BOARD #3BX

1038-80-BZ

APPLICANT – Davidoff Malito & Hutcher, LLP, for Feinrose Downing LLC, owner; Expressway Arcade Corporation, lessee.

SUBJECT – Application February 5, 2009 – Extension of Term of a Special Permit for the continued operation of a UG15 Amusement Arcade (Smile Arcade) in an M2-1 zoning district which expired on January 6, 2009.

PREMISES AFFECTED – 31-07/09/11 Downing Street, Whitestone Expressway, Block 4327, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

336-98-BZ & 337-98-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP for 312 Flatbush Avenue LLC, owner; AGT Crunch, lessee.

SUBJECT – Application December 31, 2008 – Application filed pursuant to §73-11to Extend the term of a special permit granted pursuant to §73-36 authorizing a physical culture establishment (PCE) (Crunch Fitness), extend the PCE to include additional area in the cellar and on the first floor, permit a change in operator and extend the time to obtain a certificate of occupancy. The subject site is located in a C2-4 zoning district.

PREMISES AFFECTED – 312/18 & 324/34 Flatbush Avenue, 157' west of the northwest corner of the intersection of Flatbush Avenue and Sterling Place, Block 1057, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD # 6BK

252-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Mary Claire & James Ryan, owners.

SUBJECT – Application October 14, 2009 – Reconstruction and enlargement of an existing single family home located within the bed of a mapped street contrary to General City Law Section 35. R4 zoning District.

PREMISES AFFECTED – 11 Clinton Walk, west side Clinton Walk at intersection of 12th Avenue and Beach 214th Street, Block 16350, Lot p/o 300, Borough of Queens.

COMMUNITY BOARD #14Q

292-08-A

APPLICANT – Robert Cunningham, for Robert Cunningham, lessee.

SUBJECT – Application March 17, 2009 – An Appeal Challenging Department of Buildings interpretation that Section 23-49-(a) Special Provisions for Party or Side Lot lines Walls is not applicable to this site. R3-1 Zoning District.

PREMISES AFFECTED – 123 87th Street, north side of 87th Street, 480' west from northwest corner of 87th Street and Ridge Boulevard, Block 6042, Lot 67, Borough of Brooklyn.

COMMUNITY BOARD #10BK

2-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Eileen Witschger, lessee.

SUBJECT – Application January 5, 2009 – Proposed reconstruction and enlargement of a single family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 936 Bayside, south side Bayside east side of the mapped Beach 210th Street, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

MARCH 17, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 17, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

287-06-BZ

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

SUBJECT – Application October 27, 2006 – Variance (§ 72-21) to allow a residential/community facility building contrary to yard regulations. R5 zoning district.

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

COMMUNITY BOARD #1Q

265-08-BZ

APPLICANT – Mark A. Levine for 70 Wyckoff Avenue LLC, owner.

SUBJECT – Application October 28, 2008 – Variance pursuant to §72-21 to allow for the legalization of residential units located in a manufacturing building, contrary to §42-00; M1-1 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

312-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Leah Friedman and Michael Friedman, owners.

SUBJECT – Application December 18, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area and open space (23-141), side yard (23-461) and less than the minimum required rear yard (23-47) in an R2 zoning district.

PREMISES AFFECTED – 1134 East 23rd Street, west side of East 23rd between Avenue K and Avenue L, Block 7622, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

316-08-BZ

APPLICANT – Bryan Cave LLP/Robert S. Davis, for The Simons Foundation, Inc., owner.

SUBJECT – Application December 23, 2008 – Variance (§72-21) to permit the development of a three- and eight-story school building. The proposal is contrary to ZR Section 35-24c (minimum base height). R9A with a C1-5 district overlay.

PREMISES AFFECTED – 345-349 Second Avenue, a/k/a 247-249 East 20th Street, northwest corner of East 20th Street and Second Avenue, Block 901, Lots 26, 27 & 28, Borough of Manhattan.

COMMUNITY BOARD #6M

3-09-BZ

APPLICANT – Duane Morris LLP, by Jon Popin, for Lutheran Social Services of Metropolitan New York, Inc., owner.

SUBJECT – Application January 8, 2009 – Special Permit (§73-19) to allow the conversion of an existing two-story warehouse into a high school with sleeping accommodations. The proposal is contrary to the use requirements of the underlying M1-1 district.

PREMISES AFFECTED – 831 Eagle Avenue, East Avenue, Eagle 159th Street, St. Anns Avenue, East 161st Street, Block 2619, Lot 27, Borough of Bronx.

COMMUNITY BOARD #1BX

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 24, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

617-56-BZ

APPLICANT – Kenneth H. Koons, R.A., for John O'Dwyer, owner.

SUBJECT – Application December 4, 2008 – Extension of Term/waiver for the continued use of a (UG8) parking lot which expired on September 27, 2007 in an R6 (C1-3, C2-3) zoning district.

PREMISES AFFECTED – 3120 Albany Crescent, east side, 72.7' north of West 231st Street, Block 3267, Lot 15, Borough of Bronx.

COMMUNITY BOARD #15BX

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 waiver of the Rules of Practice and Procedure, a reopening, and an extension of term of a previously granted variance for a parking lot (Use Group 8) with parking and storage of more than five vehicles, which expired on September 27, 2007; and

WHEREAS, a public hearing was held on this application on January 13, 2009, after due notice by publication in *The City Record*, with a continued hearing on February 10, 2009, and then to decision on February 24, 2009; and

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

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

WHEREAS, the site is located on the east side of Albany Crescent, between West 231st Street and West 233rd Street, within an R6 (C1-3, C2-3) zoning district; and

WHEREAS, the site is occupied by a parking lot with 66 spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 9, 1957 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by a parking lot with parking and storage of motor vehicles for a term of five years; and

WHEREAS, subsequently, the grant has been amended and the term extended several times; and

WHEREAS, most recently, on January 13, 1998, the grant was extended for a term of ten years, which expired on September 27, 2007; and

WHEREAS, the applicant now seeks to extend the term of the variance for an additional ten years; and

WHEREAS, the applicant represents that there have not been any changes to the site; and

WHEREAS, at hearing, the Board requested that the applicant screen the subject site from the surrounding residential neighborhood; and

WHEREAS, in response, the applicant submitted a revised site plan depicting the installation of vinyl slat enclosures in the existing chain link fence along the northern, southern and western boundaries of the parking lot, creating a 50 percent opaque effect; and

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

WHEREAS, based upon its review of the 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 April 9, 1957, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from September 27, 2007, to expire on September 27, 2017, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received January 27, 2009”- (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on September 27, 2017;

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

THAT a new certificate of occupancy shall be obtained by August 24, 2009;

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. 210076745)

Adopted by the Board of Standards and Appeals, February 24, 2009.

218-96-BZ

APPLICANT – Mitchell S. Ross, Esq. for The Armenian Apostolic Church.

SUBJECT – Application January 16, 2009 – Extension of Time to complete construction/waiver for a one story rear enlargement above the basement of an existing community

MINUTES

use facility (The Armenian Prelacy), which expired on January 11, 2007, located in an R8B zoning district.

PREMISES AFFECTED – 138 East 39th Street, South side, 123.4 feet east of Lexington Avenue, Block 894, Lot 60, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Mitchell Ross.

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, an extension of time to complete construction of a one-story rear enlargement above the basement of an existing Use Group 4 house of worship/community center, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on February 10, 2009 after due notice by publication in *The City Record*, and then to decision on February 24, 2009; 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 south side of East 39th Street between Lexington Avenue and Third Avenue, within an R8B zoning district; and

WHEREAS, this application is submitted on behalf of the Eastern Prelacy of the Armenian Apostolic Church (the “Church”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 20, 1997 when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit a one-story enlargement above the basement floor at the rear of an existing community facility building; and

WHEREAS, on December 11, 2001, under the subject calendar number, the Board extended the time to complete construction of the enlargement, which expired on December 11, 2003; and

WHEREAS, most recently, on January 11, 2005, the Board extended the time to complete construction of the enlargement and obtain a certificate of occupancy, which expired on January 11, 2007; and

WHEREAS, the applicant represents that, due to continued and unforeseeable adverse economic conditions, the construction has not been completed and the filing of an application for a certificate of occupancy has been delayed; and

WHEREAS, the applicant states that the Church has now obtained firm funding commitments from donors able to undertake the expense of construction; and

WHEREAS, thus, the applicant now requests extensions of time to complete construction and 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 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 20, 1997, so that as amended this portion of the resolution shall read: “to grant a four year extension of time to complete construction and obtain a certificate of occupancy, to expire on February 24, 2013; *on condition*:

THAT construction shall be substantially complete by February 24, 2013;

THAT a certificate of occupancy shall be obtained by February 24, 2013;

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. 101462347)

Adopted by the Board of Standards and Appeals, February 24, 2009.

124-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for BLDG Management Company, Incorporated; New York Sports Club, lessee.

SUBJECT – Application November 8, 2008 – Extension of the term of a previously granted special permit allowing the operation of a physical culture establishment health club in portions of the cellar and first floor of an existing twenty story commercial building located in a C6-6 (Mid) zoning district.

PREMISES AFFECTED – 1372 Broadway, Easterly side of Broadway between West 37th and West 38th Streets, Block 813, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair 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 term of a previously granted special permit for a physical culture establishment (“PCE”), which expires on October 26, 2009; and

WHEREAS, a public hearing was held on this

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application on January 27, 2009, after due notice by publication in *The City Record*, and then to decision on February 24, 2009; and

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

WHEREAS, Community Board 5, Manhattan, states that it has no objection to this application; and

WHEREAS, the PCE is located on the east side of Broadway between West 37th Street and West 38th Street, in a C6-6 zoning district within the Special Midtown District; and

WHEREAS, the site is located in portions of the cellar and first floor of a 20-story commercial building; and

WHEREAS, the PCE has a total floor area of 16,191 sq. ft., consisting of 12,033 sq. ft. on the cellar level and 4,158 sq. ft. on the first floor; 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 to permit a physical culture establishment 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 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 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 the previously approved plans; and *on further condition*:"

THAT the term of this grant shall expire on October 26, 2019;

THAT signage shall comply with C6 zoning 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. 102108247)

Adopted by the Board of Standards and Appeals, February 24, 2009.

74-49-BZ

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

SUBJECT – Application – Pursuant to (§11-411) of the Zoning Resolution to request an extension of the term of a

variance previously granted allowing a parking garage located in an M1-6 zoning district. The application seeks an amendment to increase the number of parking spaces and a waiver of the BSA's Rules of Practice and Procedure for an extension of time to obtain a Certificate of Occupancy.

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: Elizabeth Safian and Calvin Wong.

For Opposition:

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 17, 2009, at 10 A.M., for decision, hearing closed.

217-03-BZ

APPLICANT – Sheldon Lobel, P.C., for 140 Pennsylvania Avenue, LLC, owner.

SUBJECT – Application July 17, 2008 – Extension of Time to Complete Construction of a previously granted variance for the proposed expansion of a one story and cellar building in an R-5 zoning district.

PREMISES AFFECTED – 142 Pennsylvania Avenue, southeast corner of Pennsylvania Avenue and Liberty Avenue, Block 3703, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to March 31, 2009, at 10 A.M., for continued hearing.

885-78-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 120 West 25th Realty Company, LLC, owner.

SUBJECT – Application November 25, 2008 – Amendment to a previously granted Variance (§72-21) to allow the transfer of development rights from the subject site (Lot 53) to an adjoining site (Lot 49) in an M1-6 zoning district.

PREMISES AFFECTED – 120 West 25th Street, south side of West 25th Street, between Sixth and Seventh Avenues, Block 800, Lot 53, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Paul Selver.

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 17, 2009, at 10 A.M., for decision, hearing closed.

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771-89-BZ

APPLICANT – Mark D. Lipton, AIA, for William R. Burns, owner.

SUBJECT – Application January 14, 2008 – Extension of Term/waiver of a previously granted Variance (§72-21) to allow the change of use from a single family dwelling to (UG6) office use with accessory parking in an R3-2 zoning district which expired on September 18, 2000.

PREMISES AFFECTED – 2078 Richmond Avenue, west side of Richmond Avenue, 139.09’ south of Rivington Avenue, Block 2102, Lot 98, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Mark D. Lipton.

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 17, 2009, at 10 A.M., for decision, hearing closed.

200-01-BZ

APPLICANT – Davidoff Malito & Hutcher LLP by Ron J. Mandel, Esq., for Browne Associates, owner; Hillside Manor Rehabilitation and Extended Care Center, lessee.

SUBJECT – Application January 29, 2009 – Extension of Time to complete construction and to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) for the enlargement of an existing 11-story and penthouse rehabilitation/long term care facility (Hillside Manor), in an R6A/C2-4 Special Downtown Jamaica District zoning district, which expired on January 11, 2009.

PREMISES AFFECTED – 182-15 Hillside Avenue, northeast corner of Hillside Avenue and Avon Street, Block 9950, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Howard 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 17, 2009, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

19-08-BZY

APPLICANT – Edward Lauria, P.E., for Nicholas Valentino, owner.

SUBJECT – Application January 18, 2008 – Extension of

time to complete construction (§ 11-332) of a minor development commenced under the prior zoning district regulations. C4-1 SRD

PREMISES AFFECTED – 3871 Amboy Road, north side of Amboy Road, west of Greaves Avenue, Block 4633, Lot 294, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES – None.

ACTION OF THE BOARD – Application granted.

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 3, 2009, after due notice by publication in *The City Record*, and then to decision on February 24, 2009; and

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

WHEREAS, the subject site is located on the north side of Amboy Road, between Greaves Avenue and Giffords Lane, in a C4-1 zoning district within the Special South Richmond Development District; and

WHEREAS, the subject site has a frontage of approximately 62’-1” and a depth of approximately 243’-2”, and a total lot area of 16,781 sq. ft.; and

WHEREAS, the site is proposed to be developed with a four-story 17-unit residential building with commercial office use in the cellar and accessory parking (the “Building”); and

WHEREAS, the Building is proposed to have a total floor area of 19,984 sq. ft. (1.19 FAR); and

WHEREAS, the development complies with the former C4-1 zoning district parameters; and

WHEREAS, on October 20, 2005, New Building Permit No. 500805667-01-NB (hereinafter, the “New Building Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the Building; and

WHEREAS, however, on December 21, 2005 (hereinafter, the “Enactment Date”), the City Council voted to adopt ZR § 32-433, prohibiting ground floor residential uses in C4 zoning districts in Staten Island; and

WHEREAS, as of that 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 the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is still ongoing, the applicant

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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 January 29, 2009, DOB stated that the New Building Permit was lawfully issued on October 20, 2005, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, on March 7, 2008, DOB conducted an audit of the New Building Permit and issued a notice of intent to revoke the permit (“Letter of Intent”) on March 10, 2008; and

WHEREAS, on July 28, 2008, DOB rescinded the Letter of Intent, noting that the applicant had resolved all of DOB’s objections; 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 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 December 21, 2007 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes 100 percent of the foundation, structural steel, drywells, masonry, roofing, and sewer work, as well as the majority of all remaining work items associated with windows and plumbing; and

WHEREAS, in support of this statement the applicant has submitted the following: construction documents indicating the work completed; a breakdown of the construction costs by line item and percent complete; copies of cancelled checks; and photographs of the development’s interior and exterior; 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 December 21, 2007; and

WHEREAS, the Board notes that, based on visual inspections, a substantial amount of physical construction has been completed; and

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are \$2,086,500, or approximately 51 percent of the \$4,057,800 cost to complete; and

WHEREAS, as noted, the applicant has submitted financial records 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

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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. 500805667-01-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 February 24, 2011.

Adopted by the Board of Standards and Appeals, February 24, 2009.

270-08-A

APPLICANT – NYC Department of Buildings.

OWNER OF RECORD: Johnny Ubiles.

SUBJECT – Application November 5, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 200983962F issued on February 8, 2008 as it was issued in error due to failure to comply with Special Flood Hazard Area requirements as set forth in the Building Code and Department of Buildings TPPN #1/04. R3A Zoning District. PREMISES AFFECTED – 221 Betts Avenue (aka 221B Betts Avenue) west side of Betts Avenue, north of Gildersleeve Avenue, Block 3460, Lot 58, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES – None.

ACTION OF THE BOARD – Application granted

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 from the Department of Buildings (“DOB”) seeking to revoke Certificate of Occupancy No. 200983962F (the “CO”) for a home at the subject site for non-compliance with Special Flood Hazard Area requirements of the Administrative Code of the City of New York (the “Building Code”) and Technical Policy and Procedure Notice # 1/04 (the “TPPN”); and

WHEREAS, a public hearing was held on this application on February 10, 2009, after due notice by publication in *The City Record*, and then to decision on February 24, 2009; and

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

WHEREAS, the owner of 221B Betts Avenue testified at hearing; and

WHEREAS, the subject premises is located on the west side of Betts Avenue, north of Gildersleeve Avenue; and

WHEREAS, the site is occupied by a two-story with cellar two-family home classified as Building Occupancy Group J-3; and

WHEREAS, DOB states that the subject premises is located in Special Flood Hazard Area, Zone V, as identified in Reference Standard RS 4-4 and Federal Emergency Management Agency Flood Insurance Rate Map Index No. 3604970022B; and

WHEREAS, the instant appeal concerns whether the subject premises complies with the requirements of the Building Code and TPPN # 1/04 for a new building constructed in a Special Flood Hazard Area; and

Procedural History

WHEREAS, New Building Job Application No. 200983962 (the “Job Application”) for the construction of a two-story with cellar, two-family home at the subject premises was received by DOB on August 30, 2005; and

WHEREAS, DOB issued a permit for the construction of the subject home on December 20, 2005; and

WHEREAS, DOB issued a Temporary Certificate of Occupancy on November 15, 2006 and a final Certificate of Occupancy on February 4, 2008; and

WHEREAS, on September 5, 2008, DOB determined that the plans failed to comply with Special Flood Hazard Area requirements of the Building Code and issued a “15-Day Notice of Intention to Initiate Proceedings to Revoke Certificates of Occupancy” to the owner and architect of the subject premises; and

WHEREAS, DOB states that neither the owner nor the architect of the subject home demonstrated that the findings of the 15-day notice were inaccurate and further, that the previously approved plans have not been amended to comply with the requirements of the Building Code; and

WHEREAS, on October 31, 2008, DOB filed the instant appeal seeking the revocation of the permit; and

Issues Presented
WHEREAS, DOB contends that the permit for the Job Application was issued in error because the subject home fails to comply with the requirements of Building Code §§ 27-317(a), 27-317(f), 27-316.1(c), 27-316, 27-316.1(e), and 27-316(g) and with TPPN #1/04 concerning new construction in Special Flood Hazard Areas; and

Compliance with Building Code § 27-317(a)
WHEREAS, pursuant to Building Code § 27-317(a), a building in Occupancy Group J-3 may not be constructed or altered so as to have the lowest floor below the base flood elevation; and

WHEREAS, TPPN #1/04 (2) states that the floor level of any space below the base flood elevation shall be no lower than the level of the adjacent grade on at least one side of a building; and

WHEREAS, DOB states that the plans submitted with the Job Application indicate that the cellar level, which is shown as the lowest floor, has an elevation of 6.0’ (Bronx

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Borough datum) which is lower than the base flood elevation of 12.39' (Bronx Borough datum), and is also below the 8'-0" level of the adjacent grade (Bronx Borough datum); and

WHEREAS, DOB contends that the construction of the subject home therefore does not comply with Building Code § 27-317(a) or with TPPN #1/04; and

Compliance with Building Code § 27-317(f)

WHEREAS, pursuant to Section 27-317(f) of the Building Code, permitted structural supports below the base flood elevation in a Special Flood Hazard Area, Zone V, are limited to anchored pilings or columns; and

WHEREAS, DOB states that an enclosure in the space below the base flood elevation is permitted only if such a space is constructed with open lattice "breakaway" walls that are not part of the structural support of the building to which they are attached and that are designed to collapse under specific forces without causing damage to the elevated portion of the building or the supporting foundation system (see Building Code § 27-317(f)(2); see also TPPN # 1/04(3)); and

WHEREAS, DOB contends that the plans submitted with the Job Application indicate that structural supports below the base flood elevation are constructed of solid, non-breakaway walls, rather than the open lattice breakaway walls required by Building Code § 27-317(f); and

WHEREAS, pursuant to TPPN #1/04(4), the certificate of occupancy for buildings within Special Flood Hazard Area, Zone V, must contain language requiring open levels subject to flooding to remain open except to the extent that they are provided with open lattice breakaway walls; and

WHEREAS, DOB represents that the Certificate of Occupancy lacks the language required by TPPN 1/04(4); and

WHEREAS, DOB contends that the construction of the subject home and the language of the Certificate of Occupancy therefore do not comply with Building Code § 27-317(f) or with TPPN #1/04(3) and (4); and

Compliance with Building Code § 27-316

WHEREAS, pursuant to Building Code § 27-316, mechanical equipment and any floor space containing bathroom facilities must be elevated so that the bottom of the lowest horizontal structural element is at least as high as the base flood elevation; and

WHEREAS, the permitted uses of a space below the base flood elevation are parking of vehicles, building access, and building storage (see TPPN #1/04, Attachment A); and

WHEREAS, DOB states that the plans submitted with the Job Application indicate that mechanical equipment and bathrooms are located in the cellar of the subject premises, below the base flood elevation; and

WHEREAS, DOB contends that the construction of the subject home therefore does not comply with Building Code § 27-316 of the Building Code; and

Compliance with Building Code §§ 27-316.1(c), 27-316.1(e), and 27-316(g)

WHEREAS, pursuant to Building Code § 27-316.1(c); a job application for a building within a Special Flood Hazard

Area must contain a certification by a registered architect or licensed professional engineer that the heating, ventilation, air conditioning, plumbing, and electrical services are located or constructed so as to prevent water from entering or accumulating within the components during flooding; and

WHEREAS, pursuant to Building Code § 27-316.1(e), job applications for buildings within Zone V of a Special Flood Hazard Area must also contain a certification by a registered architect or licensed professional engineer that the design and methods of construction conform with reference standard RS 4-5 and with accepted standards of practice for meeting the requirements of Building Code § 27-317 (f); and

WHEREAS, DOB contends that the Job Application contains neither of the certifications required by Building Code §§ 27-316.1(c) and 27-316.1(e); and

WHEREAS, pursuant to Building Code § 27-316(g) and TPPN #1/04(1), a job application for a building within a Special Flood Hazard Area must also contain a Federal Emergency Management Agency "Elevation Certificate" certifying the elevation of the "lowest floor" of the proposed building; and

WHEREAS, DOB further contends that the Job Application contains no Elevation Certificate; and

WHEREAS, DOB contends that because the certifications required by Building Code §§ 27-316.1(c), 27-316.1(e), and 27-316(g) and by TPPN #1/04(1) were not included in the Job Application the permit for the subject home was issued erroneously; and

WHEREAS, because the permit for the subject home was issued erroneously, at hearing the Board questioned whether DOB is able to alert a homeowner that his or her building site is located in a Special Flood Hazard Area; and

WHEREAS, DOB responded that the agency was exploring steps to alert permit applicants that their properties are located in flood zones; and

WHEREAS, DOB contends that, because the construction of the subject home fails to comply with the requirements of Building Code §§ 27-317(a), 27-317(f), 27-316.1(c), 27-316, 27-316.1(e), and 27-316(g) and with TPPN #1/04 concerning new construction in Special Flood Hazard Areas, the Certificate of Occupancy must be revoked; and

WHEREAS, the Board notes 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, a court could find it inequitable to allow the government to repudiate its prior conduct, the Board is an administrative body and is not empowered to provide an equitable remedy (see *People ex rel. New York Tele. Co. v. Public Serv. Comm.*, 157 A.D. 156, 163 (3d Dep't 1913) (administrative body "ha[s] no authority to assume the powers of a court of equity"); see also *Faymor Dev. Co. v. Bd. of Sds. and Apps.*, 45 N.Y.2d 560, 565-567 (1978)); and

WHEREAS, the Board further notes that the owner submitted no evidence into the record refuting the contentions of DOB with respect to the alleged non-compliance with the Special Flood Hazard requirements;

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and

WHEREAS, based on the evidence in the record, the Board thus finds that the construction of the subject home is non-compliant with the Special Flood Hazard Area requirements of the Building Code and TPPN # 1/04.

Therefore it is Resolved that the application of the Commissioner of the Department of Buildings, dated October 31, 2008, seeking the revocation of Certificate of Occupancy No. 200983962F, is granted.

Adopted by the Board of Standards and Appeals, February 24, 2009.

271-08-A

APPLICANT – NYC Department of Buildings.

OWNER OF RECORD: Pedro Febres.

SUBJECT – Application November 5, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 200983962F issued on February 8, 2008 as it was issued in error due to failure to comply with Special Flood Hazard Area requirements as set forth in the Building Code and Department of Buildings TPPN #1/04 .R3A Zoning District. PREMISES AFFECTED – 221 A Betts Avenue, west side of Betts Avenue, north of Gildersleeve Avenue, Block 3460, Lot 59, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEARANCES – None.

ACTION OF THE BOARD – Appeal granted.

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 from the Department of Buildings (“DOB”) seeking to revoke Certificate of Occupancy No. 200983971F (the “Certificate of Occupancy”) for non-compliance with Special Flood Hazard Area requirements of the Administrative Code of the City of New York (the “Building Code”) and Technical Policy and Procedure Notice # 1/04 (the “TPPN”); and

WHEREAS, a public hearing was held on this application on February 10, 2009, after due notice by publication in *The City Record*, and then to decision on February 24, 2009; and

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

WHEREAS, the owner of 221A Betts Avenue (the “owner”) testified at hearing; and

WHEREAS, the subject premises is located on the west side of Betts Avenue, north of Gildersleeve Avenue; and

WHEREAS, the site is occupied by a two-story with cellar two-family home classified as Building Occupancy Group J-3; and

WHEREAS, DOB states that the subject premises is located in Special Flood Hazard Area, Zone V, as identified in Reference Standard RS 4-4 and Federal Emergency

Management Agency Flood Insurance Rate Map Index No. 3604970022B; and

WHEREAS, the instant appeal concerns whether the subject premises complies with the requirements of the Building Code and TPPN # 1/04 for a new building constructed in a Special Flood Hazard Area; and

Procedural History

WHEREAS, New Building Job Application No. 200983971 (the “Job Application”) for the construction of a two-story with cellar, two-family home at the subject premises was received by DOB on August 30, 2005; and

WHEREAS, DOB issued a permit for the construction of the subject home on December 20, 2005; and

WHEREAS, DOB issued a Temporary Certificate of Occupancy on November 15, 2006 and a final Certificate of Occupancy on February 4, 2008; and

WHEREAS, on September 5, 2008, DOB determined that the plans failed to comply with Special Flood Hazard Area requirements of the Building Code and issued a “15-Day Notice of Intention to Initiate Proceedings to Revoke Certificates of Occupancy” to the owner and architect of the subject premises; and

WHEREAS, DOB states that neither the owner nor the architect of the subject home demonstrated that the findings of the 15-day notice were inaccurate and further, that the previously approved plans have not been amended to comply with the requirements of the Building Code; and

WHEREAS, on October 31, 2008, DOB filed the instant appeal seeking the revocation of the permit; and

Issues Presented

WHEREAS, DOB contends that the permit for the Job Application was issued in error because the subject home fails to comply with the requirements of Building Code §§ 27-317(a), 27-317(f), 27-316.1(c), 27-316, 27-316.1(e), and 27-316(g) and with TPPN #1/04 concerning new construction in Special Flood Hazard Areas; and
Compliance with Building Code § 27-317(a)

WHEREAS, pursuant to Building Code § 27-317(a), a building in Occupancy Group J-3 may not be constructed or altered so as to have the lowest floor below the base flood elevation; and

WHEREAS, TPPN #1/04 (2) states that the floor level of any space below the base flood elevation shall be no lower than the level of the adjacent grade on at least one side of a building; and

WHEREAS, DOB states that the plans submitted with the Job Application indicate that the cellar level, which is shown as the lowest floor, has an elevation of 6.0’ (Bronx Borough datum) which is lower than the base flood elevation of 12.39’ (Bronx Borough datum), and is also below the 8’-0” level of the adjacent grade (Bronx Borough datum); and

WHEREAS, DOB contends that the construction of the subject home therefore does not comply with Building Code § 27-317(a) or with TPPN #1/04; and
Compliance with Building Code § 27-317(f)

WHEREAS, pursuant to Section 27-317(f) of the Building Code, permitted structural supports below the base

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flood elevation in a Special Flood Hazard Area, Zone V, are limited to anchored pilings or columns; and

WHEREAS, DOB states that an enclosure in the space below the base flood elevation is permitted only if such a space is constructed with open lattice “breakaway” walls that are not part of the structural support of the building to which they are attached and that are designed to collapse under specific forces without causing damage to the elevated portion of the building or the supporting foundation system (see Building Code § 27-317(f)(2); see also TPPN # 1/04(3)); and

WHEREAS, DOB contends that the plans submitted with the Job Application indicate that structural supports below the base flood elevation are constructed of solid, non-breakaway walls, rather than the open lattice breakaway walls required by Building Code § 27-317(f); and

WHEREAS, pursuant to TPPN #1/04(4), the certificate of occupancy for buildings within Special Flood Hazard Area, Zone V, must contain language requiring open levels subject to flooding to remain open except to the extent that they are provided with open lattice breakaway walls; and

WHEREAS, DOB represents that the Certificate of Occupancy lacks the language required by TPPN 1/04(4); and

WHEREAS, DOB contends that the construction of the subject home and the language of the Certificate of Occupancy therefore do not comply with Building Code § 27-317(f) or with TPPN #1/04(3) and (4); and
Compliance with Building Code § 27-316

WHEREAS, pursuant to Building Code § 27-316, mechanical equipment and any floor space containing bathroom facilities must be elevated so that the bottom of the lowest horizontal structural element is at least as high as the base flood elevation; and

WHEREAS, the permitted uses of a space below the base flood elevation are parking of vehicles, building access, and building storage (see TPPN #1/04, Attachment A); and

WHEREAS, DOB states that the plans submitted with the Job Application indicate that mechanical equipment and bathrooms are located in the cellar of the subject premises, below the base flood elevation; and

WHEREAS, DOB contends that the construction of the subject home therefore does not comply with Building Code § 27-316 of the Building Code; and
Compliance with Building Code §§ 27-316.1(c), 27-316.1(e), and 27-316(g)

WHEREAS, pursuant to Building Code § 27-316.1(c); a job application for a building within a Special Flood Hazard Area must contain a certification by a registered architect or licensed professional engineer that the heating, ventilation, air conditioning, plumbing, and electrical services are located or constructed so as to prevent water from entering or accumulating within the components during flooding; and

WHEREAS, pursuant to Building Code § 27-316.1(e), job applications for buildings within Zone V of a Special Flood Hazard Area must also contain a certification by a registered architect or licensed professional engineer that the design and methods of construction conform with reference

standard RS 4-5 and with accepted standards of practice for meeting the requirements of Building Code § 27-317 (f); and

WHEREAS, DOB contends that the Job Application contains neither of the certifications required by Building Code §§ 27-316.1(c) and 27-316.1(e); and

WHEREAS, pursuant to Building Code § 27-316(g) and TPPN #1/04(1), a job application for a building within a Special Flood Hazard Area must also contain a Federal Emergency Management Agency “Elevation Certificate” certifying the elevation of the “lowest floor” of the proposed building; and

WHEREAS, DOB further contends that the Job Application contains no Elevation Certificate; and

WHEREAS, DOB contends that because the certifications required by Building Code §§ 27-316.1(c), 27-316.1(e), and 27-316(g) and by TPPN #1/04(1) were not included in the Job Application the permit for the subject home was issued erroneously; and

WHEREAS, because the permit for the subject home was issued erroneously, at hearing the Board questioned whether DOB is able to alert a homeowner that his or her building site is located in a Special Flood Hazard Area; and

WHEREAS, DOB responded that the agency was exploring steps to alert permit applicants that their properties are located in flood zones; and

WHEREAS, DOB contends that, because the construction of the subject home fails to comply with the requirements of Building Code §§ 27-317(a), 27-317(f), 27-316.1(c), 27-316, 27-316.1(e), and 27-316(g) and with TPPN #1/04 concerning new construction in Special Flood Hazard Areas, the Certificate of Occupancy must be revoked; and

WHEREAS, at hearing, the owner stated that the cost to comply with the Building Code requirements for construction in a Special Flood Hazard Area would be prohibitively expensive; and

WHEREAS, the Board notes 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, a court could find it inequitable to allow the government to repudiate its prior conduct, the Board is an administrative body and is not empowered to provide an equitable remedy (see *People ex rel. New York Tele. Co. v. Public Serv. Comm.*, 157 A.D. 156, 163 (3d Dep’t 1913) (administrative body “ha[s] no authority to assume the powers of a court of equity”); see also *Faymor Dev. Co. v. Bd. of Sds. and Apps.*, 45 N.Y.2d 560, 565-567 (1978)); and

WHEREAS, the Board further notes that the owner submitted no evidence into the record refuting the contentions of DOB with respect to the alleged non-compliance with the Special Flood Hazard requirements; and

WHEREAS, based on the evidence in the record, the Board thus finds that the construction of the subject home is non-compliant with the Special Flood Hazard Area requirements of the Building Code and TPPN # 1/04.

Therefore it is Resolved that the application of the

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Commissioner of the Department of Buildings, dated October 31, 2008, seeking the revocation of Certificate of Occupancy No. 200983971F, is granted.

Adopted by the Board of Standards and Appeals, February 24, 2009.

245-08-BZY

APPLICANT – Sheldon Lobel, P.C., for Airport Hotels, LLC, owner.

SUBJECT – Application October 23, 2008 – Extension of time to complete construction (11-331) of minor development commenced under the prior C2-2/R3-2+ district regulations. C1-1/R3X.

PREMISES AFFECTED – 219-05 North Conduit Boulevard, bounded by Springfield Boulevard, 144th Avenue and North Conduit Boulevard, Block 13085, Lot 4, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Jordan Most.

For Opposition: Patrick Evans, Kamal F. Saleem, Donovan Richards, Dwight Johnson, Michael Duncan, Jacqueline Kellinfoster, Kim Francis, Pres. Concerned Citizens; Jacques Leundre, Concerned Citizens; Leroy Gadsden, NAACP; Rev, Charles Norris, Clergy; Jacqueline G. Boyce, James Deleston, Lillian Heard, John C. Joseph and Lorraine Gittens-Bridges.

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 7, 2009, at 10 A.M., for decision, hearing closed.

83-08-A

APPLICANT – NYC Department of Buildings, for H. Patel, P.M. – Purvi Enterprises, LLC, owner.

SUBJECT – Application April 9, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 301279319 issued on January 17, 2007 as it was issued in error due to failure to comply with ZR §62-711 requiring waterfront certification. R5 SP Sheepshead Bay District.

PREMISES AFFECTED – 3218 Emmons Avenue, Emmons Avenue between Bringham Street, and Bragg Street, Block 8815, Lot 590, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lisa M. Orrantia.

ACTION OF THE BOARD – Laid over to May 12, 2009, at 10 A.M., for postponed hearing.

147-08-BZY

APPLICANT – Hui-Li Xu, for Beachway Equities, Inc., owner.

SUBJECT – Application May 23, 2008 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on April 30, 2008. R5 zoning district.

PREMISES AFFECTED – 95-04 Allendale Street, between Atlantic Avenue and 97th Avenue, Block 10007, Lot 108, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Hui-Li-Xu and Richard J. Zimmerman.

For Administration: Lisa M. Orrantia, Department of Buildings.

ACTION OF THE BOARD – Laid over to April 7, 2009, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 11:30 A.M.

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 24, 2009
1:30 P.M.**

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

ZONING CALENDAR

284-07-BZ

CEQR #08-BSA-039M

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for K.S. Realty, Inc., owner; AGT Crunch New York, LLC, lessee. SUBJECT – Application December 19, 2007 – Special Permit (§73-36) to allow the legalization of a Physical Culture Establishment (Crunch Fitness) on portions of the cellar, and first floor, second floor, and the third floor of a mixed-use building. The proposal is contrary to § 32-10. C6-1 district.

PREMISES AFFECTED – 52-54 East 13th Street, south side of East 13th between Broadway and University Place, Block 564, Lot 11, Borough of Manhattan.

COMMUNITY BOARD #2M

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 24, 2009.

258-08-BZ

CEQR #09-BSA-038M

APPLICANT – Rizzo Group, for Robert G. Friedman, owner; Mid City Gym and Tanning LLC, lessee. SUBJECT – Application October 20, 2008 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment on the cellar in a 41-story mixed-use building. The proposal is contrary to ZR § 32-10. C6-4 district.

PREMISES AFFECTED – 343-349 West 42nd Street, located on 42nd Street, mid-block between 8th Avenue and 9th Avenue, Block 1033, Lot 9, 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 Montanez.....5
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated October 10, 2008, acting on Department of Buildings Application No. 104829928, reads in pertinent part:

“Physical culture establishment (PCE) use requires a special permit from the Board of Standards and Appeals under ZR Section 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in a C6-4 zoning district within the Special Clinton District, the establishment of a physical culture establishment (“PCE”) in the cellar of an existing 41-story mixed-use residential/commercial/community facility building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 3, 1009, after due notice by publication in *The City Record*, and then to decision on February 24, 2009; and

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

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

WHEREAS, the subject site is located on the north side of West 42nd Street between 8th Avenue and 9th Avenue, in a C6-4 zoning district within the Special Clinton District; and

WHEREAS, the site is occupied by a 41-story mixed-use residential / commercial / community facility building; and

WHEREAS, the PCE will occupy a total of 8,400 sq. ft. of area in the cellar; and

WHEREAS, the PCE will be operated as “Mid City Gymnasium;” and

WHEREAS, the applicant represents that the services at the PCE will include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; 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 8:00 a.m. to 8:00 p.m.; and

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

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

WHEREAS, the 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

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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. 09BSA038M, dated December 18, 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; 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 a C6-4 zoning district within the Special Clinton District, the establishment of a physical culture establishment in the cellar of an existing 41-story mixed-use residential / commercial / community facility building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received January 29, 2009"-(2) sheets and "Received February 18, 2009"-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on February 24, 2019;

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 all signage shall comply with C6-4 zoning 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 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;

THAT substantial construction be completed in accordance with ZR § 73-70; 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 24, 2009.

99-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) to construct a three story with cellar single family home on an irregular triangular lot what does not meet the rear yard requirement (§23-47) in an R3-2 (SRD) zoning district. PREMISES AFFECTED – 102 Drumgoole Road, South side of Drumgoole Road, 144.62 ft. west of the intersection of Drumgoole Road and Wainwright Avenue, Block 5613, Lot 221, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Todd Dole.

ACTION OF THE BOARD – Laid over to March 24, 2009, at 1:30 P.M., for continued hearing.

161-08-BZ

APPLICANT – Eric Palatnik, P.C., for Oleg F. Kaplun, owner.

SUBJECT – Application June 10, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, open space and lot coverage (§23-141) and less than the required rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 136 Dover Street, between Hampton Street and Oriental Boulevard, Block 8735, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over March 3, 2009, at 1:30 P.M., for continued hearing.

188-08-BZ

APPLICANT – Rizzo Group, for Hotel Carlyle Owners Corp., owners; The Hotel Carlyle, lessee.

SUBJECT – Application July 14, 2008 – Special Permit (§73-36) and Variance (§72-21) to allow the legalization of a Physical Culture Establishment and to extend this use into an R8B district for the subject hotel which exists in the C5-1MP and R8B zoning districts. The proposal is contrary to

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ZR Section 32-10.

PREMISES AFFECTED – 35 East 76th Street, (975-983 Madison; 981 Madison; 35-53 East 76th Street) northeast corner of Madison Avenue and East 76th Street, Block 1391, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Ken Barbino.

For Opposition: Michael Gorelick.

ACTION OF THE BOARD – Laid over to April 7, 2009, at 1:30 P.M., for continued hearing.

206-08-BZ

APPLICANT – Eric Palatnik, P.C., for Paul Chait, owner.
SUBJECT – Application November 18, 2008 – Variance (§72-21) to permit the expansion of an existing three-story Use Group 3 yeshiva which includes sleeping accommodations. The proposal is contrary to ZR §24-111 (maximum floor area), §24-35 (side yard), §24-551 (side yard setback), and parking (§25-31). R2X zoning district.

PREMISES AFFECTED – 737 Elvira Avenue, southern side of Elvira Avenue, between Reads Lane and Annapolis Street, Block 15578, Lot 8, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Alfonso Duarte, P.E..

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 31, 2009, at 1:30 P.M., for decision, hearing closed.

215-08-BZ

APPLICANT – Davidoff Malito & Hatcher, LLP by Howard S. Weiss, for SoBRO Development Corp., owners.
SUBJECT – Application August 20, 2008 – Variance (§72-21) to allow a new ten (10) story mixed-use building containing ninety eight (98) dwelling units and ground floor retail use; contrary to use regulations (§32-00). C8-3 district.
PREMISES AFFECTED – 1778-1800 Southern Boulevard, intersection of East 174th Street, Boston Post Road and Southern Boulevard, Block 2984, Lots 1 & 7, Borough of Bronx.

COMMUNITY BOARD #3BX

APPEARANCES –

For Applicant: Howard 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 April 7, 2009, at 1:30 P.M., for decision, hearing closed.

222-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Moshe Cohn, owner.

SUBJECT – Application August 29, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary lot coverage, open space and floor area (23-141); rear yard (23-47) and exceeds the perimeter wall height (23-631) in an R3-1 zoning district.

PREMISES AFFECTED – 71 Beumont Street, for east side of Beumont Street, 200' north of Hampton Avenue, Block 8728, Lot 77, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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 March 17, 2009, at 1:30 P.M., for decision, hearing closed.

229-08-BZ

APPLICANT – Sheldon Lobel, P.C. for Edward Haddad, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) for the construction of a new single family home. This applications seeks to vary floor area (§23-141), less than the minimum side yards (§23-461) and the location of the required off street parking to the front yard (§25-62) in an R2X zoning district.

PREMISES AFFECTED – 866 East 8th Street, West side of East 8th Street, north of Avenue I, and adjacent to railroad, Block 6510, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to March 31, 2009, at 1:30 P.M., for continued hearing.

253-08-BZ

APPLICANT – Law Office of Fredrick A. Becker for Paula Digrazia and Lisa Tapani, owner.

SUBJECT – Application October 15, 2008 – Variance (§72-21) to legalize a prior enlargement at the rear of the home and to allow for a new enlargement to an existing single family home on a narrow zoning lot. This variance seeks to vary floor area ratio, open space lot coverage (§23-141(b)); side yards (§23-461(a)) & (§23-48) and less than the required rear yard (§23-47) in an R-4 zoning district.

PREMISES AFFECTED – 2623 East 11th Street, East side of East 11th Street between Avenue Z and William Court, Block 7455, Lot 31, Borough of Brooklyn.

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COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to March 24, 2009, at 1:30 P.M., for continued hearing.

269-08-BZ

APPLICANT – MetroPCS New York, LLC, for LGA Hotel LLC, owner; MetroPCS New York, LLC, lessee.

SUBJECT – Application November 5, 2008 – Special Permit (§73-30) to allow an extension to an existing non-accessory radio tower.

PREMISES AFFECTED – 90-10 Grand Central Parkway, north side of 23rd Avenue, between 90th Street and 93rd Street, Block 1068, Lot 1, Borough of Queens.

COMMUNITY BOARD # 3Q

APPEARANCES –

For Applicant: Steven Mark and Fahd Kananeh.

For Opposition: Dev Viswamath.

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 17, 2009, at 1:30 P.M., for decision, hearing closed.

303-08-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Luciano Calandra, owner; Lou-Cal Auto Service, Inc., lessee.

SUBJECT – Application December 10, 2008 – Special Permit filed pursuant to §11-411 of the zoning resolution to re-establish an expired variance which permitted the erection and maintenance of a gasoline service station with accessory uses (UG 16) C2-2/R5-B zoning district.

PREMISES AFFECTED – 34-67 Francis Lewis Boulevard, northeast corner of 35th Avenue, Block 6077, Lot 43, Borough of Queens.

COMMUNITY BOARD # 11Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

For Opposition: Henry Euler.

ACTION OF THE BOARD – Laid over to April 7, 2009, at 1:30 P.M., for continued hearing.

304-08-BZ

APPLICANT – Bryan Cave LLP, for TDS Acquisition LLC d/b/a Trevor Day School, owner.

SUBJECT – Application December 11, 2008 – Variance (§72-21) and Special Permit (§73-19) to allow a school in a C8-4 district contrary to bulk regulations (33-123, 33-451, 33-453, 33-454, 33-26). C8-4 District.

PREMISES AFFECTED – 312-318 East 95th Street, south side of 95th Street, 215 east of Second Avenue, 350' feet west of First Avenue, Block 1557, Lot 41, Borough of

Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Judy Gallent, Pamela Clarke, Peter Gisolfi, Mary Hanlon and Stanislaus, Principal.

For Opposition: Michael Kramer.

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 21, 2009, at 1:30 P.M., for decision, hearing closed.

319-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Lawrence and Melvin Friedland, owners; IFC Center, lessee.

SUBJECT – Application December 31, 2008 – Special Permit (§73-201) for an expansion of an existing motion picture theater (IFC Center). C1-5 District.

PREMISES AFFECTED – 323/25 and 327 6th Avenue; 14 Cornelia Street, 75' front of 6th Avenue and 54 frontage on Cornelia Street, Block 589, Lots 19, 30, 31, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Paul Selver, John Vanco and Larry Bogdanow.

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 19, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 4:00P.M.

BULLETIN

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March 12, 2009

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66-90-BZ 43-07 Astoria Boulevard, Queens
332-98-BZ 3155 Grace Avenue, Bronx
215-06-BZ 202-06 Hillside Avenue, Queens
305-08-A East River Waterfront Esplanade, Manhattan
142-08-A 225 Brighton 2nd Lane, Brooklyn
168-08-A 63 Brighton 2nd Place, Brooklyn
272-08-A 35 Brighton 2nd Place, Brooklyn
307-08-BZY 163 Orchard Street, Manhattan

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Affecting Calendar Numbers:

223-08-BZ 4553 Arthur Kill Road, Staten Island
291-08-BZ 3141 Bedford Avenue, Brooklyn
177-07-BZ 886 Glenmore Avenue, Brooklyn
220-07-BZ 847 Kent Avenue, Brooklyn
40-08-BZ 3957 Laconia Avenue, Bronx
45-08-BZ 55 Androvette Street, Staten Island
88-08-BZ 101-17 Lefferts Boulevard, Queens
134-08-BZ 34 Lawrence Avenue, Brooklyn
161-08-BZ 136 Dover Street, Brooklyn
162-08-BZ 150 East 93rd Street, Manhattan
236-08-BZ 1986 East 3rd Street, Brooklyn
250-08-BZ 1925 East 5th Street, Brooklyn
269-06-BZ 125 Greaves Lane, Staten Island
193-08-A 125 Greaves Lane, Staten Island
310-08-BZ 406 East 91st Street, Manhattan

DOCKETS

New Case Filed Up to March 3, 2009

31-09-BZ

117-04 Sutphin Boulevard, Southwest corner of Foch Boulevard., Block 1203, Lot(s) 13, Borough of **Queens, Community Board: 12**. Special Permit (11-411 & 11-413) to re-instate, extend and amend the previous approval.

32-09-BZY

122 Treadwell Avenue, Southwest corner of Treadwell Avenue and Harrison Avenue., Block 1088, Lot(s) 49, Borough of **Staten Island, Community Board: 1**. Extension of Time (11-332) to complete construction of a major development commenced under the prior zoning district.

33-09-BZY

124 Treadwell Avenue, Southwest corner of Treadwell Avenue and Harrison Avenue., Block 1088, Lot(s) 49, Borough of **Staten Island, Community Board: 1**.

34-09-BZY

126 Treadwell Avenue, Southwest corner of Treadwell Avenue and Harrison Avenue., Block 1088, Lot(s) 49, Borough of **Staten Island, Community Board: 1**. Extension of Time (11-332) to complete construction of a major development commenced under the prior zoning district.

35-09-BZ

345-347 East 103rd Street, North side of East 103rd Street between First and York Avenues., Block 1675, Lot(s) 21,22, Borough of **Manhattan, Community Board: 11**. Special Permit (11-411 & 11-412) to renew and extend the term for 10 years.

36-09-BZ

53-01 32nd Avenue, North side of 32nd Avenue between 51st Street and 54th Street., Block 1131, Lot(s) 1, Borough of **Queens, Community Board: 1**. Special Permit (73-03, 73-30) to allow a non-accessory radio tower on the rooftop of an existing building with all accessory equipment.

37-09-BZ

3950 Bedford Avenue, Bedford Avenue between Avenue R and Avenue S., Block 6830, Lot(s) 26, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the legalization of the enlargement of a single family home.

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

CALENDAR

MARCH 24, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 24, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

709-55-BZ

APPLICANT – Whitman Breed Abbott & Morgan LLP, for LMT Realty LLC, owner; Mobil Oil Corporation, lessee.
SUBJECT – Application February 23, 2009 – Extension of Time to obtain a Certificate of Occupancy for a Gasoline Service Station (Mobil), in a C1-2/R4 zoning district, which expired on March 24, 2009.

PREMISES AFFECTED – 2000 Rockaway Parkway, north west of Seaview Avenue, Block 8299, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #18BK

7-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for HKAL 34th Street Limited Partnership, owner; TSI East 34 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application February 9, 2009 – Extension of Term of a previously granted Special Permit for the operation of Physical Culture Establishment (New York Sports Club (NYSC)), located in a C1-9 (TA) zoning district, which expired on January 11, 2009.

PREMISES AFFECTED – 300 East 34th Street, southeast corner of East 34th Street, and Second Avenue, Block 939, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEALS CALENDAR

311-08-BZY

APPLICANT – Slater & Beckerman, LLP, for D.A.B. Group LLC, owner.

SUBJECT – Application December 18, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the Zoning district regulations. C4-4A.

PREMISES AFFECTED – 77, 79 & 81 Rivington Street, Block 415, Lots 61, 62, 63, 66, 67, Borough of Manhattan.

COMMUNITY BOARD #3M

313-08-A

APPLICANT – Chuck Close, c/o Offices of Howard Goldman, LLC, for Proprietary Lessee of Studio and Basement Cooperative, lessee.

SUBJECT – Application December 22, 2008 – Appeal seeking to revoke permits and approvals for a six story commercial building that violates the Building Code and Zoning Resolution. M1-5B zoning district.

PREMISES AFFECTED – 363-371 Lafayette Street, east side of Lafayette Street between Great Jones and Bond Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

MARCH 24, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 24, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

97-08-BZ

APPLICANT – Eric Palatnik, P.C., for Chesky Berkowitz, owner; Central UTA, lessee.

SUBJECT – Application April 18, 2008 – Special Permit (§73-19) to allow the proposed legalization of the existing yeshiva (Use Group 3 school). M1-1 district.

PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #3BK

235-08-BZ

APPLICANT – Eric Palatnik, P.C., for Agudath Taharath Mishpachan, owners.

SUBJECT – Application September 16, 2008 – Variance (§72-21) to permit the expansion of a Use Group 3 Mikvah. The proposal is contrary to ZR §33-12 (Maximum floor area ratio) and §33-431 (Maximum height of walls and required setbacks). C2-3/R4 district.

PREMISES AFFECTED – 1508 Union Street, located at the southwest corner of Union Street and Albany Avenue, Block 1279, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #9BK

274-08-BZ

APPLICANT – Jesse Masyr, Esq., Wachtel & Masyr, LLP, for West Broadway 220 LLC (47 Grand Street), owner; West Broadway 330 LLC (431, 43 Grand Street), lessee.

SUBJECT – Application November 10, 2008 – Variance pursuant to §72-21 to allow for an increase in floor area,

CALENDAR

variation in height and setback requirements and retail use below the level of the second story, contrary to §42-14, §43-12 and §43-43. M1-5A & M1-5B Districts.

PREMISES AFFECTED – 41-47 Grand Street (a/k/a 330 West Broadway) southwest corner of Grand Street and West Broadway, Block 227, Lots 19, 20, 22, Borough of Manhattan.

COMMUNITY BOARD #2M

306-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Third and Fifty-Eight. LLC, owner; Evergreen Spa, Inc., lessee.

SUBJECT – Application December 18, 2008 – Special Permit (§73-36) to allow the operation of a physical culture establishment in the cellar of an existing 21-story mixed-use building. The proposal is contrary to ZR §32-10. C5-2 district.

PREMISES AFFECTED – 969 Third Avenue a/k/a 200 East 58th Street, Block 1331, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #6M

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, MARCH 3, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

241-47-BZ

APPLICANT – Sheldon Lobel, P.C., for Marin Vajanc, owner.

SUBJECT – Application July 24, 2008 – Extension of Term and Amendment filed pursuant to §§11-411 & 11-413 requesting an extension of the variance previously granted by the Board of Standards and Appeals which expired on January 29, 2004. The application seeks a change in use from knitting mill (Use Group 17) to a contractor's establishment (Use Group 17). The site is located in an R5B zoning district.

PREMISES AFFECTED – 16-23/25 Hancock Street, West side of Hancock Street approximately 245' north of Wycoff Street, Block 3548, Lot 97, Borough of Queens.

COMMUNITY BOARD #5Q

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 March 24, 2009, at 10 A.M., for decision, hearing closed.

66-90-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for A.H.G. Realty Corporation, owner.

SUBJECT – Application February 9, 2009 – Extension of Time/waiver to obtain an Certificate of Occupancy for a UG16 Gasoline Service Station (Mobil), in an R-5 zoning district, which expired on December 31, 2008.

PREMISES AFFECTED – 43-07 Astoria Boulevard, north east corner of 43rd Street, Block 780, Lot 18, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Cindy Bachan.

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 17, 2009, at 10 A.M., for decision, hearing closed.

332-98-BZ

APPLICANT – Law Office of Howard Goldman, LLC, for Workmen's Circle Home & Infirmary, owners.

SUBJECT – Application January 30, 2009 – Extension of Time/waiver to Complete Construction of a previously approved Variance (§72-21) for the enlargement of a (UG3) existing nursing home, in an R5 zoning district, which expired on April 13, 2003.

PREMISES AFFECTED – 3155 Grace Avenue, bounded by Grace, Hammersley, Ely and Burke Avenues, Block 4777, Lots 2 & 57, Borough of Bronx.

COMMUNITY BOARD #12BX

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 March 17, 2009, at 10 A.M., for decision, hearing closed.

215-06-BZ

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

SUBJECT – Application January 28, 2009 – Extension of Time/waiver to obtain a Certificate of Occupancy for an existing gasoline service station (Exxon) with accessory convenience store, in a C1-2/R4 zoning district, which expired on January 24, 2008.

PREMISES AFFECTED – 202-06 Hillside Avenue, southeast corner of Hillside Avenue and 202nd Street, Block 10496, Lot 52, Borough of Queens.

COMMUNITY BOARD #3Q

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 17, 2009, at 10 A.M., for decision, hearing closed.

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APPEALS CALENDAR

305-08-A

APPLICANT – NYC Economic Development Corp.

OWNER: Department of Small Business Services

SUBJECT – Application December 12, 2008 – for a variance of flood plain regulations under Sec. G107 of Appendix G. of the NYC Building Code.

PREMISES AFFECTED – East River Waterfront Esplanade, East side of South Street, 24' south of Maiden Lane, Block 36, Lots 25 & 30, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Daniel Mule.

ACTION OF THE BOARD – Appeal 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 January 16, 2009, acting on Application No. 20080272, reads, in pertinent part:

“The design of “Pavilion A,” as indicated on the attached drawings (AO-00, A1-01, A2-01 and A4-01), 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 February 3, 2009, after due notice by publication in *The City Record*, and then to decision on March 3, 2009; 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 on the east side of South Street, 24 feet from Maiden Lane 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 42, which will include seven leasable pavilion buildings, as well as furniture, plantings, lighting, and rehabilitation of two piers; and

WHEREAS, the subject site is proposed to be occupied by a commercial building (“Pavilion A” and the “building”) to be selected pursuant to a Request for Proposals issued by EDC; and

WHEREAS, the building is proposed to have a width of 40’-0” and a length of 142’-0” and a total floor area of 5,680 sq. ft.; and

WHEREAS, the building is proposed to be located beneath the deck of the FDR Drive; and

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 proposed floor elevation of Pavilion A is below the base flood elevation and does 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 § G107.2.3, the Board may grant a variance to the provisions of G304 upon finding that: (i) the variance is technically justified; (ii) there is good and sufficient cause for the variance; (iii) a denial of the variance would result in exceptional hardship to the applicant; (iv) the grant of the variance would not burden the public, expose it to harm, or conflict with existing laws or ordinances; and (v) the variance is the minimum necessary to afford relief to the applicant; and

WHEREAS, with respect to the first finding, the applicant states that the variance is technically justified by the impracticability of complying with either the elevation option or the alternate dry floodproofing option required by Appendix G § G104.1.2 of the Building Code; and

WHEREAS, the applicant states that compliance with the elevation option is impracticable because the height of the building is limited by the location of the FDR Drive above it; and

WHEREAS, the applicant represents that its location necessarily limits the floor-to-ceiling height of Pavilion A and makes it infeasible to comply with the elevation option; and

WHEREAS, the applicant states that New York State Department of Transportation (“DOT”) requires five feet of

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clearance between the top of the Pavilion roof and the underside of the longitudinal beams supporting the FDR Drive to inspect and clean the structure and to make necessary repairs to the underside of the FDR Drive deck; and

WHEREAS, the applicant states further that FDR Drive drainpipes will hang between the FDR Drive structure and the Pavilion A roof, further limiting the height of the proposed building; and

WHEREAS, because an interior plenum space of 4'-0" is required between the Pavilion A roof and ceiling to locate the roof structure, recessed lighting fixtures, interior mechanical units and associated ductwork, constructing the building out of the base flood elevation would reduce the floor-to-ceiling height to 8'-8", reducing the leasable value of the space for the intended commercial uses and resulting in an economic hardship; and

WHEREAS, the applicant further states that compliance with the elevation option would additionally necessitate raising the base height of the building by three to four feet through the addition of approximately 725 cubic yards of engineered fill below the floor slab; and

WHEREAS, the applicant represents that the addition of this fill would significantly increase the amount of new loading applied to a pile-supported platform immediately to the east that is already loaded to its limit, requiring strengthening of the existing structures; and

WHEREAS, the applicant further represents that, if the platform is at load capacity, the additional fill might jeopardize the feasibility of the building; and

WHEREAS, the applicant states that access to a building that complies with the elevated option would additionally require a series of ramps and stairs from the adjoining esplanade walkway and that these stairs and ramps would be a major obstacle and intrusion into the primary circulation path, given the limited width of the site and impose a consequential expense; and

WHEREAS, the applicant states that implementation of the dry floodproofing option of Appendix G § G304.1.2 requires that the building's structure and perimeter be designed to prevent water from entering the building and to withstand hydrostatic and hydrodynamic forces imposed by flooding; and

WHEREAS, the applicant represents that constructing the building to comply with the dry floodproofing option, as required, would require that the foundation and structural system be designed to withstand uplift forces during flooding, necessitating an increase in the slab on grade from five inches to 10 inches, with increased reinforcing and waterproofing beneath; and

WHEREAS, the applicant represents that constructing the building with dry floodproofing up to the base flood elevation would further require a redesign of the building to allow emergency access by the Fire Department and emergency services at or above the 100-year flood plain level; and

WHEREAS, the applicant states that the redesign and construction expenses associated with the dry floodproofing

of the building would exacerbate an existing funding shortfall for the overall East River Waterfront Esplanade project; and

WHEREAS, the applicant represents that dry floodproofing is additionally infeasible because it would create storage and operational difficulties for building tenants and force a redesign of the building that would be incompatible with its program objectives; and

WHEREAS, the applicant states that the dry floodproofing would be achieved by either: (i) manually installing temporary flood shields around the building perimeter which act as a dam to prevent water from penetrating the building; or (ii) constructing the building with solid walls to a designated height above the base flood elevation which are designed to resist hydrostatic, hydrodynamic and other flood-related loads; and

WHEREAS, the applicant states that flood shields consist of a series of stainless steel base plates mounted to an enlarged foundation around the entire perimeter of the building which create a water-tight barrier after steel posts are mounted to the base plates and aluminum panels are inserted in advance of a flood; and

WHEREAS, the applicant further states that use of temporary flood shields is undesirable because tenants may have difficulty storing them on site and installing them in time to protect the building from an impending flood; and

WHEREAS, moreover, the applicant states that constructing the building with the solid low-level walls required by the alternative dry floodproofing scheme would be incompatible with the programming objective that Pavilion A be able fully open onto the surrounding esplanade; and

WHEREAS, the Board therefore finds that the proposed variance to Appendix G § G304.1.2 is justified based on the technical infeasibility of compliance with either the elevation option or the dry waterproofing option; and

WHEREAS, with respect to the second variance finding, the applicant states that Pavilion A is a necessary component to the East River Waterfront Esplanade which creates an active destination and generates revenue for its support; and

WHEREAS, the applicant further 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 building 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

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WHEREAS, as discussed above, pursuant to Appendix G § 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 decrease the height of the interior space of the building; and

WHEREAS, the applicant further states that the operation and maintenance of the East River Waterfront Esplanade is dependent on revenue generated from the leasing of Pavilion A, as well as the other structures planned for the overall development; and

WHEREAS, the applicant represents that reducing the interior height of the building significantly reduces its leasable value and would result in an economic hardship; and

WHEREAS, as discussed above, compliance with the dry floodproofing option would require modifications to the building's foundation and structure, the installation of temporary flood shields and the creation of emergency access for fire department and emergency services; and

WHEREAS, the applicant states that dry floodproofing would increase the cost of Pavilion A by approximately 20 percent, creating an additional financial hardship for the overall esplanade project which was earlier reduced in scope due to funding cutbacks; 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 endanger or burden the public, result in any nuisance, fraud on or victimization of the public, or conflict with existing laws or ordinances; and

WHEREAS, the applicant states that the variance will not result in increased flood heights because the 5,600 sq. ft. building floor area 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 the proposed building design complies with wet floodproofing standards promulgated by the American Society of Civil Engineers ("ASCE") in "Flood Resistant Design and Construction, SEI/ASCE 24-05" (2006) ("SEI/ASCE 24-05 (2006)"), setting forth minimum requirements for flood-resistant design and construction in flood hazard areas; and

WHEREAS, at hearing, the applicant stated that, consistent with ASCE wet floodproofing standards, Pavilion A will be designed with a series of louvers that permit flood waters to enter and exit the building without accumulation and enable the equalization of hydrostatic floor forces; and

WHEREAS, the applicant further states that the building design will raise all essential utilities and large objects out of the flood plain and will use materials approved under wet floodproofing standards; and

WHEREAS, the applicant represents that the design of the building will be appropriate to the AE flood hazard zone in which it is located, in an area deemed not subject to high velocity wave action; and

WHEREAS, the applicant further represents that the building will be constructed to a 6.4 foot elevation that is approximately that of a fifty-year storm surge and that is less than two feet below the 8.25 foot elevation/100-year flood plane that would otherwise be required; 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 adherence of the building design to ASCE wet floodproofing standards, the raising of utilities and large objects out of the flood plane, and construction to a fifty-foot storm surge elevation, the Board finds that the proposed variance to Appendix G § G304.1.2 will not result in 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 base floor elevations of the proposed building comply with the 50-year still-water flood elevation determined by FEMA and the building design will conform to ASCE wet floodproofing standards; and

WHEREAS, the Board finds that, based on the applicant's representations, that 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 § G107.2.3, the Board must also evaluate the affect of the proposed variance on nine factors/conditions summarized as follows: (i) potential damage or injury to other property or lives; (ii) potential damage to the subject site; (iii) importance of the proposed development to the community; (iv) availability of alternative location(s) not located in a flood hazard area; (v) its relationship to the comprehensive plan and flood management program; (vi) access by ordinary and emergency vehicles; (vii) effects of wave action and expected heights, velocity, duration, rate of rise and, debris and debris and sediment transport of floodwaters; and (viii) cost of providing governmental services; 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 conformance of the building design to the wet floodproofing requirements of the National Flood Insurance Program and/or the ASCE allow the building to withstand flooding, as water is able to enter and exit the

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building without accumulating therein; and

WHEREAS, the applicant further represents that the proposed variance would not increase danger to life or property due to flooding because building electrical and mechanical systems will be designed to adhere to flood-resistant standards and large equipment will either be raised above the maximum flood elevation or secured to prevent it from floating away; and

WHEREAS, the applicant states that flood damage to the proposed development and its contents would be limited because tenant leases will require critical building elements to be raised above the base flood elevation and items that could float and cause damage to be secured, therefore reducing the impact of potential flooding; and.

WHEREAS, the applicant further states that systems and finishes will be chosen to adhere to flood resistant standards, and the compliance of the building's design with the ASCE wet floodproofing standards will limit damage to the proposed development; and

WHEREAS, the applicant states that the proposed building is a necessary element of a waterfront plan that will create active destinations along the esplanade and help subsidize the cost of maintaining 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, indeed, the proposed building is one of four pavilion structures proposed to be located beneath the FDR Drive as part of the East River Waterfront Esplanade, all of which are consequently below the base 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 Pavilion A 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 the cost to provide governmental services during and after flood conditions will be essentially the same as without the variance and that underground public utilities will not be affected by it; 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 March 3, 2009" three (3) 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, March 3, 2009.

142-08-A

APPLICANT – Eric Palatnik, P.C., for George Kraff, owner.

SUBJECT – Application May 9, 2008 – Proposed construction of a three story residential building which does not front on an officially mapped street contrary to General City Law Section 36. R6-OP Zoning District.

PREMISES AFFECTED – 225 Brighton 2nd Lane, corner of Brighton 2nd Lane and Brighton 2nd Place, Block 8662, Lots 153, Borough of Brooklyn.

COMMUNITY BOARD #13BK

MINUTES

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 March 17, 2009, at 10 A.M., for decision, hearing closed.

168-08-A

APPLICANT – Cozen O’Connor Attorneys, for South Brighton Development, LLC, owner.

SUBJECT – Application June 24, 2008 – Legalization of an existing building not fronting on a legally mapped street contrary to General City Law Section 36. R6(OP) zoning district.

PREMISES AFFECTED – 63 Brighton 2nd Place, east side of Brighton 2nd Place, 110’ north of Brighton 2nd Lane, Block 8662, Lot 157, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Peter Geis.

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 17, 2009, at 10 A.M., for decision, hearing closed.

272-08-A

APPLICANT – Elizabeth Safian, Sheldon Lobel, P.C., for Brighton 2nd Place, LLC, owner.

SUBJECT – Application November 5, 2008 – Proposed construction of residential building not fronting on a legally mapped street contrary to General City Law Section 36. R6 Zoning District.

PREMISES AFFECTED – 35 Brighton 2nd Place, premises is located on the west side of Brighton 2nd Place approximately 120 feet north of Brighton 2nd Lane, Block 8662, Lots 230, 232, 234, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to March 31, 2009, at 10 A.M., for continued hearing.

307-08-BZY

APPLICANT – Howard Zipser, Akerman Senterfitt LLP, for 163 Orchard Street LLC, owner.

SUBJECT – Application December 17, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. C4-4A Zoning District.

PREMISES AFFECTED – 163 Orchard Street, through lot between Orchard and Houston Street between Stanton 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 March 24, 2009, at 10 A.M., for postponed hearing.

REGULAR MEETING

TUESDAY AFTERNOON, MARCH 3, 2009

1:30 P.M.

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

ZONING CALENDAR

223-08-BZ

CEQR #09-BSA-019R

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Joseph Maza, owner.

SUBJECT – Application August 29, 2008 – Variance (§72-21) to permit a commercial development (local retail, use group 6) within an R3-2 (SRD) zoning district.

PREMISES AFFECTED – 4553 Arthur Kill Road, west side of Arthur Kill Road, 142’ south of the intersection with Kreischer Street, Block 7596, Lot 250, Borough of Staten Island.

COMMUNITY BOARD #3SI

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 Staten Island Borough Superintendent, dated July 30, 2008 acting on Department of Buildings Application No. 510049225, reads in pertinent part:

“Proposed construction of the commercial building is contrary to the Zoning Resolution and requires approval of the Board of Standards and Appeals;”
and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site in an R3-2 zoning district within the Special South Richmond Development District, the construction of a one-story commercial building (Use Group 6) with accessory parking which does not conform to district use regulations, contrary to ZR § 22-21; and

MINUTES

WHEREAS, a public hearing was held on this application on December 9, 2008, after due notice by publication in *The City Record*, with continued hearings on January 27, 2009 and February 10, 2009, and then to decision on March 3, 2009; and

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

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

WHEREAS, the subject premises is located on the northwest corner of Arthur Kill Road and Tiller Court in an R3-2 zoning district within the Special South Richmond Development District (the "SSRDD"); and

WHEREAS, the site has an irregular triangular shape, with 142'-6" of frontage on Arthur Kill Road, a depth of approximately 232'-0" on the southern lot line and a depth of 119'-0" on the northern lot line and has a lot area of 21,372 sq. ft.; and

WHEREAS, the site is occupied by a one-story commercial building which is proposed to be demolished; and

WHEREAS, the applicant proposes a one-story commercial building with a street wall height and total height of 16'-0", a floor area of 6,447 sq. ft. (0.30 FAR), and 21 accessory parking spaces; and

WHEREAS, the applicant states that the proposed building will be occupied by retail stores; and

WHEREAS, as noted above, the proposed building requires a use waiver; thus, the instant variance application was filed; 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 site's irregular shape and grade differential; (2) the site's location opposite an MTA bus facility; and (3) the site's location on a heavily traveled thoroughfare; and

WHEREAS, the applicant states that the irregular shape and grade of the subject site impede its development for a conforming residential use; and

WHEREAS, the applicant further states that the narrow western portion of the site and its irregular northern border, coupled with the requirements of the SSRDD and the underlying R3-2 zoning district constrain the configuration of a complying residential development; and

WHEREAS, the applicant represents that the site is limited to a single curb cut on Arthur Kill Road, pursuant to ZR § 107-251; and

WHEREAS, the applicant states that a conforming development is further constrained by a 15-foot differential in grade from the front of the site along Arthur Kill Road to its rear; and

WHEREAS, the applicant represents that the site's incline increases the expense of a necessary sewer line that would extend approximately 700 feet from the subject site to the main line south along Arthur Kill Road; and

WHEREAS, the applicant further represents that the proposed commercial development will employ an on-site

septic system and would therefore not require a sewer extension; and

WHEREAS, the applicant also states that the site's location directly north of an 87,000 sq. ft. two-story and mezzanine bus depot currently being constructed makes the site unmarketable for a conforming residential development; and

WHEREAS, the applicant further states that the depot will provide fueling and maintenance services to several hundred buses daily and will operate seven days per week; and

WHEREAS, the applicant represents that the new facility will provide parking for 220 buses and more than 200 employee vehicles, and that bus routes will originate and terminate at new bus stops located in front of the facility; and

WHEREAS, the applicant further represents that the new facility is expected to increase traffic, citing an MTA study that found that the level of service at six nearby intersections exceeded NYC DOT limits and that post-construction signal timing adjustments were needed; and

WHEREAS, the applicant also states that the site is located on a 60-foot wide arterial roadway (mapped to an 80-foot width) which provides access to the Outerbridge Crossing (Route 440); and

WHEREAS, the applicant represents that the heavy incidence of traffic further limits the marketability of a conforming development which would front on Arthur Kill Road; and

WHEREAS, based upon the above, the Board finds that the shape of the subject lot and the premium costs associated with installation of the required sewer, when considered in the aggregate with the site's location on a busy thoroughfare directly across from a large, active bus depot, 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: (i) six as-of-right single-family two-story attached homes with a total floor area of 14,850 sq. ft. with private garages; (ii) an alternative scenario consisting of seven single-family three-story attached homes with 13,356 sq. ft. of floor area and shared parking at the rear; and (iii) the proposed development; and

WHEREAS, the study concluded that neither complying scenario would realize a reasonable return; and

WHEREAS, the proposed project 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, as discussed above, a nearly 11-acre bus depot will be located directly across from the subject site; and

MINUTES

WHEREAS, the applicant states that the subject site is located immediately west of an M1-district in which commercial development is permitted as of right; and

WHEREAS, the applicant further states that the subject site was located within the M1-1 district until 2004, when the site was inadvertently included within an area rezoned from R3-2 (SSRDD) as part of a privately-sponsored rezoning to facilitate construction of a 190-unit residential development (“the Tides at Charleston”); and

WHEREAS, the applicant represents that the plan sheets submitted to the Department of City Planning indicated that the subject site was not intended to be included in the rezoning and the owner had been unaware that his site was nonetheless included; and

WHEREAS, the Board notes that the Tides at Charleston has been completed and is situated directly to the south and north of the proposed development; and

WHEREAS, the applicant states that the bulk and height of the proposed building comply with the R3-2 zoning parameters; and

WHEREAS, at hearing, the Board asked the applicant to explore relocating the commercial building to the northern lot line, to reduce its impact on the adjacent residential development to its south; and

WHEREAS, in response, the applicant submitted a revised site plan indicating that relocating the commercial building to the northern lot line would place it within 39 feet of the residential development to its north, while the proposed development would be situated approximately 100 feet from the residential development to its south and would provide a buffer between the commercial uses and the residential development to its south; and

WHEREAS, at hearing, the Board raised concerns with the compliance of the site plan with the SSRDD buffering, screening and landscaping requirements and requested that the applicant take measures to buffer adjacent residential properties from the proposed retail use of the site; and

WHEREAS, in response, the applicant submitted revised plans relocating the proposed development five feet distant from the southern lot line, and indicating that a planting strip and street trees will be planted in compliance with the requirements of ZR § 107-48 and that all lighting will be directed downwards and away from residential properties; and

WHEREAS, at hearing, the Board also raised concerns with the hours of operation of the proposed commercial development; and

WHEREAS, in response, the applicant agreed to limit the hours of operation to between 6:00 a.m. and midnight; 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 pre-existing irregular shape and grade, its

proximity to a bus depot and its heavily trafficked location; 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, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable.

Therefore it is Resolved, that the Board of Standards and Appeals 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 in an R3-2 zoning district within in the Special South Richmond Development District, the construction of a one-story commercial building (Use Group 6) with accessory parking which does not conform to district use regulations, contrary to ZR § 22-21; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received January 13, 2009”- (5) sheets and “March 3, 2009”- (1) sheet; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of approximately 6,447 sq. ft., an FAR of 0.30, a height of 16’-0”, and 21 accessory parking spaces; as indicated on the BSA-approved plans;

THAT the hours of operation of the retail stores shall be limited to: Monday through Sunday, from 6:00 a.m. to midnight p.m.;

THAT all signage shall comply with C1 zoning district regulations as per the BSA-approved plans;

THAT DOB shall review and ensure compliance with the landscaping and screening requirements of ZR § 107-48, as per the BSA-approved plans;

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, March 3, 2009.

291-08-BZ

APPLICANT – Moshe M. Friedman, for Eva Hershovic,

MINUTES

owner.

SUBJECT – Application November 24, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area ration (§23-141(a)) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 3141 Bedford Avenue, West side 140' south of the intersection of Bedford Avenue & Avenue J, Block 7607, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe Friedman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated November 20, 2008, acting on Department of Buildings Application No. 310225725, reads:

“Proposed extension of existing one family dwelling is contrary to:

ZR § 23-141(a) floor area ratio.

ZR § 23-141(a) open space ratio.

ZR § 23-47 rear yard;” and

WHEREAS, this is an application under Z.R. §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (FAR), open space ratio, and rear yards, contrary to Z.R. §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on February 10, 2009, after due notice by publication in *The City Record*, and then to decision on March 3, 2009; and

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

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Bedford Avenue, between Avenue J and Avenue K, in 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 2,662 sq. ft. (0.66 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 2,662 sq. ft. (0.66 FAR) to 3,688 sq. ft. (0.92 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of approximately 70 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 of 30'-0" is required); 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 Z.R. § 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, open space ratio and rear yards, contrary to Z.R. §§ 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 November 24, 2008”-(5) sheets and “February 17, 2009”-(5) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 3,688 sq. ft. (0.92 FAR); an open space ratio of 70 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, March 3, 2009.

MINUTES

177-07-BZ

APPLICANT – Manish S. Savani, for Maurice Dayan, owner.

SUBJECT – Application July 6, 2007 – Variance (§72-21) to construct a two story, two family residential building on a vacant corner lot. This application seeks to vary the front yard requirement on one street frontage (§23-45) in an R-5 zoning district.

PREMISES AFFECTED – 886 Glenmore Avenue, corner of Glenmore Avenue and Milford Street, Block 4208, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Manish S. Savani.

ACTION OF THE BOARD – Laid over to April 21, 2009, at 1:30 P.M., for continued hearing.

220-07-BZ

APPLICANT – Moshe M. Friedman, P.E., for Relly Bodansky, owner.

SUBJECT – Application September 25, 2007 – Variance (§72-21) to allow the erection of a new 4-story residential building containing 4 dwelling units on a site containing an existing legal, nonconforming 3-story multiple dwelling which is proposed to be razed; contrary to use regulations (§42-10). M1-1 district.

PREMISES AFFECTED – 847 Kent Avenue, east side of Kent Avenue, 300' north of intersection of Kent Avenue and Myrtle Avenue, Block 1898, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

ACTION OF THE BOARD – Laid over to April 21, 2009 at 1:30 P.M., for deferred decision.

40-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Laconia Land Corporation, owner.

SUBJECT – Application February 25, 2008 – Special Permit (§§11-411 & 11-413) to allow the re-instatement and extension the term, to amend the previous BSA approval of an Automotive Service Station (UG 16) to a Automotive Repair Facility (UG 16). The application seeks to subdivide the zoning lot and allow a portion to be developed as of right in a C1-2/R5 zoning district.

PREMISES AFFECTED – 3957 Laconia Avenue, Northwest corner of east 224th Street, Block 4871, Lot 1, Borough of Bronx.

COMMUNITY BOARD #1BX

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over April 7, 2009, at 1:30 P.M., for continued hearing.

45-08-BZ

APPLICANT – Rampulla Associates Architects, for 65 Androvette Street, LLC, owner.

SUBJECT – Application February 29, 1998 – Variance (§72-21) to construct a four-story, 108 unit age restricted residential building contrary to use regulations (§42-00, §107-49). M1-1 District / Special South Richmond Development District.

PREMISES AFFECTED – 55 Androvette Street, north side Androvette Street, corner of Manley Street, Block 7407, Lots 1, 80, 82, (Tent. 1), Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phil L. Rampulla and Rebecca Pytosh.

For Opposition: Dennis D. Dell'Angelo and Staten Island Taxpayers Association.

ACTION OF THE BOARD – Laid over to April 7, 2009, at 1:30 P.M., for continued hearing.

88-08-BZ

APPLICANT – Alfonso Duarte, for Naresh M. Gehi, owner.

SUBJECT – Application April 11, 2008 – Variance pursuant to §72-21 to allow the commercial office conversion of an existing residential building; contrary to use regulations §22-00. R5 District.

PREMISES AFFECTED – 101-17 Lefferts Boulevard, East side, 150 ft. south of 101st Avenue, Block 9487, Lot 68, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Alfonso Duarte and Richard Lobel.

For Opposition: Sylvia Hack, CB #9

ACTION OF THE BOARD – Laid over to April 21, 2009, at 1:30 P.M., for continued hearing.

134-08-BZ

APPLICANT – Eric Palatnik, P.C., for Asher Goldstein, owner.

SUBJECT – Application April 30, 2008 – Variance (§72-21) to construct a third floor to an existing two story, two family semi-detached residence partially located in an R-5 and M1-1 zoning district.

PREMISES AFFECTED – 34 Lawrence Avenue, Lawrence Avenue, 80' west of McDonald Avenue, Block 5441, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #12BK

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 March 24, 2009, at 1:30 P.M., for decision, hearing closed.

MINUTES

161-08-BZ

APPLICANT – Eric Palatnik, P.C., for Oleg F. Kaplun, owner.

SUBJECT – Application June 10, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, open space and lot coverage (§23-141) and less than the required rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 136 Dover Street, between Hampton Street and Oriental Boulevard, Block 8735, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 7, 2009, at 1:30 P.M., for continued hearing.

162-08-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 150 East 93rd Street Corporation, owner.

SUBJECT – Application June 12, 2008 – Special Permit (§73-621) to allow for the enlargement of an existing building contrary to floor area and lot coverage regulations §23-145 and §35-31; C1-8X District.

PREMISES AFFECTED – 150 East 93rd Street, southeast corner of East 93rd Street and Lexington Avenue, Block 1521, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Fredrick A. Becker, Mark Martinez and Ronen Henzig.

For Opposition: Lo Van der Valk, Susan Kathryn Hefti, and James Norden.

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 24, 2009, at 1:30 P.M., for decision, hearing closed.

236-08-BZ

APPLICANT – Sheldon Lobel, for Joey Aini, owner.

SUBJECT – Application September 18, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (§23-141) and the permitted perimeter wall height (§23-631) in an R2X (OPSD) zoning district.

PREMISES AFFECTED – 1986 East 3rd Street, west side of East 3rd Street, 100' south of Avenue S, Block 7105, Lot 152, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to March 24, 2009, at 1:30 P.M., for continued hearing.

250-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sari Dana and Edward Dana, owners.

SUBJECT – Application October 10, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (§23-141) and less than the required rear yard (§23-47) in an R2X (OP) Special Ocean Parkway District.

PREMISES AFFECTED – 1925 East 5th Street, east side of East 5th Street between Avenues R and S, Block 6681, Lot 490, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to March 24, 2009, at 1:30 P.M., for continued hearing.

269-06-BZ

APPLICANT – Joseph Margolis, for Bruno Salvo, owner.

SUBJECT – Application October 4, 2006 – Variance (§72-21) to permit the conversion of 11,000 sf of vacant space into retail/commercial space. The proposal is contrary to §22-00. R3-2 district (South Richmond Special District).

PREMISES AFFECTED – 125 Greaves Lane, between Timber Ridge drive on the east and Greaves Lane on the west, Block 4645, Lot 425, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Joseph Margolis, Gaetano Donatantonio, Rebecca Pytosh and E. Lemonides.

For Opposition: Kevin Boshell.

ACTION OF THE BOARD – Laid over to April 21, 2009, at 1:30 P.M., for continued hearing.

193-08-A

APPLICANT – Joseph Margolis, for Bruno Salvo, owner.

SUBJECT – Application July 15, 2008 – Proposed construction of retail/commercial space located in an existing shopping center not fronting on a mapped street contrary to General City Law Section 36. R3-2 Zoning District.

PREMISES AFFECTED – 125 Greaves Lane, between Timber Ridge drive on the east and Greaves Lane on the west, Block 4645, Lot 425, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Joseph Margolis, Gaetano Donatantonio, Rebecca Pytosh and E. Lemonides.

For Opposition: Kevin Boshell.

ACTION OF THE BOARD – Laid over to April 21, 2009, at 1:30 P.M., for continued hearing.

MINUTES

310-08-BZ

APPLICANT – Friedman & Gotbaum, LLP, for Convent of the Sacred Heart, owner.

SUBJECT – Application December 18, 2008 – Special Permit (§73-19) to allow construction of a school building in a C8-4 zone, contrary to use regulations. C8-4 District.

PREMISES AFFECTED – 406 East 91st Street, south side of East 91st Street, 94' west of First Avenue, Block 1570, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Shelly Friedman, Joseph Ciangalini, John Woelfling, Simon Bradley, Veranica LaBeradine and Scott Gilles.

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 21, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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March 27, 2009

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CHRISTOPHER COLLINS, *Vice-Chair*

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EILEEN MONTANEZ

Commissioners

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Tuesday, March 17, 2009**

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DOCKETS

New Case Filed Up to March 17, 2009

38-09-A

72-45 43rd Avenue, Corner of 43rd Avenue and 74th Street., Block 1353, Lot(s) 46, Borough of **Queens, Community Board: 4**. Proposed construction in the bed of mapped street contrary to General City Law Section 35 . R-5 district.

39-09-A

101-18 39th Avenue, Between 102nd and 103rd Streets., Block 1770, Lot(s) 22, Borough of **Queens, Community Board: 3**. Proposed construction of three family homes located within the bed of a mapped street contrary to General City Law section 35 R6b(C1-4) district.

40-09-A

101-20 39th Avenue, Between 102nd and 103rd Streets., Block 1770, Lot(s) 22, Borough of **Queens, Community Board: 3**. Construction within a bed of a mapped street, contrary to Section 35 of the General City Law. R6b(C1-4) district.

41-09-A

101-22 39th Avenue, Between 102nd and 103rd Streets., Block 1770, Lot(s) 22, Borough of **Queens, Community Board: 3**. Construction within a bed of a mapped street, contrary to Section 35 of the General City Law. R6b(C1-4) district.

42-09-BZ

441-477 Prospect Avenue,n/s, Between Eight Avenue and Prospect Park West., Block 1113, Lot(s) 73, Borough of **Brooklyn, Community Board: 7**. Special Permit filed pursuant to §§11-411 & 11-412 to permit a re-instatment of a variance which expired on July 12, 1992 which allowed the extension of a legal non conforming use within a residential zoning district. The application seeks an amendment to allow for the a one-story enlargement of approximately 770 sq. ft. in the rear of the lot for additional storage for the commercial laundry. The subject site is located in a R5B zoning district R5B district.

43-09-BZ

198 Varet Street, Southside 170'-6" west of White Street,between White Street and Bushwick Avenue., Block 3117, Lot(s) 24, Borough of **Brooklyn, Community Board: 1**. Special Permit (73-19) to allow a school. M1-2 district.

44-09-BZ

2175 Richmond Avenue, Eastside of Richmond Avenue 39.80' south of Saxon Avenue., Block 2361, Lot(s) 12(tent), 14, 17, 22, Borough of **Staten Island, Community Board: 2**. Variance to allow a two-story retail building and office building with parking, contrary to use regulations. R3-1 district.

45-09-A

142-19 Cherry Avenue, Northeast corner of Cherry Avenue and Bowne Street., Block 5186, Lot(s) 51, Borough of **Queens, Community Board: 7**. Appeal seeking a determination that owner has aquired a common law vested rights to continue construction commenced under the prior zoning district regulations . R7B R7b 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 31, 2009, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 31, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

853-53-BZ

APPLICANT – Walter T. Gorman, P.E., for Knapp LLC, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application March 4, 2009 – Extension of Time/waiver to obtain a Certificate of Occupancy for a Gasoline Service Station (Mobil) in a C-2/R3-2 which expired on January 22, 2009.

PREMISES AFFECTED – 2402/16 Knapp Street, south west corner of Avenue Z, Block 7429, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

240-55-BZ

APPLICANT – Joseph P. Morsellino, Esq., for DLC Properties LLC, owner; Helms Brother's, lessee.

SUBJECT – Application March 11, 2009 – Extension of Time to complete construction of a second story addition (5,000sf) to an existing commercial building in a C2-2(R6B) & R4 zoning district which expired on February 13, 2009.

PREMISES AFFECTED – 207-22 Northern Boulevard, Northern Boulevard and 208th Street, Block 7305, Lot 19, Borough of Queens.

COMMUNITY BOARD #11Q

237-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Anthony Perez Cassino, owner.

SUBJECT – Application March 3, 2009 – Extension of Time to Complete Construction for a previously granted Variance (§72-21) to permit the proposed construction of a two family detached home on a vacant lot, which expired on February 8, 2009, in an R3-1 zoning district.

PREMISES AFFECTED – 5722 Faraday Avenue, southeast corner of Valles Avenue, Block 5853, Lot 2198, Borough of Bronx.

COMMUNITY BOARD #8BX

277-08-BZY thru 287-08-BZY

APPLICANT – Eric Palatnik, P.C., for Opal Builders, LLC, owner.

SUBJECT – Application November 19, 2008 – Extension of time to complete construction (11-332) and obtain a Certificate of Occupancy of a minor development commenced prior to the text amendment of the zoning district regulations. R3-X SRRD (Area LL).

PREMISES AFFECTED – 23, 26, 27, 35, 39, 43, 47, 55, 59, and 63 Opal Lane, bounded Idaho Avenue, Bloomingdale Road and Amboy Road, Block 6993, Lot 20, 4,19,18,17,16,15,14,12,11,10, Borough of Staten Island.

COMMUNITY BOARD #3SI

27-09-BZY

APPLICANT – Bryan Cave, LLP, for 126 First Place, LLC, owner.

SUBJECT – Application February 17, 2009 – Extension of time to complete construction 11-332(b) and obtain a Certificate of Occupancy for a development commenced under the prior zoning district regulations. R6 Zoning district.

PREMISES AFFECTED – 126 First Place, south side of First Place, 300' east of intersection of First Place and Court Street, Block 459, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #6BK

CALENDAR

MARCH 31, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 31, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

222-07-BZ

APPLICANT – Stuart A. Klein, Esq., for Century Realty Corp./Randall Co. LLC., owner.

SUBJECT – Application September 27, 2007 – Variance pursuant to §72-21 to legalize residential uses on the second and third floor of an existing building. M1-6 District.

PREMISES AFFECTED – 110 West 26th Street, between Sixth Avenue and Seventh Avenue, Block 801, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #4M

246-08-BZ

APPLICANT – Slater & Beckerman, LLP, for St. Barnabas Hospital, owner.

SUBJECT – Application October 3, 2008 – Special Permits pursuant to §73-481 and 73-49 to allow for the construction of a five story parking garage and rooftop parking and Variance pursuant to 72-21 to allow for an accessory sign contrary to §22-331 and 22-342. R7-1 District.

PREMISES AFFECTED – 4400 Third Avenue, block bounded by Third Avenue and East 184th Street, Quarry Road, and East 181st Street, Block 3064, Lot 1, 20 tent 100, Borough of The Bronx.

COMMUNITY BOARD #6BX

247-08-BZ

APPLICANT – Howard S. Weiss, Esq., for Davidoff Malito, for 3454 Star Nostrand LLC, owner.

SUBJECT – Application October 6, 2008 – Special Permit filed pursuant to §73-243 to allow the operation of a accessory drive-through facility in connection with a planned as-of-right eating and drinking establishment (Starbucks Coffeehouse) (Use Group 6) located in a C1-2/R4 zoning district.

PREMISES AFFECTED – 3454 Nostrand Avenue and approx. 49' along Gravesend Neck Road, Block 7362, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

266-08-BZ

APPLICANT – Lewis E. Garfinkel R.A., for Harold Willig, owner.

SUBJECT – Application October 28, 2008 – Special Permit (§73-621) for the enlargement of an existing single family home. This application seeks to vary 34-141(b) as the proposed floor area ratio (FAR) exceeds what is permitted in an R-4 zoning district.

PREMISES AFFECTED – 2007 New York Avenue, east side of New York Avenue between Avenue K and Avenue L, Block 7633, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #18BK

26-09-BZ

APPLICANT – Sheldon Lobel, P.C., for CAMBA Housing Ventures, Inc., owner.

SUBJECT – Application February 17, 2009 – Variance (§72-21) to permit the construction of a nine-story community facility building. The proposal is contrary to ZR section 24-36. R7-1 district.

PREMISES AFFECTED – 97 Croke Avenue, north side of Croke Avenue, 164' west of Ocean Avenue, Block 5059, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, MARCH 17, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

74-49-BZ

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

SUBJECT – Application – Pursuant to (§11-411) of the Zoning Resolution to request an extension of the term of a variance previously granted allowing a parking garage located in an M1-6 zoning district. The application seeks an amendment to increase the number of parking spaces and a waiver of the BSA's Rules of Practice and Procedure for an extension of time to obtain a Certificate of Occupancy.

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: Elizabeth Safian.

For Opposition:

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, an extension of term for the continued use of a parking garage, an extension of time to obtain a certificate of occupancy, and an amendment to the previously approved plans to legalize an increase in the number of parking spaces for the existing parking garage; and

WHEREAS, a public hearing was held on this application on February 3, 2009, after due notice by publication in *The City Record*, with a continued hearing on February 24, 2009, and then to decision on March 17, 2009; 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, Manhattan, recommends approval of this application, conditioned upon the installation of five bicycle spaces on the ground floor; 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 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, on April 4, 2000, the grant was extended for a term of ten years from the expiration of the prior grant, to expire on June 28, 2009; a condition of the grant was that a certificate of occupancy be obtained by April 4, 2001; and

WHEREAS, on February 3, 2004, under the subject calendar number, the Board granted a two-year extension of time to obtain a certificate of occupancy, until February 3, 2006; and

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the stipulated date due to administrative oversight; and

WHEREAS, the applicant now seeks a ten-year extension of term and a six-month extension of time to obtain a certificate of occupancy for the public parking garage; and

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

WHEREAS, the applicant also seeks to amend the grant to permit an increase in the number of parking spaces from 253 parking spaces to 360 parking spaces and 18 reservoir spaces; and

WHEREAS, the applicant states that the proposed increase can be achieved through the use of mechanical lifts (“stackers”) on the roof; and

WHEREAS, the applicant represents that the need for additional parking spaces is driven by excess demand at the site, stating that the parking garage utilizes 80 to 100 percent of its parking spaces on a daily basis; and

WHEREAS, at hearing, the Board raised concerns about the safety of the roof-top stackers; and

WHEREAS, in response, the applicant submitted a letter from the supplier of the stackers, dated February 13, 2009, indicating that each stacker includes a wheel chock on the stacker platform that locks in the car tires and prevents them from rolling forward, and a six-inch steel wheel barrier across the rear of the platform that prevents the cars from rolling backward; and

WHEREAS, in addition, the applicant submitted a letter from the Department of Buildings (“DOB”), dated January 16, 2002, indicating that the proposed stackers were found to be acceptable for use in New York City; and

WHEREAS, the applicant states that the proposed increase in the number of parking spaces will require no structural changes to the subject building; and

WHEREAS, at hearing, the Board requested that the applicant confirm the capacity of the roof to support the stackers and the weight of the proposed additional vehicles; and

WHEREAS, in response, the applicant submitted structural engineering reports confirming that the roof

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structure would adequately support the proposed stackers and additional vehicles; and

WHEREAS, at hearing, the Board also requested that the applicant minimize the visual impact of the stackers and direct all rooftop lighting downward; and

WHEREAS, in response, the applicant submitted a revised plan indicating that the stackers located along 38th Street would be five feet from the five-foot high parapet wall to minimize visibility from the street, and that all rooftop lighting is directed downward; and

WHEREAS, in addition, the revised plans showed the installation of five bicycle spaces on the ground floor; and

WHEREAS, the applicant also provided a traffic study which concluded that no significant adverse traffic impacts would result from the proposed increase in the number of parking spaces; 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 amendment to increase the number of parking spaces for the existing parking garage 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 March 29, 1949, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 28, 2009, to expire on June 28, 2019, to grant a six-month extension of time to obtain a certificate of occupancy, to expire on September 17, 2009, and to permit an increase in the number of parking spaces for the existing parking garage; *on condition* that all use and operations shall substantially conform to plans filed with this application marked “Received February 13, 2009”-(7) sheets and “March 13, 2009”-(2) sheets; and *on further condition*:

THAT the term of the grant shall expire on June 28, 2019;

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

THAT a certificate of occupancy shall be obtained by September 17, 2009;

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 March

17, 2009.

885-78-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 120 West 25th Realty Company, LLC, owner.

SUBJECT – Application November 25, 2008 – Amendment to a previously granted Variance (§72-21) to allow the transfer of development rights from the subject site (Lot 53) to an adjoining site (Lot 49) in an M1-6 zoning district.

PREMISES AFFECTED – 120 West 25th Street, south side of West 25th Street, between Sixth and Seventh Avenues, Block 800, Lot 53, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Paul Selver.

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 amendment to an existing variance, to permit the transfer of development rights from the subject site to an adjoining property in an M1-6 zoning district; and

WHEREAS, a public hearing was held on this application on February 24, 2009, after due notice by publication in *The City Record*, and then to decision on March 17, 2009; 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 4, Manhattan, withheld support, while not recommending denial of this application; and

WHEREAS, the subject site (Lot 53) is located on the south side of West 25th Street, between Sixth Avenue and Seventh Avenue within an M1-6 zoning district; and

WHEREAS, the site has a lot area of approximately 4,077 sq. ft. and is occupied by a five-story and cellar building; and

WHEREAS, the ground floor of the building is occupied by retail use and the second through fifth floors are occupied by eight Class “A” apartments; and

WHEREAS, the building has a floor area of 16,906 sq. ft., and an FAR of 2.41; and

WHEREAS, the applicant states that the site has a maximum total FAR of 10.0 and a maximum floor area of 40,770 sq. ft., of which approximately 23,864 sq. ft. of allowable floor area is undeveloped; and

WHEREAS, on April 3, 1979, under the subject calendar number, the Board granted a variance to permit, in an M1-6 zoning district, the conversion of the second through fifth floors of the subject building to residential use; and

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WHEREAS, on October 21, 2008, by a conditional Letter of No Objection (“LNO”), the Board approved the merger of the site into a larger zoning lot comprised of other properties, including Block 800, Lot 49; and

WHEREAS, the LNO did not authorize the transfer or utilization of the available development rights of the subject site; and

WHEREAS, the applicant now proposes to transfer 23,864 sq. ft. of unused development rights from Lot 53 to adjacent Lot 49 to its east; and

WHEREAS, the applicant also proposes to modify its site plan to reflect the merger of Lots 55 and 56 within the subject Zoning Lot; and

WHEREAS, the applicant represents that the transfer of development rights from Lot 53 requires no modification of the Board’s grant because the waivers and conditions of the underlying grant are not implicated and the mixed-use residential/commercial building authorized by the variance will be unchanged; and

WHEREAS, the applicant further represents that the proposed transfer of development rights is consistent with the Court’s decision in Bella Vista v. Bennett, 89 N.Y. 2d 565 (1997), setting forth the parameters of Board review of requests for the transfer of development rights from sites for which a variance has been granted; and

WHEREAS, Bella Vista concerned a permit request for a new as-of-right residential building proposed to be built through the transfer of development rights-- from a site in which the Board granted a use variance to permit operation of a movie theater in a residential zoning district, to a separate adjacent site under common ownership-- for development of a complying residential building; and

WHEREAS, the Court held that review and approval of such transfers by the Board was required, *inter alia*, because the basis for the original grant, particularly with respect to the findings of financial hardship under ZR § 72-21(b) and minimum variance needed to provide relief under ZR § 72-21(e), may be implicated by the proposed transfer; and

WHEREAS, the applicant states that an approval of the requested development rights transfer from the subject site does not undermine the integrity of the Board’s 1979 findings concerning ZR §§ 72-21(b) or 72-21(e) because the facts of the instant application are readily distinguishable from those underlying the Court’s holding in Bella Vista; and

WHEREAS, the applicant represents that, unlike in Bella Vista, the subject site and the proposed development site have been under separate, unrelated ownership since at least the time of the Board’s 1979 grant and the owner of the variance site therefore lacked control over either the timing of new development on the adjacent property or the use of the development rights for such a development; and

WHEREAS, the applicant states that the brief period of time elapsing between the date of the Bella Vista variance grant and the date of the permit application in question also distinguishes that case from the proposed development rights transfer under review in the subject application; and

WHEREAS, in Bella Vista, the permit application proposing to use floor area transferred from the variance site

was filed only three years after the Board grant, while the variance for the subject site was granted in 1979, thirty years before the filing of the instant application; and

WHEREAS, the applicant represents that the owner of the subject site could not have anticipated that its appurtenant unused development rights had any value at the time of the Board’s grant because there was no demand for and therefore no value to the development rights appurtenant to any of the properties in the area; and

WHEREAS, in support, the applicant points to affidavits executed in 1979 by the owner and the former owner of the subject site included in the variance application attesting to the building’s lack of economic value, as well as a letter from a real estate broker dated March 2, 1979 discussing the lack of value of the subject building “in its current state” which listed 26 buildings with full floors for rent and discussed the lack of real estate demand in the area surrounding the subject site; and

WHEREAS, at the time of the 1991 Board grant in Bella Vista, the community surrounding the site in question was economically vibrant and the value of development rights was consequently far more likely to be contemplated by the Board; and

WHEREAS, as there would have been no basis to analyze the value of the development rights at the time of the grant in the instant case, the applicant posits that the grant of a simple use variance was construed to be sufficient to generate a reasonable return and provide the minimum variance necessary for relief, and that the subject site therefore retained full use of the excess development rights; and

WHEREAS, the Board agrees that the differences in timing and in the health of the respective real estate markets distinguish the Bella Vista case from the instant case and supports the conclusion that the use of the subject site’s excess development rights was not foreseeable by the owner or the Board; and

WHEREAS, the applicant represents that the variance was granted to “equalize” the economic status of the subject site with that of other properties within the zoning district that were not similarly burdened with a unique physical condition and which retained their full development rights; and

WHEREAS, the applicant states that, as the variance grant put the owner on substantially the same economic footing as other properties within the same zoning district, the (b) finding of the subject variance would not be affected by the transfer because the variance equalized the marketability of space at the subject site with that of space in neighboring buildings that were able to accommodate conforming uses, and which would be permitted to transfer development rights as-of-right; and

WHEREAS, the applicant concludes that allowing the zoning lot merger and transfer of unused development rights appurtenant to the subject site now is therefore no different from the transfer of unused development rights from other properties on the block and that equalizing the economic status of the two classes of properties would not have

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required that the subject site be stripped of its excess development rights; and

WHEREAS, the Board finds that the proposed transfer of development rights does not implicate or affect the basis for its findings in general, and specifically the (b) and (e) finding, at the time that they were made; and

WHEREAS, Community Board 4, Manhattan expressed concerns that the potential height and configuration of a building proposed on Lot 49 may be incompatible with the surrounding area; and

WHEREAS, in response, the applicant submitted photographs indicating that the context in the immediate area surrounding the subject site includes 19 to 40 story buildings and that at least seven buildings of that size are located on Sixth Avenue within two blocks north and south of the subject site; and

WHEREAS, the Board notes, however, that the scope of its review is limited to consideration of the proposed transfer of development rights from Lot 53 to Lot 49 and the implications of such a transfer on the findings it made when the variance was approved, particularly under ZR §§ 72-21(b) or 72-21(e); and

WHEREAS, further, the Board's grant recognizes that the use of such development rights would be subject to the bulk regulations of the underlying district; and

WHEREAS, based upon its review of the record, the Board finds that the proposed transfer of development rights is appropriate.

Therefore it is Resolved that the Board of Standards and Appeals reopens and amends the resolution, said resolution having been adopted on April 3, 1979, so that as amended this portion of the resolution shall read: "to permit the transfer of 23,864 sq. ft. of development rights from Block 800, Tax Lot 53 to Block 800, Tax Lot 49, and to permit modifications to the BSA-approved site plan *on condition* that all site conditions shall comply with the drawing marked "Received March 17, 2009"- (1) sheet;" and *on further condition*:

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

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

(DOB Application No. 1103865555)

Adopted by the Board of Standards and Appeals, March 17, 2009.

771-89-BZ

APPLICANT – Mark D. Lipton, AIA, for William R. Burns, owner.

SUBJECT – Application January 14, 2008 – Extension of Term/waiver of a previously granted Variance (§72-21) to allow the change of use from a single family dwelling to (UG6) office use with accessory parking in an R3-2 zoning district which expired on September 18, 2000.

PREMISES AFFECTED – 2078 Richmond Avenue, west

side of Richmond Avenue, 139.09' south of Rivington Avenue, Block 2102, Lot 98, 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.....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 term of a previously granted variance permitting a change in use from a single family dwelling within an R3-2 zoning district to an office (Use Group 6) with accessory parking, which expired on September 18, 2000; and

WHEREAS, a public hearing was held on this application on February 24, 2009 after due notice by publication in *The City Record*, and then to decision on March 17, 2009; and

WHEREAS, Community Board 2, 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 Richmond Avenue, approximately 139 feet south of Rivington Avenue, within an R3-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 18, 1990 when, under the subject calendar number, the Board granted a variance to permit the construction of a two-story and attic office building (Use Group 6) with accessory parking, to expire on September 18, 2000; and

WHEREAS, the applicant represents that there have been no changes to the site; and

WHEREAS, the applicant now requests an additional ten-year 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 *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on September 18, 1990, so that as amended this portion of the resolution shall read: "to extend the term for ten years from September 18, 2000, to expire on September 18, 2010, *on condition* that any and all work shall substantially conform to drawings filed with this application marked "Received January 28, 2009"- (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on September 18, 2010;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.” (DOB App. No. 510063958)

Adopted by the Board of Standards and Appeals, March 17, 2009.

66-90-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for A.H.G. Realty Corporation, owner.

SUBJECT – Application February 9, 2009 – Extension of Time/waiver to obtain an Certificate of Occupancy for a UG16 Gasoline Service Station (Mobil), in an R-5 zoning district, which expired on December 31, 2008.

PREMISES AFFECTED – 43-07 Astoria Boulevard, north east corner of 43rd Street, Block 780, Lot 18, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Cindy 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.....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 time to obtain a certificate of occupancy for an automotive service station, which expired on December 31, 2008; and

WHEREAS, a public hearing was held on this application on March 3, 2009, after due notice by publication in *The City Record*, and then to decision on March 17, 2009; 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, one of the conditions of the grant was that substantial construction be completed and a new certificate of occupancy obtained within two years from the date of the grant, by November 14, 2002; 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, the applicant represents that construction is now complete, but that the owner was unable to obtain the new certificate of occupancy within the prescribed time frame; 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 has stipulated, inter alia, that it will obtain a final certificate of occupancy no later than October 25, 2009, unless delays are caused by DOB or the City of New York which prevent it from doing so; and

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

WHEREAS, at hearing, the Board directed the applicant to remove storage trailers located on site and establish that the site is otherwise in compliance with the latest BSA-approved plans; and

WHEREAS, in response, the applicant provided photographs reflecting the removal of the storage trailers and the site’s compliance with the BSA-approved plans; and

WHEREAS, based upon its review of the record, the Board finds that an extension of time to obtain a certificate of occupancy until October 25, 2009 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 1, 1991, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to

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October 25, 2009; *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 a certificate of occupancy shall be obtained by October 25, 2009;

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, March 17, 2009.

332-98-BZ

APPLICANT – Law Office of Howard Goldman, LLC, for Workmen's Circle Home & Infirmary, owners.

SUBJECT – Application January 30, 2009 – Extension of Time/waiver to Complete Construction of a previously approved Variance (72-21) for the enlargement of a (UG3) existing nursing home, in an R5 zoning district, which expired on April 13, 2003.

PREMISES AFFECTED – 3155 Grace Avenue, bounded by Grace, Hammersley, Ely and Burke Avenues, Block 4777, Lots 2 & 57, Borough of Bronx.

COMMUNITY BOARD #12BX

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 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 time to complete construction of an existing nursing home building (Use Group 3); and

WHEREAS, a public hearing was held on this application on March 3, 2009 after due notice by publication in *The City Record*, and then to decision on March 17, 2009; and

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

WHEREAS, this application is submitted on behalf of the Workman's Circle Home and Infirmary (“Workman's”), a non-profit entity; and

WHEREAS, the subject site occupies the entire block bounded by Burke Avenue on the north, Grace Avenue on the

east, Hammersley Avenue on the south and Ely Avenue on the west; and

WHEREAS, on April 13, 1999, under the subject calendar number, the Board granted a variance to permit the proposed enlargement of an existing nursing home building (Use Group 3) located within an R5 zoning district; and

WHEREAS, substantial construction was to be completed by April 13, 2003 in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that construction was delayed due to unforeseen site conditions and the need for additional funding; and

WHEREAS, specifically, after Workman's commenced construction in 1999, it learned that the existing building required major modifications, including the addition of two floors to the building's major wing along Grace Avenue, which could not be accomplished within the \$50 million construction budget; and

WHEREAS, the applicant represents that construction was delayed until 2003, to secure additional construction funding and that by 2007 the north and south wings of the building had been completed, but that budget shortfalls due to cost increases for the internal work on the building further delayed completion of the building; and

WHEREAS, the applicant further represents that the building will be completed by the end of 2009; and

WHEREAS, thus, the applicant now requests a one-year 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 April 13, 1999, so that as amended this portion of the resolution shall read: “to grant a one-year extension of time to complete construction, to expire on March 17, 2010; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans associated with the prior approval; and *on condition*:

THAT construction shall be substantially complete by March 17, 2010;

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. 200536063)

Adopted by the Board of Standards and Appeals, March 17, 2009.

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200-01-BZ

APPLICANT – Davidoff Malito & Hutcher LLP by Ron J. Mandel, Esq., for Browne Associates, owner; Hillside Manor Rehabilitation and Extended Care Center, lessee.

SUBJECT – Application January 29, 2009 – Extension of Time to complete construction and to obtain a Certificate of Occupancy for a previously granted Variance (§72-21) for the enlargement of an existing 11-story and penthouse rehabilitation/long term care facility (Hillside Manor), in an R6A/C2-4 Special Downtown Jamaica District zoning district, which expired on January 11, 2009.

PREMISES AFFECTED – 182-15 Hillside Avenue, northeast corner of Hillside Avenue and Avon Street, Block 9950, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of the time to complete construction and obtain a certificate of occupancy for the enlargement of a community facility building, which expired on January 11, 2009; and

WHEREAS, a public hearing was held on this application on February 24, 2009 after due notice by publication in *The City Record*, and then to decision on March 17, 2009; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, this application is submitted on behalf of the Hillside Manor Rehabilitation and Extended Care Center (“Hillside Manor”), a non-profit entity; and

WHEREAS, the subject premises is located on the northeast corner of Hillside Avenue and Avon Street, in an C2-4 (R6A) zoning district within the Special Downtown Jamaica District; and

WHEREAS, the site is occupied by an 11-story and penthouse nursing home building (Use Group 3); and

WHEREAS, on August 7, 2002, the City Planning Commission (“CPC”) granted a special permit pursuant to ZR § 74-90, to authorize the enlargement of the nursing home, which became effective on September 3, 2002; and

WHEREAS, on April 16, 2002, under the subject calendar number, the Board granted a variance to permit the enlargement of the existing penthouse and the addition of three elevators; and

WHEREAS, a condition of that grant was that a new certificate of occupancy be obtained by April 16, 2004; and

WHEREAS, the applicant represents that due to unforeseen delays related to obtaining program and funding

approvals for the enlargement from the New York State Department of Health (“DOH”), the construction was not completed and the certificate of occupancy was not obtained within the prescribed time; and

WHEREAS, on January 11, 2005, the Board granted an extension of time to complete construction and obtain a certificate of occupancy for an additional two-year term; and

WHEREAS, on March 13, 2007, the Board granted a further extension of time to complete construction and obtain a certificate of occupancy, to expire on January 11, 2009; and

WHEREAS, the applicant states that it has been unable to complete construction due to delays resulting from the September 10, 2007 rezoning of the site from a C2-2 (R5) district to a C2-4 (R6A) district within the Special Downtown Jamaica District, which imposed height limits that are exceeded by the subject building; and

WHEREAS, the applicant states that the CPC special permit authorizing the enlargement lapsed on September 3, 2006; and

WHEREAS, the applicant represents that, before it would issue work permits for the proposed enlargement, DOB required that Hillside Manor renew the CPC special permit to confirm its right to proceed with the proposed enlargement despite the rezoning; and

WHEREAS, the applicant represents that, as a special permit pursuant to ZR § 74-90 was approved by CPC prior to the September 10, 2007 rezoning, the project is grandfathered pursuant to ZR § 115-01 and may be built as proposed; and

WHEREAS, nonetheless, the applicant secured a renewal of the CPC special permit on September 8, 2008 for a term of three years; and

WHEREAS, additionally, on January 20, 2009, in response to a request by the applicant, the Board issued a letter of substantial compliance approving certain minor modifications to the approved plans, including: (i) the reduction of the sub-cellar by 1,065 sq. ft.; and (ii) the reduction of the cellar by 5,077 sq. ft.; and

WHEREAS, the applicant now requests an additional two years to complete construction and obtain a new certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board finds that the requested two-year extension of time to complete construction and 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 April 16, 2002, so that as amended this portion of the resolution shall read: “to grant an extension time to complete construction and obtain a certificate of occupancy for two years; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans associated with the prior approval; and *on condition*:

THAT a certificate of occupancy shall be obtained by March 17, 2011;

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

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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) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 401196031)

Adopted by the Board of Standards and Appeals, March 17, 2009.

215-06-BZ

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

SUBJECT – Application January 28, 2009 – Extension of Time/waiver to obtain a Certificate of Occupancy for an existing gasoline service station (Exxon) with accessory convenience store, in a C1-2/R4 zoning district, which expired on January 24, 2008.

PREMISES AFFECTED – 202-06 Hillside Avenue, southeast corner of Hillside Avenue and 202nd Street, Block 10496, Lot 52, 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.....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 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 March 3, 2009, after due notice by publication in *The City Record*, and then to decision on March 17, 2009; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Hinkson; 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 November 15, 1983, under BSA Cal. No. 327-55-BZ, the Board reopened and amended the

resolution to legalize an existing storage trailer to be used for the storage of non-combustible items; and

WHEREAS, on June 4, 1985, under BSA Cal. No. 327-55-BZ, the Board reopened and amended the resolution to permit the addition of one pump to each existing pump island; and

WHEREAS, on February 6, 1990, under BSA Cal. No. 327-55-BZ, the Board reopened and amended the resolution to permit changes in the design and arrangement of the existing gasoline station; and

WHEREAS, on June 30, 1992, under BSA Cal. No. 327-55-BZ, the Board reopened and amended the resolution to extend the term of the variance for a period of ten years to July 24, 2001, to eliminate a metal storage container and chain link fence, and to restore a portion of the grass that had been covered with asphalt; 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; and

WHEREAS, a condition of the grant was that a new certificate of occupancy be obtained by January 24, 2008; and

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

WHEREAS, the applicant represents that the delay in obtaining a certificate of occupancy was due to the need to engage a new engineering firm; and

WHEREAS, the applicant states that it has engaged a new engineering firm and that a 15-month extension is necessary to secure a new certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board finds that the requested 15-month 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, 2007, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to June 17, 2010; *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 a certificate of occupancy shall be obtained by June 17, 2010;

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

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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) and/or configuration(s) not related to the relief granted.” (DOB Application No. 400524072)

Adopted by the Board of Standards and Appeals March 17, 2009.

316-73-BZ

APPLICANT – Vassalotti Associates Architects, for 31-02 68th Realty Corporation, owner.

SUBJECT – Application February 9, 2009 – Extension of Term for the continued operation of a (UG16) Gasoline Service Station (Husky) in an R4 zoning district which expired on January 8, 2009.

PREMISES AFFECTED – 31-02 68th Street, south west corner of 68th Street and 31st Avenue, Block 1138, Lot 27, Borough of Queens.

COMMUNITY BOARD #3BX

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to March 31, 2009, at 10 A.M., for continued hearing.

1038-80-BZ

APPLICANT – Davidoff Malito & Hatcher, LLP, for Feinrose Downing LLC, owner; Expressway Arcade Corporation, lessee.

SUBJECT – Application February 5, 2009 – Extension of Term of a Special Permit for the continued operation of a UG15 Amusement Arcade (Smile Arcade) in an M2-1 zoning district which expired on January 6, 2009.

PREMISES AFFECTED – 31-07/09/11 Downing Street, Whitestone Expressway, Block 4327, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Ron Mandel.

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 31, 2009, at 10 A.M., for decision, hearing closed.

337-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Giuseppe LaSorsa, owner.

SUBJECT – Application November 10, 2008 – Extension of Term/waiver for the continued operation of a one story (UG16) Automotive Repair Shop and a two story (UG6) business and (UG2) dwelling unit on a portion of the site,

which expired on June 2, 2002, in a C1-2/R4 zoning district and an Extension of Time/waiver to obtain a Certificate of Occupancy which expired on March 29, 1987.

PREMISES AFFECTED – 1415/17 East 92nd Street, northeast corner of East 92nd Street and Avenue L, Block 8238, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to March 31, 2009, at 10 A.M., for continued hearing.

336-98-BZ & 337-98-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP for 312 Flatbush Avenue LLC, owner; AGT Crunch, lessee.

SUBJECT – Application December 31, 2008 – Application filed pursuant to §73-11to Extend the term of a special permit granted pursuant to §73-36 authorizing a physical culture establishment (PCE) (Crunch Fitness), extend the PCE to include additional area in the cellar and on the first floor, permit a change in operator and extend the time to obtain a certificate of occupancy. The subject site is located in a C2-4 zoning district.

PREMISES AFFECTED – 312/18 & 324/34 Flatbush Avenue, 157' west of the northwest corner of the intersection of Flatbush Avenue and Sterling Place, Block 1057, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD # 6BK

APPEARANCES –

For Applicant: Todd Dale

ACTION OF THE BOARD – Laid over to April 7, 2009, at 10 A.M., for continued hearing.

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APPEALS CALENDAR

142-08-A

APPLICANT – Eric Palatnik, P.C., for George Kraff, owner.

SUBJECT – Application May 9, 2008 – Proposed construction of a three story residential building which does not front on an officially mapped street contrary to General City Law Section 36. R6-OP Zoning District.

PREMISES AFFECTED – 225 Brighton 2nd Lane, corner of Brighton 2nd Lane and Brighton 2nd Place, Block 8662, Lots 153, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted.

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 Brooklyn Borough Commissioner, dated March 20, 2008, acting on Department of Buildings Application No. 302215582, which reads in pertinent part:

“Lot is a corner lot, however since the streets are not mapped streets, BSA approval is required for GCL 36;” and

WHEREAS, a public hearing was held on this application on March 3, 2009, after due notice by publication in the *City Record*, and then to decision for March 17, 2009; and

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

WHEREAS, this is an application to construct a three-story with mezzanine residential building which does not front on an officially mapped street, contrary to General City Law Section 36; and

WHEREAS, by letter dated July 28, 2008, the Fire Department states that it has reviewed the subject proposal and objects to the construction of a building at 225 Brighton 2nd Lane due to the following conditions: (1) the road is only 22'-10" wide, making Fire Department response in the area more challenging and dangerous; (2) the road was constructed many years ago for small one- and two-story single occupancy dwellings; (3) the street is a one-way street with limited parking on the right side; (4) an eight-story multiple dwelling would require the use of an aerial or tower ladder in order to respond in the case of a fire, however, because of the narrow width of this block the use of this type of equipment is not possible; and (5) the building does not have the required 30 feet of frontage space; and

WHEREAS, by letter dated August 28, 2008, the applicant clarified that the subject proposal is for a three-story with mezzanine multiple dwelling and not an eight-story multiple dwelling; and

WHEREAS, in accordance with Fire Code Section 503.2.1, in effect as of July 1, 2008, the applicant filed a New York City Fire Department Variance Application with the Fire Department on November 25, 2008; and

WHEREAS, by letter dated February 26, 2009 the Fire Department states that it has reviewed the subject proposal and objects to the proposed development unless the following conditions are met: (1) the building is protected throughout by a sprinkler system complying with the requirements of the New York City Building Code; (2) the height of the building does not exceed 35 feet above the grade plane; (3) the building is equipped with interconnected smoke alarms throughout the entire building, in compliance with the requirements of the 2008 New York City Building Code; and (4) the building is designed, constructed, operated and maintained in accordance with the Building Code, Fire Code and other applicable laws, rules, and regulations; and

WHEREAS, by letter dated March 5, 2009, the Fire Department states that the February 26, 2009 letter is also an approval of the Fire Code Variance, with conditions requested by the applicant on November 26, 2008; and

WHEREAS, on March 10, 2009, the applicant submitted revised plans in accordance with the conditions requested by the Fire Department in the February 26, 2009 letter; 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 March 20, 2008, acting on Department of Buildings Application No. 302215582, 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 March 12, 2009” – (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 17, 2009.

168-08-A

APPLICANT – Cozen O’Connor Attorneys, for South Brighton Development, LLC, owner.

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SUBJECT – Application June 24, 2008 – Legalization of an existing building not fronting on a legally mapped street contrary to General City Law Section 36. R6(OP) zoning district.

PREMISES AFFECTED – 63 Brighton 2nd Place, east side of Brighton 2nd Place, 110’ north of Brighton 2nd Lane, Block 8662, Lot 157, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Application granted.

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 Brooklyn Borough Commissioner, dated June 20, 2008, acting on Department of Buildings Application No. 302043651, which reads in pertinent part:

“Building does not have required frontage on mapped street as required under General City Law Section 36; Building Code 27-291;” and

WHEREAS, a public hearing was held on this application on August 19, 2008, after due notice by publication in the *City Record*, with continued hearings on October 7, 2008, November 18, 2008, December 16, 2008, January 27, 2008, and March 3, 2009 and then to decision for March 17, 2009; 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, this is an application to construct a four-story, eight-unit multiple dwelling which does not front on an officially mapped street, contrary to General City Law Section 36 ; and

WHEREAS, by letter dated July 15, 2008, the Fire Department stated that it reviewed the subject proposal and objected to the construction of a building at 225 Brighton 2nd Place due to the following conditions: (1) the 22’-10” width of the roadway makes Fire Department response more challenging and dangerous; (2) the road was constructed many years ago for small one-family and two-family single-family homes; (3) Brighton 2nd Lane is a one-way street with limited parking on the right side; (4) an eight-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 not possible; and (5) the building does not have the required 30 feet of frontage space; and

WHEREAS, by letter dated September 30, 2008, the applicant clarified that the proposal is for a four-story multiple dwelling with mezzanines, and not an eight-story multiple dwelling; and

WHEREAS, subsequent to a meeting with the applicant, by letter dated February 24, 2009, the Fire Department states that it approves of the proposed development if the following

conditions are met: (1) the building is protected throughout by a sprinkler system complying with the requirements of the New York City Building Code; (2) that parking is prohibited by the Department of Transportation (“DOT”) for a distance of twenty feet on the northwest corner of Brighton 2nd Lane at its intersection with Brighton 2nd Place; (3) that parking is prohibited by DOT on both sides of Brighton 2nd Place from its intersection with Brighton 2nd Lane to the north curve of Brighton 2nd Place; (4) that the building is equipped with a standpipe system installed in compliance with Building Code requirements, including a riser accessible from all floors of the building (including below-grade floors); (5) the building is equipped with interconnected smoke alarms throughout the entire building in compliance with the requirements of the 2008 New York City Building Code; and (6) the building is designed, constructed, operated and maintained in accordance with the Building Code, Fire Code and other applicable laws, rules, and regulations; and

WHEREAS, on February 26, 2009, the Fire Department stated that approval from the DOT had been secured prohibiting parking on both sides of Brighton 2nd Place and that “No Parking” signs would be installed; and

WHEREAS, the applicant submitted revised plans in accordance with the conditions requested by the Fire Department in the February 24, 2009 letter; 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 June 20, 2008, acting on Department of Buildings Application No. 302043651, 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 March 6, 2009” – (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 Building Code, Fire Code, and any other relevant 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 17, 2009.

252-08-A

APPLICANT – Gary D. Lenhart, for The Breezy Point

MINUTES

Cooperative, Inc., owner; Mary Claire & James Ryan, owners.

SUBJECT – Application October 14, 2009 – Reconstruction and enlargement of an existing single family home located within the bed of a mapped street contrary to General City Law Section 35. R4 zoning District.

PREMISES AFFECTED – 11 Clinton Walk, west side Clinton Walk at intersection of 12th Avenue and Beach 214th Street, Block 16350, Lot p/o 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted.

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 October 3, 2008, acting on Department of Buildings Application No. 410161364, reads in pertinent part:

“A1- 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, and

A2- The proposed upgraded private disposal system is in the bed of a mapped street 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 March 17, 2009, after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated October 28, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated October 29, 2008 the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated January 22, 2009, 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 October 3, 2008, acting on Department of Buildings Application No. 410161364 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 14, 2008” – 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 17, 2009.

2-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Eileen Witschger, lessee.

SUBJECT – Application January 5, 2009 – Proposed reconstruction and enlargement of a single family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 936 Bayside, south side Bayside east side of the mapped Beach 210th Street, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted.

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 December 12, 2008, acting on Department of Buildings Application No. 410175705, reads in pertinent part:

“A1- The street giving access to the existing building altered is not duly placed on the map of the City of New York.

A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.

Existing dwelling altered does not have at least 8 percent of the total perimeter of the building fronting space and is contrary to Section 27-291 of the Administrative Code;” and

WHEREAS, a public hearing was held on this application on March 17, 2009, after due notice by publication in the *City Record*, then to closure and decision on this same date; and

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WHEREAS, by letter dated February 3, 2009, 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 December 12, 2008, acting on Department of Buildings Application No. 410175705, is modified by the power vested in the Board by Section 36 of the General City Law, and this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received January 5, 2009" – 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 that it complies 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 17, 2009.

60-08-A & 39-09-A thru 41-09-A

APPLICANT – Eric Palatnik, P.C., for F & Z Properties, owners.

SUBJECT – Application March 21, 2008 – Proposed construction of a four Story Community Facility located within the bed of a mapped street (102nd Street) contrary to General City Law Section 35. R6B (C1-4) zoning district. PREMISES AFFECTED – 101-20 39th Avenue (formerly 101-20, 101-22 & 101-24 103rd Street, and 101-18 39th Avenue, between 102nd and 103rd Streets, Block 1770, Lot 22, 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 Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 24, 2009, at 10 A.M., for decision, hearing closed.

292-08-A

APPLICANT – Robert Cunningham, for Robert Cunningham, lessee.

SUBJECT – Application March 17, 2009 – An Appeal Challenging Department of Buildings interpretation that Section 23-49-(a) Special Provisions for Party or Side Lot lines Walls is not applicable to this site. R3-1 zoning district.

PREMISES AFFECTED – 123 87th Street, north side of 87th Street, 480' west from northwest corner of 87th Street and Ridge Boulevard, Block 6042, Lot 67, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Robert Cuningham and Michael Mazzella.

For Opposition: Christopher Slowik, Matthew Gershon and Walter Maffei.

For Administration: Amandus Deer, Department of Buildings.

ACTION OF THE BOARD – Laid over to April 29, 2009, at 10 A.M., for continued hearing.

Jeffrey Mulligan, Executive Director

Adjourned: 11:30 A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 17, 2009
1:30 P.M.**

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

ZONING CALENDAR

222-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for Moshe Cohn, owner.

SUBJECT – Application August 29, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary lot coverage, open space and floor area (23-141); rear yard (23-47) and exceeds the perimeter wall height (23-631) in an R3-1 zoning district.

PREMISES AFFECTED – 71 Beumont Street, for east side of Beumont Street, 200’ north of Hampton Avenue, Block 8728, Lot 77, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted.

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 Brooklyn Borough Superintendent, dated August 19, 2008, acting on Department of Buildings Application No. 302169258, reads in pertinent part:

“Proposed enlargement of the one family residence in an R3-1 zoning district:

1. Extends the degree of non-compliance with respect to lot coverage and is contrary to Sections 23-141 and 54-31 of the Zoning Resolution.
2. Extends the degree of non-compliance with respect to floor area ratio and open space and is contrary to Sections 23-141 and 54-31 of the Zoning Resolution.
3. Extends the degree of non-compliance with respect to rear yard and is contrary to Sections 23-47 and 54-31 of the Zoning Resolution;”
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 ratio, open space, lot coverage, and rear yard, contrary to ZR §§ 23-141, 23-47 and 54-31; and

WHEREAS, a public hearing was held on this application on January 13, 2009, after due notice by publication in *The City Record*, with a continued hearing on February 24, 2009, and then to decision on March 17, 2009; 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, members of the Manhattan Beach community provided testimony in opposition to the proposal, citing concerns about the perimeter wall height of the home as initially proposed; and

WHEREAS, the subject site is located on the east side of Beumont Street, between Shore Boulevard and Hampton Avenue; 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 2,186 sq. ft. (0.55 FAR); and

WHEREAS, the premises are within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in floor area from 2,186 sq. ft. (0.55 FAR) to 3,944 sq. ft. (0.99 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement provides approximately 60 percent of open space (a minimum of 65 percent is required) and 40 percent of lot coverage (a maximum of 35 percent is permitted); and

WHEREAS, the proposed enlargement maintains the existing non-complying rear yard with a depth of 20’-2¼” (a minimum rear yard of 30’-0” is required); and

WHEREAS, the applicant initially proposed to provide a perimeter wall height of 23 feet (a maximum of 21 feet is permitted); and

WHEREAS, the Board directed the applicant to establish that the perimeter wall height of the proposed home is legal; and

WHEREAS, the applicant represented that the 23-foot perimeter wall height was permitted pursuant to ZR § 73-622 because it would not exceed the perimeter wall height of the adjacent dwelling at 75 Beumont Street; and

WHEREAS, the Board notes that the applicant has submitted no evidence to establish the compliance of the perimeter wall height of the adjacent home with the Zoning Resolution; and

WHEREAS, in response, the applicant revised its proposal to reduce the requested perimeter wall height to 21 feet; and

WHEREAS, on April 10, 2007, under BSA Cal. No. 118-06-BZ, the Board granted a similar special permit application for the premises, permitting a total floor area of 4,048 sq. ft., approximately 58 percent of open space, approximately 42 percent of lot coverage, and a rear yard with a depth of 21’-6¼”; and

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WHEREAS, the Board notes that the instant application, superseding BSA Cal. No. 118-06-BZ, was filed due to subsequent modifications to 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 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 proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, open space, lot coverage and rear yard, contrary to ZR §§ 23-141, 23-47 and 54-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received November 21, 2008"-(4) sheets, "February 5, 2009"-(2) sheets and "March 3, 2009"-(3) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 3,944 sq. ft. (0.99 FAR); an open space of approximately 60 percent; lot coverage of approximately 40 percent; and a rear yard with a minimum depth of 20'-2 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, March 17, 2009.

269-08-BZ

CEQR #09-BSA-041Q

APPLICANT – MetroPCS New York, LLC, for LGA Hotel LLC, owner; MetroPCS New York, LLC, lessee.

SUBJECT – Application November 5, 2008 – Special Permit (§73-30) to allow an extension to an existing non-accessory radio tower.

PREMISES AFFECTED – 90-10 Grand Central Parkway, north side of 23rd Avenue, between 90th Street and 93rd Street, Block 1068, Lot 1, Borough of Queens.

COMMUNITY BOARD # 3Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted.

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 Deputy Borough Commissioner, dated October 16, 2008, acting on Department of Buildings Application No. 410097247, reads in pertinent part:

“Proposed telecommunication facility exceeds 400 square feet allowed under TPPN # 5/98 and therefore will require a special permit from the Board of Standards and Appeals pursuant to Section 73-30 of the NYC Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within a C2-2 (R3-2) zoning district, the proposed construction of a telecommunications facility that consists of six antennas and related equipment for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on February 24, 2009, after due notice by publication in *The City Record*, and then to decision on March 17, 2009; and

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

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, at hearing, a resident of the adjacent building testified in opposition to the application, citing concerns about the proximity of the telecommunication facility to LaGuardia airport; and

WHEREAS, a number of local residents provided testimony in opposition to this application, citing concerns about aesthetics and health risks; and

WHEREAS, the proposed telecommunications facility will be located on the roof of a six-story hotel building (Use Group 5); and

WHEREAS, the applicant states that the proposed telecommunications facility consists of: (1) six antennas pipe mounted onto the building parapet and extending to a maximum height of six feet above the parapet, for a total

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height of 76 feet; (2) two new equipment cabinets, two new battery cabinets and one new Power Protection Cabinet, to be placed on a new 10-foot by 16-foot equipment platform located on the rooftop; (3) two GPS units mounted to the parapet; and (4) accessory equipment for public utility wireless communications; and

WHEREAS, the applicant represents that the telecommunications facility is necessary to remedy a significant gap in reliable service in the vicinity of the site caused by a lack of coverage and capacity; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications facility, provided it finds “that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood;” and

WHEREAS, the applicant represents that the facility has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the facility will comply with all applicable laws, that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant further represents that the size and profile of the facility is the minimum necessary to provide the required wireless coverage, and that the facility will not interfere with radio, television, telephone or other uses; and

WHEREAS, the applicant represents that three existing telecommunication facilities, including antennas, are already situated on the roof of the subject building; and

WHEREAS, in response to the health and safety concerns raised by the community, the applicant represents that any structure would be subject to Federal Aviation Administration (“FAA”) regulations related to the airport, and transmissions from the facility will conform to standards promulgated by the Federal Communications Commission (“FCC”) in accordance with federal law; and

WHEREAS, in addition, the Board notes that it may not consider arguments about health risks related to such installations, as such consideration is pre-empted by federal law; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed facility and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

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

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

outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09-BSA-041Q, dated November 6, 2008; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR § 73-03 and § 73-30, to permit, within a C2-2 (R3-2) zoning district, the proposed construction of a telecommunications facility (non-accessory radio facility) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked “Received November 6, 2008”- (6) 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;

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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 17, 2009.

319-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for

MINUTES

Lawrence and Melvin Friedland, owners; IFC Center, lessee.

SUBJECT – Application December 31, 2008 – Special Permit (§73-201) for an expansion of an existing motion picture theater (IFC Center). C1-5 District.

PREMISES AFFECTED – 323/25 and 327 6th Avenue; 14 Cornelia Street, 75’ front of 6th Avenue and 54 frontage on Cornelia Street, Block 589, Lots 19, 30, 31, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Paul Selver.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 29, 2008, acting on Department of Buildings (“DOB”) Application No. 110414999 reads, in pertinent part:

“Pursuant to Zoning Resolution Section 32-31, proposed motion picture theater with a maximum capacity of 500 persons in a C1-5/R7-2 zoning district requires a special permit from the Board of Standards and Appeals under Zoning Resolution Section 73-201;” and

WHEREAS, this is an application made pursuant to ZR §§ 73-201 and 73-03, to permit, on a site partially within a C1-5/R7-2 zoning district and partially within an R6 zoning district, the proposed 95-seat expansion of an existing motion picture theater (Use Group 8), which does not comply with ZR § 32-17; and

WHEREAS, a public hearing was held on this application on February 24, 2009 after due notice by publication in The City Record, and then to decision on March 17, 2009; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination 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, Congressman Jerrold L. Nadler, recommends approval of this application; and

WHEREAS, the subject Zoning Lot, consisting of Tax Lots 30, 31 and 19, is an irregular through-block site bounded on the east by Sixth Avenue and on the west by Cornelia Street, between West 4th Street and Bleeker Street; and

WHEREAS, the Zoning Lot has approximately 75’-2” of frontage on Sixth Avenue, and approximately 52’-8” of frontage on Cornelia Street, and a total lot area 9,146 sq. ft.; and

WHEREAS, Tax Lot 30 and Tax Lot 31 are located entirely within a C1-5/R7-2 zoning district; Tax Lot 19 is

divided by a zoning district boundary with the eastern portion lying within the C1-5/R7-2 zoning district and the western portion located within the adjacent R6 zoning district; and

WHEREAS, Tax Lot 30 and Tax Lot 31 are occupied by a three-story 385-seat motion picture theater (Use Group 8) with three separate cinemas and a total floor area of 10,140 sq. ft. (1.32 FAR); Tax Lot 19 is vacant; and

WHEREAS, the existing theater is currently operating as the “IFC Center;” and

WHEREAS, the applicant states that the existing theater operated as the “Waverly” from 1938 until approximately 2001, during which time it had 586 seats; and

WHEREAS, the applicant further states that after a renovation, the theater reopened in 2005 as the IFC Center with three theaters with a total of 385 seats and a Use Group 6 eating and drinking establishment in an adjoining building on Lot 30; and

WHEREAS, the applicant represents that the use as the site as a theater predated the adoption of the 1961 Zoning Resolution and the existing building was therefore reoccupied as a legal nonconforming theater use; and

WHEREAS, the applicant proposes to convert the area occupied by the Use Group 6 eating and drinking establishment into two additional theaters with 95 new seats, for a total of 480 seats; and

WHEREAS, in the subject C1-5 zoning district, a special permit pursuant to ZR § 73-201 is required to permit an increase in the number of seats from 385 to 480 seats and the creation of two new theaters; thus, the instant application was filed; and

WHEREAS, the grant of a special permit pursuant to ZR § 73-201 requires a finding that a proposed additional theater has a minimum of four square feet of waiting area either within an enclosed lobby or in an open area that is protected during inclement weather; and

WHEREAS, the applicant states that 380 sq. ft. of waiting area is required by the expansion of 95 seats, and that 480 sq. ft. of waiting area is proposed in the lobby area of the ground floor; and

WHEREAS, the applicant further states that there is currently no waiting area requirement for the seats in the three existing theaters because the provision of a patron waiting area based on the number of seats was not required by the Zoning Resolution in effect in 1937 when the theater was built; the seats for those theaters are therefore grandfathered by the prior Zoning Resolution; and

WHEREAS, the applicant supported this statement by providing the zoning calculations approved by DOB and the current Certificate of Occupancy; and

WHEREAS, ZR § 73-201 states that the waiting area shall not include space occupied by stairs, or located within ten feet of a refreshment stand or an entrance to a public toilet; and

WHEREAS, the plans provided by the applicant indicate that the proposed waiting area is located in an enclosed interior space that includes no space occupied by stairs or within ten feet of a refreshment stand or an entrance

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to a public toilet; and

WHEREAS, as to the general impact on the essential character of the neighborhood and nearby conforming uses, the applicant states that the Sixth Avenue location of the existing theater building is predominately developed with commercial uses; and

WHEREAS, the applicant further states that the proposed expansion will not increase the bulk or height of the existing building and that changes to the building envelope are limited to the sealing of windows in the façade where the restaurant use is being replaced by theater use; and

WHEREAS, the two proposed theaters will seat 35 and 60 patrons, respectively, the applicant represents that the expansion will result in no appreciable increase in pedestrian or vehicular traffic and further notes that before 2001, the subject building accommodated 586 theater patrons, more than would be permitted by the proposed grant; and

WHEREAS, the applicant states that the proposed theaters will be built with sound attenuation to ensure that they are compatible with adjacent residential uses; and

WHEREAS, the applicant further states that the operation of the theaters rely on staggered screening times, thereby decreasing the number of patrons waiting to purchase tickets or enter a cinema; and

WHEREAS, the Board notes that the applicant provided a current screening schedule indicating that starting times for evening performances were generally spaced at least 15 minutes apart; and

WHEREAS, the Board further notes that drawings provided by the applicant also include residual patron space at the cellar level; and

WHEREAS, at hearing, the Board asked the applicant to confirm that egress complies with all Building Code requirements; and

WHEREAS, in response, the building architect explained the egress from the theaters and represented that the proposed plans comply with all Building Code requirements; and

WHEREAS, accordingly, the Board finds that the proposed expansion will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, the Board notes that the grant of the special permit will facilitate the expansion of a venue for the showing of independently-produced films, thereby enhancing the cultural life of the city on a site where such use is appropriate; and

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

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

WHEREAS, therefore, the Board determines that the evidence in the record supports the findings required to be

made under ZR §§ 73-201 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 each and every one of the required findings under ZR §§ 73-201 and 73-03, to permit, on a site partially within a C1-5/R7-2 zoning district and partially within an R6 zoning district, the proposed 95-seat expansion of an existing motion picture theater (Use Group 8), which does not comply with ZR § 32-17, *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 31, 2008"-(2) sheets and "February 19, 2009"-(1) sheet; and *on further condition*;

THAT 480 sq. ft. of waiting area shall be provided in the lobby area of the ground floor, as shown on the BSA-approved plans;

THAT residual patron space shall be maintained at the cellar level, as shown on the BSA-approved plans;

THAT all applicable fire safety measures will be complied with;

THAT all egress shall be as approved by DOB;

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

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

THAT construction shall be completed pursuant to ZR § 73-70;

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

Adopted by the Board of Standards and Appeals March 17, 2009.

287-06-BZ

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

SUBJECT – Application October 27, 2006 – Variance (§ 72-21) to allow a residential/community facility building contrary to yard regulations. R5 zoning district.

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

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant:

ACTION OF THE BOARD – Laid over to April 21, 2009, at 1:30 P.M., for continued hearing.

203-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gastar, Inc.,

MINUTES

owner.

SUBJECT – Application August 17, 2007 – Variance (§72-21) to allow a new thirteen (13) story mixed-use building containing twenty (20) dwelling units, ground floor retail and third and fourth floor community facility (medical) uses; contrary to bulk and parking regulations (§35-311 & §36-21). R6/C2-2 district.

PREMISES AFFECTED – 137-35 Elder Avenue (a/k/a 43-49 Main Street) located at the northwest corner of Main Street and Elder Avenue, Block 5140, Lot 40, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Richard Lobel and Barbara Cohen.

ACTION OF THE BOARD – Laid over to April 28, 2009, at 1:30 P.M., for continued hearing.

133-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Pilot Realty Co., owner.

SUBJECT – Application April 25, 2008 – Special Permit (§§73-48 & 73-49) to allow rooftop parking above the first floor of an existing one and two-story commercial building and waive limitation on number of vehicles in a group parking facility, located in an M1-1 zoning district.

PREMISES AFFECTED – 1601 Bronxdale Avenue, northeast side of Bronxdale Avenue between Pierce and Van Nest Avenues, Block 4042, Lot 200, Borough of Bronx.

COMMUNITY BOARD #11BX

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 31, 2009, at 1:30 P.M., for decision, hearing closed.

173-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Royal One Real Estate, LLC, owner.

SUBJECT – Application July 1, 2008 – Variance (§ 72-21) to allow a new twelve (12) story hotel building containing ninety nine (99) hotel rooms; contrary to bulk regulations (§ 117-522). M1-5/R7-3 Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area C.

PREMISES AFFECTED – 42-59 Crescent Street, northeast corner of the intersection of Crescent Street and 43rd Avenue, Block 430, Lots 37, 38, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to April 21, 2009, at 1:30 P.M., for continued hearing.

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 warehouse/ commercial vehicle storage building (UG 16); contrary to use regulations (§22-00). R3X 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 and Richard Alexander.

For Opposition: Council Member Tony Avella, Kathleen Cronin, Thomas Buscher, James R.. Grayshaw and Gerda Soria.

ACTION OF THE BOARD – Laid over to April 21, 2009, at 1:30 P.M., for continued hearing.

216-08-BZ

APPLICANT – Eric Palatnik, P.C., for Valeri Gerval, owner.

SUBJECT – Application August 22, 2008 – Special Permit (§73-622) In-Part Legalization for the enlargement and modification of a single family home. This application seeks to vary floor area, open space and lot coverage (§23-141) and side yard (§23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 1624 Shore Boulevard, Shore Boulevard and Oxford Street, Block 8757, Lot 88, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to April 7, 2009, at 1:30 P.M., for decision, hearing closed.

228-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sephardic Mikvah Israel by Isaac Hidary, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) to permit the construction of a one-story mikvah (ritual bath). The proposal is contrary to ZR §§ 24-34 (front yards) and 24-35 (side yards). R3-2 district.

PREMISES AFFECTED – 2802 Avenue R, a/k/a 1801-1811 East 28th Street, southeast corner of Avenue R and East 28th Street, Block 6834, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman and Rabbi Maslaton.

For Opposition: Eric Palatnik and Stuart Klein.

MINUTES

ACTION OF THE BOARD – Laid over to April 28, 2009, at 1:30 P.M., for continued hearing.

230-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for A and B Bistricher, LLC, by Elsa Bistricher, owner.
SUBJECT – Application September 5, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space (§23-141); and less than minimum rear yard requirement (§23-47) in an R-2 zoning district.
PREMISES AFFECTED – 1019 East 23rd Street, East side of 23rd Street between Avenue J and Avenue K, Block 7605, Lot 36, 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 31, 2009, at 1:30 P.M., for decision, hearing closed.

234-08-BZ

APPLICANT – Eric Palatnik, P.C., for 1702 Avenue Z, Inc., owner.

SUBJECT – Application September 9, 2008 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment at the cellar and a portion of the first and second floors in a seven-story mixed-use building. The proposal is contrary to ZR §32-10. C4-2 district.

PREMISES AFFECTED – 1702 Avenue Z, southeast of the corner formed by Avenue Z and East 17th Street, Block 7462, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 7, 2009, at 1:30 P.M., for continued hearing.

265-08-BZ

APPLICANT – Mark A. Levine for 70 Wyckoff Avenue LLC, owner.

SUBJECT – Application October 28, 2008 – Variance pursuant to §72-21 to allow for the legalization of residential units located in a manufacturing building, contrary to §42-00; M1-1 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, Jack Freedman and Sandy

Santra.

ACTION OF THE BOARD – Laid over to April 21, 2009, at 1:30 P.M., for continued hearing.

275-08-BZ

APPLICANT – Eric Palatnik, P.C., for South Side House LLC, owner.

SUBJECT – Application November 20, 2008 – Special Permit (§73-36) to allow a physical culture establishment on the ground floor of an existing building. The proposal is contrary to ZR §42-10. M1-2/R6 (MX8) district.

PREMISES AFFECTED – 98 South 4th Street, south side of South 4th Street, between Bedford Avenue and Berry Street, Block 2443, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Eric Palatnik and Vadim Noskov.

ACTION OF THE BOARD – Laid over to April 7, 2009, at 1:30 P.M., for continued hearing.

276-08-BZ

APPLICANT – Alfonso Duarte, for Kesey LLC, owner; Beljanski Wellness Center Inc., lessee.

SUBJECT – Application November 12, 2008 – Special Permit (§73-36) to allow a physical culture establishment on the sixth floor in a seven-story office building. The proposal is contrary to ZR §32-10. C5-2 district.

PREMISES AFFECTED – 150 East 55th Street, south side, 155' east of Lexington Avenue, Block 1309, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Alfonso Duarte and Kevin McCarthy.

ACTION OF THE BOARD – Laid over to April 7, 2009, at 1:30 P.M., for continued hearing.

312-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Leah Friedman and Michael Friedman, owners.

SUBJECT – Application December 18, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area and open space (23-141), side yard (23-461) and less than the minimum required rear yard (23-47) in an R2 zoning district.

PREMISES AFFECTED – 1134 East 23rd Street, west side of East 23rd between Avenue K and Avenue L, Block 7622, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to April 21, 2009, at 1:30 P.M., for continued hearing.

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316-08-BZ

APPLICANT – Bryan Cave LLP/Robert S. Davis, for The Simons Foundation, Inc., owner.

SUBJECT – Application December 23, 2008 – Variance (§72-21) to permit the development of a three- and eight-story school building. The proposal is contrary to ZR Section 35-24c (minimum base height). R9A with a C1-5 district overlay.

PREMISES AFFECTED – 345-349 Second Avenue, a/k/a 247-249 East 20th Street, northwest corner of East 20th Street and Second Avenue, Block 901, Lots 26, 27 & 28, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Robert Davis.

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 7, 2009, at 1:30 P.M., for decision, hearing closed.

3-09-BZ

APPLICANT – Duane Morris LLP, by Jon Popin, for Lutheran Social Services of Metropolitan New York, Inc., owner.

SUBJECT – Application January 8, 2009 – Special Permit (§73-19) to allow the conversion of an existing two-story warehouse into a high school with sleeping accommodations. The proposal is contrary to the use requirements of the underlying M1-1 district.

PREMISES AFFECTED – 831 Eagle Avenue, East Avenue, Eagle 159th Street, St. Anns Avenue, East 161st Street, Block 2619, Lot 27, Borough of Bronx.

COMMUNITY BOARD #1BX

APPEARANCES –

For Applicant: John Poppin, James Hinamen and Christine Connel.

For Opposition: Irma L. Hernandez.

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 31, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 4:00P.M.

BULLETIN

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April 2, 2009

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46-09-BZ

122 Oxford Street, Between Shore Boulevard and Oriental Avenue., Block 8757, Lot(s) 92, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of an existing family home. R3-1 district.

47-09-A

114 Beach 215th Street, Westside of Beach 215th Street 240' south of Breezy Point Boulevard., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Reconstruction and enlargement of an existing single family dwelling not fronting on a legally mapped street contrary to General City Law Section 36 . R4 Zoning District . R4 district.

48-09-A

97 Crooke Avenue, North side of Crooke Avenue, approximately 164 feet of west of Ocean Avenue., Block 5059, Lot(s) 51, Borough of **Brooklyn, Community Board: 14**. Construction not fronting a mapped street, contrary to General City Law Section 36. R7-1 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

APRIL 7, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 7, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

111-71-BZ

APPLICANT – Walter T. Gorman, P.E., for Motiva Enterprises LLC, owner; Erol Bayrdktar, lessee.

SUBJECT – Application March 16, 2009– Extension of Time/waiver to obtain a Certificate of Occupancy for a UG16 Gasoline Service Station (Shell) with accessory convenience store, in a C2-2/R3-2 zoning district, which expired on October 16, 1997.

PREMISES AFFECTED – 185-25 North Conduit Avenue, northwest corner of Springfield Boulevard, Block 13094, Lot p/o 63, Borough of Queens.

COMMUNITY BOARD #12Q

301-03-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Isabell Wassner and Leonard Wassner, owner.

SUBJECT – Application February 20, 2009– Extension of Time/waiver to Complete Construction and obtain a Certificate of Occupancy of previously granted Special Permit (§73-622) for the enlargement of single family home and an Amendment to modify the previously approved plans, in an R2 zoning district, which expired on January 13, 2008.

PREMISES AFFECTED – 1103 East 22nd Street, between Avenue J and Avenue K, Block 7604, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEALS CALENDAR

180-08-A thru 184-08-A

APPLICANT – Tobias Guggenheimer Architect, P.C., for Schley Avenue Development, LLC, owner.

SUBJECT – Application July 10, 2008 – Proposed construction of Four three family homes and parking lot located within the bed of mapped street (Shore Drive) contrary to General City Law Section 35. C3A zoning district.

PREMISES AFFECTED – 3236, 3238, 3240, 3242 and 3244 Schley Avenue, south east corner of Schley Avenue and Clarence Avenue, Block 5490, Lot (tent.) 7, 108, 109, 110, 111, Borough of Bronx.

COMMUNITY BOARD #10BX

APRIL 7, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 7, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

237-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Rocky Mount Baptist Church, owner; Rocky Mount Development, LLC., lessee.

SUBJECT – Application September 18, 2008 – Variance pursuant to §72-21 to allow for a 19 story community facility and residential building with 124 affordable units, contrary to bulk regulations (§23-145, §23-633, §24-552(b)) R7-2 District.

PREMISES AFFECTED – 37 Hillside Avenue, south side of Hillside Avenue, 450' east of the intersection of Broadway and Hillside Avenue, Block 2170, Lot 118, Borough of Manhattan.

COMMUNITY BOARD #12M

298-08-BZ

APPLICANT – Lewis E. Garfinkel, for Abraham Zlotnick, owner.

SUBJECT – Application December 4, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141(a)) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1156 East 22nd Street, between Avenue J and Avenue K, Block 7603, Lot 81, Borough of Brooklyn.

COMMUNITY BOARD #14BK

308-08-BZ

APPLICANT – Davidoff Malito & Hutcher, LLP, for 201 East 67 LLC, owner; MonQi Fitness, lessee.

SUBJECT – Application October 17, 2008 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment located on the third through fifth floors in a five-story building. The proposal is contrary to ZR §32-00. C1-9 district.

PREMISES AFFECTED – 201 East 67th Street, northeast corner of the intersection of Third Avenue and East 67th Street, Block 1422, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

CALENDAR

1-09-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 39-01 QB LLC c/o Rhodes Management, owner; TSI Sunnyside LLC dba New York Sports Club, lessee.

SUBJECT – Application January 2, 2009 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment on a portion of the ground floor in a three-story building. The proposal is contrary to ZR §42-00. M1-4 district.

PREMISES AFFECTED – 39-01 Queens Boulevard, northerly side of Queens Boulevard, easterly of 39th Street, Block 191, Lot 5, Borough of Queens.

COMMUNITY BOARD #2Q

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 24, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

241-47-BZ

APPLICANT – Sheldon Lobel, P.C., for Centre Metro Realty, LLC, owner.

SUBJECT – Application July 24, 2008 – Extension of Term and Amendment filed pursuant to §§11-411 & 11-413 requesting an extension of the variance previously granted by the Board of Standards and Appeals which expired on January 29, 2004. The application seeks a change in use from knitting mill (Use Group 17) to a contractor's establishment (Use Group 17). The site is located in an R5B zoning district.

PREMISES AFFECTED – 16-23/25 Hancock Street, West side of Hancock Street approximately 245' north of Wyckoff Street, Block 3548, Lot 97, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Elizabeth Safian.

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 to permit a change of use from a knitting mill (Use Group 17) to a contractor's establishment (Use Group 16), and an extension of the term which expired on January 29, 2004; and

WHEREAS, a public hearing was held on this application on January 27, 2009, after due notice by publication in the *City Record*, with a continued hearing on March 3, 2009, and then to decision on March 24, 2009; and

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

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

WHEREAS, the site is located on the west side of Hancock Street between Wyckoff Street and Cypress Avenue, within an R5B zoning district; and

WHEREAS, the subject site has a total lot area of 5,000 sq. ft.; and

WHEREAS, the site is occupied by a two-story mixed-use building with a recently vacated knitting mill on the first

floor and a two-family dwelling on the second floor; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 4, 1948 when, under the subject calendar number, the Board granted a variance to permit a knitting mill use at the site 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, the grant was extended on October 25, 1994, for a term of ten years from the expiration of the prior grant, to expire on January 24, 2004; 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 extend the term of an expired variance; and

WHEREAS, the applicant also seeks an amendment to permit a change in use from knitting mill (Use Group 17) to contractor's establishment (Use Group 16); and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a request for a change in use; and

WHEREAS, the applicant represents that the proposed contractors' establishment (Use Group 16) will be a less intrusive use than the previous knitting mill (Use Group 17); and

WHEREAS, the applicant states that the knitting mill employed a total of 25 people while the proposed contractors' establishment is anticipated to employ between four and eight people; and

WHEREAS, the applicant represents that the proposed contractors' establishment will generate less noise than the knitting mill use, and will not result in any additional traffic; and

WHEREAS, the applicant states that the hours of operation for the proposed contractors' establishment will be limited to Monday through Sunday, from 7:00 a.m. to 5:00 p.m.; 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, accordingly, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-413; and

Therefore it is Resolved, that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and 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 under ZR §§ 11-411 and 11-413, to permit the change in use at the premises from knitting mill (Use Group 17) to contractor's establishment (Use Group 16), and grants an extension of term for a period of ten (10) years, to expire on January 29, 2014; *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 February 18, 2009"-(4) sheets; and *on further condition*:

THAT this grant shall be for a term of ten years, to expire on January 29, 2014;

THAT street trees shall be planted as per the BSA-

MINUTES

approved plans;

THAT the ground floor use shall be limited to an electrical, glazing, heating, painting, paper hanging, plumbing, roofing or ventilating contractor's establishment;

THAT all signage shall comply with C1 zoning district regulations and shall not be illuminated;

THAT the hours of operation shall be limited to Monday through Sunday, 7:00 a.m. to 5:00 p.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 approved plans shall 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. (DOB Application No. 410104970)

Adopted by the Board of Standards and Appeals, March 24, 2009.

709-55-BZ

APPLICANT – Walter T. Gorman, P.E., for LMT Realty LLC, owner; Mobil Oil Corporation, lessee.

SUBJECT – Application February 23, 2009 – Extension of Time to obtain a Certificate of Occupancy for a Gasoline Service Station (Mobil), in a C1-2/R4 zoning district, which expired on March 24, 2009.

PREMISES AFFECTED – 2000 Rockaway Parkway, north west of Seaview Avenue, Block 8299, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Cindy Bachan.

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 7, 2009, at 10 A.M., for decision, hearing closed.

7-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for HKAL 34th Street Limited Partnership, owner; TSI East 34 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application February 9, 2009 – Extension of Term of a previously granted Special Permit for the operation of Physical Culture Establishment (New York Sports Club (NYSC)), located in a C1-9 (TA) zoning district, which expired on January 11, 2009.

PREMISES AFFECTED – 300 East 34th Street, southeast corner of East 34th Street, and Second Avenue, Block 939, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to April 21, 2009, at 10 A.M., for continued hearing.

APPEALS CALENDAR

60-08-A

39-09-A thru 41-09-A

APPLICANT – Eric Palatnik, P.C., for F & Z Properties, owners.

SUBJECT – Application March 21, 2008 – Proposed construction of a four Story Community Facility located within the bed of a mapped street (102nd Street) contrary to General City Law Section 35. R6B (C1-4) zoning district. PREMISES AFFECTED – 101-20 39th Avenue (formerly 101-20, 101-22 & 101-24 103rd Street, and 101-18 39th Avenue, between 102nd and 103rd Streets, Block 1770, Lot 22, 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 Superintendent, dated February 4, 2009, acting on Department of Buildings Application Nos. 401214227, 401214236, 401214254 and 401214245, reads in pertinent part:

“The proposed development in the bed of a mapped street is contrary to General City Law 35;” and

WHEREAS, these applications collectively request permission to build four four-story, four-family residential buildings partially in the bed of 102nd Street, a mapped street between 39th Avenue and Roosevelt Avenue; and

WHEREAS, a public hearing was held on these applications on November 18, 2008 after due notice by publication in the *City Record*, with continued hearings on January 13, 2008 and March 17, 2008, and then to decision on March 24, 2009; and

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

WHEREAS, pursuant to a proposed subdivision, the subject site (Block 1770, Lot 22) will comprise Tax Lot 124 (101-23 39th Avenue), Tax Lot 123 (101-22 39th Avenue) Tax

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Lot 122 (101-20 39th Avenue), and Tax Lot 222 (101-18 39th Avenue); and

WHEREAS, on September 14, 2004, under BSA Cal. Nos. 50-04-A to 52-04-A, the Board approved applications under Section 35 of the General City Law for the collective development of three three-story, three-family homes at the subject site; and

WHEREAS, the Board notes that the instant application initially proposed a five-story daycare facility; the applicant subsequently revised its proposal to reflect the proposed residential development; and

WHEREAS, the Department of Environmental Protection (DEP) reviewed the two earlier iterations of this proposal and, by letters dated May 14, 2004 and April 22, 2008, stated that it had no objections; and

WHEREAS, the Department of Transportation (DOT) also reviewed the two earlier iterations of this proposal and, by letters dated June 24, 2004 and October 2, 2008, stated that it had no objections; and

WHEREAS, by letter dated March 19, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; 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 Superintendent, dated February 4, 2009, acting on New Building Application Nos. 401214227, 401214236, 401214254 and 401214245, is hereby modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawings filed with the application marked "Received March 6, 2009"-(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 lot subdivision prior to the issuance of any permits;

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

THAT the applicant shall forward a copy of a plan showing landscaping to the community board prior to issuance of a building permit, with a copy to the Board;

THAT the approved plans shall 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 24, 2009.

307-08-BZY

APPLICANT – Howard Zipser, Akerman Senterfitt LLP, for 163 Orchard Street LLC, owner.

SUBJECT – Application December 17, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. C4-4A Zoning District.

PREMISES AFFECTED – 163 Orchard Street, through lot between Orchard and Houston Street between Stanton 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 March 31, 2009, at 10 A.M., for postponed hearing.

311-08-BZY

APPLICANT – Slater & Beckerman, LLP, for D.A.B. Group LLC, owner.

SUBJECT – Application December 18, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the Zoning district regulations. C4-4A.

PREMISES AFFECTED – 77, 79 & 81 Rivington Street, Block 415, Lots 61, 62, 63, 66, 67, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Neil Weisbard, Daniel Borra and Edward Mills.

For Opposition: Sheila Saks.

ACTION OF THE BOARD – Laid over to April 21, 2009, at 10 A.M., for continued hearing.

313-08-A

APPLICANT – Chuck Close, c/o Offices of Howard Goldman, LLC, for Proprietary Lessee of Studio and Basement Cooperative, lessee.

SUBJECT – Application December 22, 2008 – Appeal seeking to revoke permits and approvals for a six story commercial building that violates the Building Code and Zoning Resolution. M1-5B zoning district.

PREMISES AFFECTED – 363-371 Lafayette Street, east side of Lafayette Street between Great Jones and Bond Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 12, 2009, at 10 A.M., for postponed hearing.

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**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 24, 2009
1:30 P.M.**

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

ZONING CALENDAR

134-08-BZ

APPLICANT – Eric Palatnik, P.C., for Asher Goldstein, owner.

SUBJECT – Application April 30, 2008 – Variance (§72-21) to construct a third floor to an existing two story, two family semi-detached residence partially located in an R-5 and M1-1 zoning district.

PREMISES AFFECTED – 34 Lawrence Avenue, Lawrence Avenue, 80’ west of McDonald Avenue, Block 5441, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 23, 2009, acting on Department of Buildings Application No. 310113926, reads in pertinent part:

- “1. Proposed enlargement of an existing two-family house within the R5 district is contrary to ZR Section 23-141(b), ZR Section 23-631(d), ZR Section 23-461(b) and ZR Section 23-47 which requires a variance from the Board of Standards and Appeals.
2. Proposed enlargement of an existing two-family house within the M1-1 district is contrary to ZR Sections 42-00 and 43-43 which requires a variance from the Board of Standards and Appeals;” and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site partially within an R5 zoning district and partially within an M1-1 zoning district, the proposed one-story enlargement of an existing two-story, two-family, semi-detached residence which does not conform to district use regulations and does not comply with the zoning requirements for perimeter wall height in the M1-1 zoning district, contrary to ZR §§ 42-00 and 43-43, and does not comply with the zoning requirements for floor area, perimeter wall height, side yard and rear yard in the R5 zoning district, contrary to ZR §§

23-141(b), 23-631(d), 23-461(b), and 23-47; and

WHEREAS, a public hearing was held on this application on October 28, 2008, after due notice by publication in *The City Record*, with continued hearings on December 9, 2008, January 13, 2009, February 3, 2009, and March 3, 2009, and then to decision on March 24, 2009; 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 12, Brooklyn, recommends approval of this application; and

WHEREAS, the subject premises is located on the south side of Lawrence Avenue, between McDonald Avenue and 47th Street, partially within an R5 zoning district and partially within an M1-1 zoning district; and

WHEREAS, the site has a frontage of 59’-9” on Lawrence Avenue, a depth of 100’-0”, and a total lot area of approximately 3,743 sq. ft.; and

WHEREAS, the site is currently occupied by a two-story, semi-detached, two-family home; and

WHEREAS, the applicant proposes to construct a one-story vertical enlargement to the existing home; and

WHEREAS, the site comprises two tax lots--Lot 17, on the western portion of the site, and Lot 18, on the eastern portion of the site; and

WHEREAS, at hearing, the Board requested the applicant to establish whether the subject site comprised a single zoning lot; and

WHEREAS, in response, the applicant provided copies of 1943 and 1971 deeds for the premises, which indicate that the two tax lots were under common ownership in 1961 and are therefore a single zoning lot as defined by ZR § 12-10(b); and

WHEREAS, a zoning district boundary line bisects the site; the western portion of the Zoning Lot is within an R5 zoning district and the eastern portion is within an M1-1 zoning district; and

WHEREAS, the M1-1 portion of the Zoning Lot has a lot area of approximately 2,712 sq. ft. and the R5 portion of the Zoning Lot has a lot area of approximately 1,031 sq. ft.; the applicant provided separate zoning calculations for both zoning districts; and

WHEREAS, as to use, the proposed residential use is permitted as of right in the R5 zoning district, but a use variance is required within the M1-1 zoning district; and

WHEREAS, the home is proposed to have: a total floor area of 3,858 sq. ft. (1.02 FAR, the maximum permitted FAR is 1.06 FAR), with 2,151 sq. ft. of floor area (2.09 FAR) in the R5 portion of the site (the maximum permitted FAR is 1.25) and 1,707 sq. ft. of floor area (0.63 FAR) in the M1-1 portion of the site (the maximum permitted FAR is 1.0); and a perimeter wall height of 32’-8” (the maximum permitted perimeter wall height is 30’-0” in both zoning districts); and

WHEREAS, the proposed home will maintain the following existing non-compliances: a side yard with a width of 6’-2 ¼” along the eastern lot line (a side yard with a

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minimum width of 8'-0" is required), and a rear yard with a depth of 27'-3" (a minimum rear yard of 30'-0" is required); 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 and conforming development: (1) the site's irregular shape; (2) the site's division by a zoning district boundary; (3) the site's underdevelopment; and (4) the existing home's above-grade first floor; and

WHEREAS, as to the site's shape and size, the applicant states that the site is an irregular triangular shape with approximately 1,031 sq. ft. of lot area located in an R5 zoning district and approximately 2,712 sq. ft. of lot area located in an M1-1 zoning district; and

WHEREAS, the applicant notes that the site is a pre-existing Zoning Lot predating the creation of the aforementioned zoning district boundary line; and

WHEREAS, the applicant states that the existing two-family home is located partially within the R5 zoning district and partially within the M1-1 zoning district; and

WHEREAS, the applicant further states that the M1-1 portion of the site has a frontage of approximately 30'-0 on Lawrence Avenue; and

WHEREAS, the applicant represents that the site's frontage is too small to accommodate a truck loading area; and

WHEREAS, the applicant further represents that the portion of the subject site within the M1-1 zoning district is too small to accommodate the floor plates of a modern manufacturing facility; and

WHEREAS, the applicant submitted a 400-foot radius diagram indicating that no site in the surrounding area with a size and shape comparable to the subject site was used for a conforming manufacturing use; and

WHEREAS, the applicant represents that, as a consequence of its irregular shape and the location of the zoning district boundary line, the subject site is infeasible for as-of-right manufacturing use; and

WHEREAS, as to the site's underdeveloped condition, the applicant submitted a survey indicating that the buildings within the subject R5 district had an average FAR of 1.14, and the buildings within the subject M1-1 district along McDonald Avenue had an average FAR of 1.01; and

WHEREAS, the applicant states that the existing home on the subject site has a floor area of 2,572 sq. ft. (0.68 FAR); and

WHEREAS, the applicant notes that approximately 4,001 sq. ft. of floor area is permitted on the subject site (1.07 FAR); approximately 1,289 sq. ft. (1.25 FAR) of developable floor area located within the R5 portion of the site; and approximately 2,712 sq. ft. (1.0 FAR) of developable floor area located within the M1-1 portion of the site; and

WHEREAS, thus, the applicant represents that the site is significantly underdeveloped as approximately 1,429 sq. ft. of floor area is currently unused; and

WHEREAS, the applicant notes that the proposed

enlargement would develop 1,286 sq. ft. of the available floor area; and

WHEREAS, the applicant further states that the proposed enlargement cannot be accommodated as of right within the M1-1 portion of the subject site because of the site's configuration and the location of the existing home; and

WHEREAS, the Board notes that homes in the surrounding neighborhood similar in size to the existing home may increase their square footage as of right, while the subject site cannot be enlarged without a variance from the Board; and

WHEREAS, as to the existing building's above-grade floor, the applicant states that the first floor of the existing home is located 4'-2" above grade, and the first and second stories of the home have 10'-0" floor-to-floor heights; and

WHEREAS, the applicant further states that the existing home has a height of 23'-2"; and

WHEREAS, the applicant represents that a perimeter wall height of 32'-8" is therefore necessary in order to provide a floor-to-ceiling height of 8'-8" on the proposed third floor; and

WHEREAS, thus, the applicant further represents that the requested waiver for 2'-8" of the perimeter wall height is necessary in order to provide a livable floor-to-ceiling height on the proposed third floor; and

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

WHEREAS, as discussed above, the applicant notes that the subject site is an irregularly shaped triangular lot, with approximately 1,031 sq. ft. of lot area within an R5 zoning district and approximately 2,712 sq. ft. of lot area within an M1-1 zoning district; and

WHEREAS, the applicant represents that, given the location of the existing residential building and the zoning district boundary at the site, no conforming manufacturing use is feasible at the subject site; and

WHEREAS, the Board agrees that due to the unique physical conditions on the site, there is no reasonable possibility that development in strict conformance with zoning will provide a reasonable return; and

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

WHEREAS, as to use, the applicant states that the proposed use is permitted as of right within the R5 zoning district; and

WHEREAS, the applicant represents that Lawrence Avenue, between McDonald Avenue and 47th Street, is occupied by an abundance of residential uses; and

WHEREAS, the applicant has submitted a 400-foot radius diagram of the area indicating that 14 sites located on Lawrence Avenue between McDonald Avenue and 47th Street

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are occupied by homes, including the adjoining site to the west; and

WHEREAS, as to bulk, the applicant notes that the proposed 1.02 FAR is compliant with the permitted FAR in the R5 district; and

WHEREAS, the survey submitted by the applicant indicates that buildings within the subject R5 district have an average FAR of 1.14, and that buildings in the neighboring M1-1 district along McDonald Avenue have an average FAR of 1.01; and

WHEREAS, the radius diagram submitted by the applicant indicates that there are several three-story homes in the surrounding area, including the home located directly across the street from the subject site; 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 pre-existing shape and a zoning district boundary line that bisects the pre-existing lot; and

WHEREAS, the Board notes that the application as originally filed contemplated that the eastern side of the proposed third floor would cantilever over the lower floors by 2'-4", creating a total floor area of 4,004 sq. ft. (1.06 FAR); and

WHEREAS, at hearing, the Board questioned the applicant's need for the third floor cantilever; and

WHEREAS, in response to the Board's concerns, the applicant submitted revised plans indicating the removal of the cantilevered third floor overhang and the reduction of the total floor area to 3,858 sq. ft. (1.02 FAR); and

WHEREAS, accordingly, the Board finds the requested waivers to be 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 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 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, on a site located partially within an R5 zoning district and partially within an M1-1 zoning district, the proposed enlargement of a two-story residential building, which does not conform to district use regulations and does not comply with the zoning requirements for perimeter wall height in the M1-1 zoning district, contrary to ZR §§ 42-00 and 43-43, and does not comply with the zoning requirements for floor area, perimeter wall height, side yard and rear yard in the R5 zoning district, contrary to ZR §§ 23-141(b), 23-631(d), 23-461(b), 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 March 2, 2009"-(12) sheets and "March 24, 2009"-(1) sheet; and *on further condition*:

THAT the following are the bulk parameters of the proposed building: a total floor area of 3,858 sq. ft. (1.02 FAR), a perimeter wall height of 32'-8", a side yard with a width of 6'-2 1/4" along the eastern lot line, and a rear yard of 27'-3", 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;

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, March 24, 2009.

162-08-BZ

CEQR #08-BSA-094M

APPLICANT – The Law Office of Fredrick A. Becker, for 150 East 93rd Street Corporation, owner.

SUBJECT – Application June 12, 2008 – Special Permit (§73-621) to allow for the enlargement of an existing building contrary to floor area and lot coverage regulations §23-145 and §35-31; C1-8X District.

PREMISES AFFECTED – 150 East 93rd Street, southeast corner of East 93rd Street and Lexington Avenue, Block 1521, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #8M

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 Manhattan Borough Commissioner dated December 5, 2008, acting on Department of Buildings Application No. 103369196, reads in pertinent part:

“Proposed vertical enlargement increases degree of FAR non-compliance by less than 10 percent of the maximum permitted, contrary to ZR 23-145 and ZR 35-31;” and

WHEREAS, this is an application under ZR §§ 73-621

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and 73-03, to permit, within a C1-8X zoning district, the proposed vertical enlargement of a mixed-use residential/commercial building which does not comply with the zoning requirements for floor area, contrary to ZR §§ 23-144 and 35-31; and

WHEREAS, a public hearing was held on this application on December 16, 2008, after due notice by publication in *The City Record*, with continued hearings January 27, 2009 and March 3, 2009, and then to decision on March 24, 2009; 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 8, Manhattan, recommends approval of this application; and

WHEREAS, Manhattan Borough President Scott M. Stringer, State Assembly Member Jonathan Bing, State Assembly Member Micah Z. Kellner, and Council Member Jessica Lappin provided written testimony recommending disapproval of this application; and

WHEREAS, representatives of the Carnegie Hill Neighbors, Defenders of the Historic Upper East Side, 93rd Street Beautification Association, Brewery Hill Block Association, and Civitas submitted written and/or oral testimony citing concerns with the effects that the proposed enlargement would have on neighborhood character; and

WHEREAS, residents of neighboring properties testified in opposition to the application citing the adverse effects that the proposed enlargement would have on their access to light and air; and

WHEREAS, the subject site is located on the southeast corner of the intersection of Lexington Avenue and East 93rd Street within a C1-8X zoning district; and

WHEREAS, the subject site has a total lot area of approximately 7,345 sq. ft., and is occupied by an 11-story and penthouse multi-family dwelling with a floor area of approximately 64,940 sq. ft. (8.84 FAR); and

WHEREAS, the applicant proposes a second-floor vertical enlargement of 1,218 sq. ft. to an existing penthouse unit; and

WHEREAS, the applicant seeks an increase in the total floor area from approximately 64,940 sq. ft. (8.84 FAR), to approximately 66,158 sq. ft. (9.01 FAR); the maximum floor area permitted is approximately 66,104 sq. ft. (9.0 FAR); and

WHEREAS, the applicant represents that the proposed floor area exceeds the maximum permitted floor area by approximately 55 sq. ft. 1, or less than one percent; and

WHEREAS, the initial application identified the entire proposed 1,218 sq. ft. penthouse enlargement as exceeding the maximum permitted floor area; and

WHEREAS, the initial request was based on a lot area calculated at 7,005 sq. ft. and a maximum permitted floor area calculated at 63,045 sq. ft., on the basis of the 9.0 FAR permitted for the subject site; and

WHEREAS, the applicant subsequently determined that the lot area had been miscalculated and that, based on the permitted FAR, approximately 1,163 sq. ft. could be built as-of-right; and

WHEREAS, the applicant then revised the special permit application to request an increase in the maximum permitted floor area of 55 sq. ft.; and

WHEREAS, the Board notes that ZR § 73-621 permits the enlargement of a residential building such as the subject multi-family dwelling if the following requirements are met: (1) the proposed FAR does not exceed 110 percent of the maximum permitted; (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 enlargement creates no new non-compliance nor increases the amount or degree of any existing non-compliance; and

WHEREAS, as to the FAR, the applicant states that an application under ZR § 73-621 would permit an FAR of 9.9 on the subject site and a floor area of 69,345 sq. ft. -- an increase of 3,241 sq. ft. over the permitted floor area; and

WHEREAS, the Board notes that the subject application is to allow approximately 55 sq. ft. of additional floor area above what is permitted as of right, well below the permitted limit; and

WHEREAS, the Board further notes that the proposed 9.01 FAR reflects an increase of less than one percent of the maximum permitted FAR of 9.0 which is less than the 10 percent increase allowed under the special permit; and

WHEREAS, as to lot coverage, the applicant states that Quality Housing regulations appertaining to the subject site provide for a maximum permitted lot coverage of 80 percent and that the an application under ZR § 73-621 would allow for a maximum lot coverage of 88 percent; and

WHEREAS, the applicant represents that the existing lot coverage of the subject site is 82 percent and is an existing non-compliance; and

WHEREAS, the applicant states that, as the proposed enlargement is to an existing penthouse, the grant of the special permit will not increase the existing lot coverage or decrease the amount of open space; and

WHEREAS, the Board notes that the penthouse addition would be within the contextual envelope prescribed by the C1-8X district and therefore would not create any new non-compliances or increase the degree of existing non-compliance; and

WHEREAS, accordingly, the Board has determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 73-621; and

WHEREAS, the applicant represents that the proposed enlargement will not: (1) alter the essential character of the surrounding neighborhood; (2) impair the use or development of adjacent properties; (3) be detrimental to the public welfare; or (4) interfere with any pending public improvement project; and

WHEREAS, the applicant states that the proposed enlargement will increase the floor area of one existing penthouse unit and will not increase the number of dwelling units in the subject building; and

1 Difference due to rounding.

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WHEREAS, as to the concerns of neighbors regarding the effects of the enlargement on light and air, a response by the applicant states and the Board agrees that the addition of approximately 55 sq. ft. allowed by the special permit would not significantly diminish the amount of available light and air; and

WHEREAS, the Board notes that the Environmental Assessment Statement submitted by the applicant analyzed the potential shadows created by the proposed penthouse, and not just the 55 sq. ft. increment, and found no impacts; and

WHEREAS, the applicant further states that the additional floor area sought comprises two linear feet of building area at the rear of the addition, and that an addition of that size would have no adverse impacts on shadows, light or air; and

WHEREAS, a number of elected officials and community residents testified that the proposed enlargement was inappropriate with the context of the surrounding area; and

WHEREAS, the applicant states the subject C1-8X zoning district allows for a maximum street wall height of 120 feet and a maximum building height of 170 feet; and

WHEREAS, the applicant further states that the proposed enlargement would reach a height of 135 feet and would comply with the height and setback requirements of the subject zoning district; and

WHEREAS, the applicant represents that the proposed height of the subject building is comparable to that of five buildings in the immediate area located respectively at the southeast and northeast corners of East 92nd Street and Lexington Avenue, the northeast corner of East 93rd Street and Lexington Avenue, the southeast corner of East 94th Street and Lexington Avenue, and the southwest corner of East 92nd Street and Lexington Avenue; and

WHEREAS, applicant submitted photomontages indicating that the visibility of the proposed enlargement will be minimal from certain points to the north and south of the subject site, and will be nonexistent from 93rd Street; and

WHEREAS, at hearing, several civic organizations (the "Opposition") testified that the grant of the special permit could discourage a potential extension of the Carnegie Hill Historic District by the Landmarks Preservation Commission ("LPC"); and

WHEREAS, in response, a submission by the applicant notes that the subject building is not a landmark and is not located in a landmark district or a historic district; and

WHEREAS, the applicant further states that the LPC has evaluated requests to expand the Carnegie Hill Historic District to include the subject site, but that no action is pending; and

WHEREAS, the applicant states additionally that landmarking of the subject site would be unlikely to preclude development of the proposed enlargement because the LPC has permitted rooftop enlargements on individual landmarks and in historic districts where the enlargement was minimally visible, as in the instant case; and

WHEREAS, the Board notes that the site is neither an individual landmark, nor is it located within a historic district; and

WHEREAS, the Board further notes that the proposed

increase in floor area of approximately 55 sq. ft. is modest and is well within the parameters of the special permit; and

WHEREAS, at the last hearing, members of the Opposition testified that the Board should continue the hearing to ensure the accuracy of the applicant's revised zoning lot calculations, which resulted in a reduction in the requested square footage from 1,218 sq. ft. to 55 sq. ft.; and

WHEREAS, the Board's approval will be limited to only 55 sq ft above the allowable maximum FAR and the Board will request that, prior to the issuance of permits, DOB review and verify the existing zoning lot size and floor area calculations; 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 requisite findings pursuant to ZR § 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 §§ 73-621 and 73-03, to permit, within a C1-8X zoning district, the proposed vertical enlargement of a mixed-use residential/commercial building, which does not comply with the zoning requirements for floor area, contrary to ZR §§ 23-144 and 35-31; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received February 25, 2009"-(9) sheets and "March 23, 2009"-(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed enlargement: a floor area increase of 55 sq. ft. above the maximum permitted FAR, a total floor area of 66,158 sq. ft., and an FAR of 9.01, as shown on the BSA approved plans;

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

THAT prior to the issuance of the building permit, DOB shall review and verify the existing zoning lot size and the existing and proposed floor area calculations;

THAT this 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 within four years of the date of this resolution; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning

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Resolution, the Administrative Code, and any other relevant 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 24, 2009.

97-08-BZ

APPLICANT – Eric Palatnik, P.C., for Chesky Berkowitz, owner; Central UTA, lessee.

SUBJECT – Application April 18, 2008 – Special Permit (§73-19) to allow the proposed legalization of the existing yeshiva (Use Group 3 school). M1-1 district.

PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik, Rabbi Glanz, Hiram Rothkrug and Shteirman.

For Opposition: Michael McGaw and Charlene Phipps, CB #3.

ACTION OF THE BOARD – Laid over to April 21, 2009, at 1:30 P.M., for continued hearing.

99-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) to construct a three story with cellar single family home on an irregular triangular lot what does not meet the rear yard requirement (§23-47) in an R3-2 (SRD) zoning district.

PREMISES AFFECTED – 102 Drumgoole Road, South side of Drumgoole Road, 144.62 ft. west of the intersection of Drumgoole Road and Wainwright Avenue, Block 5613, Lot 221, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Todd Dole.

ACTION OF THE BOARD – Laid over to April 21, 2009, at 1:30 P.M., for continued hearing.

169-08-BZ

APPLICANT – James Chin & Associates, LLC, for Jeffrey Bennett, owner.

SUBJECT – Application June 24, 2008 – Variance (§ 72-21) to allow the residential redevelopment of an existing five-story commercial building. Six residential floors and six (6) dwelling units are proposed; contrary to use regulations (§42-00 & § 111-104 (e)). M1-5 (TMU- Area B-2) district.

PREMISES AFFECTED – 46 Laight Street, north side of Laight Street, 25’ of frontage on Laight Street, Block 220, Lot 35, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: James, Chin, Ivan Khoury and Robert Pauls.

ACTION OF THE BOARD – Laid over to April 28, 2009, at 1:30 P.M., for continued hearing.

235-08-BZ

APPLICANT – Eric Palatnik, P.C., for Agudath Taharath Mishpachan, owners.

SUBJECT – Application September 16, 2008 – Variance (§72-21) to permit the expansion of a Use Group 3 Mikvah.

The proposal is contrary to ZR §33-12 (Maximum floor area ratio) and §33-431 (Maximum height of walls and required setbacks). C2-3/R4 district.

PREMISES AFFECTED – 1508 Union Street, located at the southwest corner of Union Street and Albany Avenue, Block 1279, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Eric Palatnik, Deity Leverton, David Shteirman, Sheina Levin and Yossi Stern.

ACTION OF THE BOARD – Laid over to April 28, 2009, at 1:30 P.M., for continued hearing.

236-08-BZ

APPLICANT – Sheldon Lobel, for Joey Aini, owner.

SUBJECT – Application September 18, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (§23-141) and the permitted perimeter wall height (§23-631) in an R2X (OPSD) zoning district.

PREMISES AFFECTED – 1986 East 3rd Street, west side of East 3rd Street, 100’ south of Avenue S, Block 7105, Lot 152, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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 April 7, 2009, at 1:30 P.M., for decision, hearing closed.

250-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sari Dana and Edward Dana, owners.

SUBJECT – Application October 10, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (§23-141) and less than the required rear yard (§23-47) in an R2X (OP) Special Ocean Parkway District.

PREMISES AFFECTED – 1925 East 5th Street, east side of East 5th Street between Avenues R and S, Block 6681, Lot 490, Borough of Brooklyn.

COMMUNITY BOARD #15BK

MINUTES

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 7, 2009, at 1:30 P.M., for decision, hearing closed.

253-08-BZ

APPLICANT – Law Office of Fredrick A. Becker for Paula Digrazia and Lisa Tapani, owner.

SUBJECT – Application October 15, 2008 – Variance (§72-21) to legalize a prior enlargement at the rear of the home and to allow for a new enlargement to an existing single family home on a narrow zoning lot. This variance seeks to vary floor area ratio, open space lot coverage (§23-141(b)); side yards (§23-461(a) & (§23-48) and less than the required rear yard (§23-47) in an R-4 zoning district.

PREMISES AFFECTED – 2623 East 11th Street, East side of East 11th Street between Avenue Z and William Court, Block 7455, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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 21, 2009, at 1:30 P.M., for decision, hearing closed.

274-08-BZ

APPLICANT – Jesse Masyr, Esq., Wachtel & Masyr, LLP, for West Broadway 220 LLC (47 Grand Street), owner; West Broadway 330 LLC (431, 43 Grand Street), lessee.

SUBJECT – Application November 10, 2008 – Variance pursuant to §72-21 to allow for an increase in floor area, variation in height and setback requirements and retail use below the level of the second story, contrary to §42-14, §43-12 and §43-43. M1-5A & M1-5B Districts.

PREMISES AFFECTED – 41-47 Grand Street (a/k/a 330 West Broadway) southwest corner of Grand Street and West Broadway, Block 227, Lots 19, 20, 22, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Ethan Goodman, Morris Adjmi, Jess Walker, Alan Popal, Jack Freeman, Dan Aizer, Erez Itzhaki, Jack Forewa and Dirk McCall.

For Opposition: Shelly Friedman, Robert Wisniewski, Ingrid Wegaud, Darlene Lulkes, Carole Fredman, Sharon Leysea, Pryor Dodge, Marie Evans, Carol Gable and Mark Shefflin.

ACTION OF THE BOARD – Laid over to May 12,

2009, at 1:30 P.M., for continued hearing.

306-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Third and Fifty-Eight. LLC,owner; Evergreen Spa, Inc., lessee.

SUBJECT – Application December 18, 2008 – Special Permit (§73-36) to allow the operation of a physical culture establishment in the cellar of an existing 21-story mixed-use building. The proposal is contrary to ZR §32-10. C5-2 district.

PREMISES AFFECTED – 969 Third Avenue a/k/a 200 East 58th Street, Block 1331, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #6M

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 April 21, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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April 9, 2009

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49-09-BZ

1323 East 32nd Street, East side of East 32nd Street between Avenue M and Kings Highway., Block 7668, Lot(s) 36, Borough of **Brooklyn, Community Board: 18**. Variance to permit the enlargement of a synagouge, contrary to bulk regulations. R4 district.

50-09-BZ

29 West 35th Street, West of 35th Street and Fifth Avenue., Block 837, Lot(s) 23, Borough of **Manhattan, Community Board: 5**. Special Permit (73-36) to allow legalization of a physical culture establishment. M1-6 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 21, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 21, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

5-98-BZ

APPLICANT – Maxfield Blaufeux & Heywood Balaufeux, for Priority Landscaping Incorporated, owner.
SUBJECT – Application March 13, 2009 – Extension of Term of a previously granted Variance (§72-21) for a garden supply sales and nursery establishment (UG17) with accessory parking and storage in an R5 zoning district which expired on February 23, 2009.
PREMISES AFFECTED – 1861 McDonald Avenue, east side 200' north of Quentin Road, Block 6633, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #15BK

209-04-BZ

APPLICANT – Joseph P. Morsellino, for Waterfront Resort, Incorporated, owner.
SUBJECT – Application March 23, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to permit the conversion and enlargement of an existing industrial building to residential use in an M2-1 zoning district which expires on July 19, 2009.
PREMISES AFFECTED – 109-09 15th Avenue, northwest corner of 15th Avenue and 110th Street, Block 4044, Lot 60, Borough of Queens.

COMMUNITY BOARD #7Q

41-06-BZ

APPLICANT – Akerman Senterfitt Stadtmauer Bailkin, for New York Hospital Queens, owner.
SUBJECT – Application February 9, 2009 – Amendment of a previously approved variance (§72-21) which permitted, on a portion of the campus of New York Hospital, the construction of a underground parking structure with 372 accessory parking spaces. The application did not comply with the front and side yard requirements. (§§24-33 & 24-34). The current application seeks to legalize a 4'-8" open area along the side lot line within the C1-2 overlay which does not comply with §33-25 (Minimum Required Side Yards). The site is located in a R6/C1-2 zoning district.
PREMISES AFFECTED – 139-24 Booth Memorial Avenue, south side of Booth Memorial Avenue and West Side of 141st Street, Block 6401, Lot 19, Borough of Queens.

COMMUNITY BOARD #7Q

APPEALS CALENDAR

32-09-BZY thru 34-09-BZY

APPLICANT – William Alicea for Treadwell LLC, owner.
SUBJECT – Application February 27, 2009 – Extension of time to complete construction (11-332) and obtain a Certificate of Occupancy of a major development commenced prior to the text amendment of the zoning district regulations. R3A.

PREMISES AFFECTED – 122, 124 & 126 Treadwell Avenue, southwest corner of Treadwell Avenue and Harrison Avenue, Block 1088, Lot 49, Borough of Staten Island.

COMMUNITY BOARD #1SI

APRIL 21, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 21, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

260-08-BZ

APPLICANT – Eric Palatnik, for Moisei Tomshinsky, owner.
SUBJECT – Application October 21, 2008 – Special Permit (§73-622) for the In-Part Legalization and enlargement of a single family home. This application seeks to vary floor area (23-141) in an R3-1 zoning district.
PREMISES AFFECTED – 148 Oxford Street, between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

268-08-BZ

APPLICANT – Sheldon Lobel, P.C., for 314 7th Avenue, LLC, owner.
SUBJECT – Application October 30, 2008 – Special Permit filed, pursuant to §73-621 of the New York City Zoning Resolution, to permit the enlargement of an as-of-right eating and drinking establishment (Use Group 6) into the footprint of an existing accessory parking garage of a mixed-use residential and commercial building. The subject site is located in a R6A/C1-4 zoning district.

PREMISES AFFECTED – 314 Seventh Avenue, southwest corner of the intersection formed by Eight Street and Seventh Avenue, Block 1006, Lot 37, Borough of Brooklyn.
COMMUNITY BOARD #6BK

CALENDAR

301-08-BZ

APPLICANT – Fridman Saks LLP, for 2717 Quentin Realty LLC, owner.

SUBJECT – Application December 10, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area and lot coverage (23-141), side yard (23-461), perimeter wall height (23-631(b)) and less than the minimum rear yard (23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 2717 Quentin Road, between East 27th and East 28th Streets, Block 6790, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #15BK

16-09-BZ

APPLICANT – Slater & Beckerman, LLP, for The Devlin Building LLC, owner; Yoga Works, Inc., lessee.

SUBJECT – Application February 4, 2009 – Special Permit (§73-36) to allow a physical culture establishment on the second and third floors of an existing five-story building. The proposal is contrary to ZR Section 42-10. M1-5B district.

PREMISES AFFECTED – 459 Broadway, south west corner of Broadway and Grand Street, Block 231, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #2M

42-09-BZ

APPLICANT – Francis R. Angelino, Esq., for Arrow Linen Supply Company, Inc., owner.

SUBJECT – Application March 6, 2009 – Special Permit filed pursuant to §§11-411 & 11-412 to permit a reinstatement of a variance which expired on July 12, 1992 which allowed the extension of a legal non conforming use within a residential zoning district. The application seeks an amendment to allow for a one-story enlargement of approximately 770 sq. ft. in the rear of the lot for additional storage for the commercial laundry. The subject site is located in a R5B zoning district

PREMISES AFFECTED – 441-477 Prospect Avenue, between Eight Avenue and Prospect Park West, Block 1113, Lot 73, Borough of Brooklyn.

COMMUNITY BOARD #7BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MARCH 31, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

1038-80-BZ

APPLICANT – Davidoff Malito & Hatcher, LLP, for Feinrose Downing LLC, owner; Expressway Arcade Corporation, lessee.

SUBJECT – Application February 5, 2009 – Extension of Term of a Special Permit for the continued operation of a UG15 Amusement Arcade (Smile Arcade) in an M2-1 zoning district which expired on January 6, 2009.

PREMISES AFFECTED – 31-07/09/11 Downing Street, Whitestone Expressway, Block 4327, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Florence Lo.

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 of a special permit, which expired on January 6, 2009; and

WHEREAS, a public hearing was held on this application on March 17, 2009 after due notice by publication in *The City Record*, and then to March 31, 2009 for decision; and

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

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

WHEREAS, on January 6, 1981, the Board granted a special permit, under the subject calendar number, for the operation of an amusement arcade on the subject premises; and

WHEREAS, on May 13, 1986, the special permit was amended to increase the number of amusement arcade games from 112 to 130; and

WHEREAS, subsequently, the term of the special permit has been extended at various times; and

WHEREAS, most recently, on February 5, 2008, the term was extended for one year from the expiration of the prior grant, to expire on January 6, 2009; and

WHEREAS, the Board finds that the instant application

is appropriate to grant, based upon the evidence submitted.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated January 6, 1981, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for an additional one (1) year from January 6, 2009, to expire on January 6, 2010; *on condition* that all conditions and drawings associated with the previous grant remain in effect; and *on further condition*:

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT there shall be no more than 130 amusement games on the subject premises;

THAT the above conditions and all conditions from prior resolutions shall appear on the certificate of occupancy;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Alt. No. 435/81)

Adopted by the Board of Standards and Appeals, March 31, 2009.

316-73-BZ

APPLICANT – Vassalotti Associates Architects, for 31-02 68th Realty Corporation, owner.

SUBJECT – Application February 9, 2009 – Extension of Term for the continued operation of a (UG16) Gasoline Service Station (Husky) in an R4 zoning district which expired on January 8, 2009.

PREMISES AFFECTED – 31-02 68th Street, south west corner of 68th Street and 31st Avenue, Block 1138, Lot 27, Borough of Queens.

COMMUNITY BOARD #3BX

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 21, 2009, at 10 A.M., for decision, hearing closed.

337-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Giuseppe LaSorsa, owner.

SUBJECT – Application November 10, 2008 – Extension of Term/waiver for the continued operation of a one story (UG16) Automotive Repair Shop and a two story (UG6)

MINUTES

business and (UG2) dwelling unit on a portion of the site, which expired on June 2, 2002, in a C1-2/R4 zoning district and an Extension of Time/waiver to obtain a Certificate of Occupancy which expired on March 29, 1987.

PREMISES AFFECTED – 1415/17 East 92nd Street, northeast corner of East 92nd Street and Avenue L, Block 8238, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #18BK

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 April 21, 2009, at 10 A.M., for decision, hearing closed.

217-03-BZ

APPLICANT – Sheldon Lobel, P.C., for 140 Pennsylvania Avenue, LLC, owner.

SUBJECT – Application July 17, 2008 – Extension of Time to Complete Construction of a previously granted variance for the proposed expansion of a one story and cellar building in an R-5 zoning district.

PREMISES AFFECTED – 142 Pennsylvania Avenue, southeast corner of Pennsylvania Avenue and Liberty Avenue, Block 3703, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #5BK

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 April 21, 2009, at 10 A.M., for decision, hearing closed.

853-53-BZ

APPLICANT – Walter T. Gorman, P.E., for Knapp LLC, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application March 4, 2009 – Extension of Time/waiver to obtain a Certificate of Occupancy for a Gasoline Service Station (Mobil) in a C-2/R3-2 which expired on January 22, 2009.

PREMISES AFFECTED – 2402/16 Knapp Street, south west corner of Avenue Z, Block 7429, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Cindy Bachan

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 28, 2009, at 10 A.M., for decision, hearing closed.

240-55-BZ

APPLICANT – Joseph P. Morsellino, Esq., for DLC Properties LLC, owner; Helms Brother's, lessee.

SUBJECT – Application March 11, 2009 – Extension of Time to complete construction of a second story addition (5,000sf) to an existing commercial building in a C2-2(R6B) & R4 zoning district which expired on February 13, 2009.

PREMISES AFFECTED – 207-22 Northern Boulevard, Northern Boulevard and 208th Street, Block 7305, Lot 19, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Joseph P. Morsellino

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 28, 2009, at 10 A.M., for decision, hearing closed.

237-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Anthony Perez Cassino, owner.

SUBJECT – Application March 3, 2009 – Extension of Time to Complete Construction for a previously granted Variance (§72-21) to permit the proposed construction of a two family detached home on a vacant lot, which expired on February 8, 2009, in an R3-1 zoning district.

PREMISES AFFECTED – 5722 Faraday Avenue, southeast corner of Valles Avenue, Block 5853, Lot 2198, Borough of Bronx.

COMMUNITY BOARD #8BX

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 April 28, 2009, at 10 A.M., for decision, hearing closed.

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APPEALS CALENDAR

272-08-A

APPLICANT – Elizabeth Safian, Sheldon Lobel, P.C., for Brighton 2nd Place, LLC, owner.

SUBJECT – Application November 5, 2008 – Proposed construction of residential building not fronting on a legally mapped street contrary to General City Law Section 36. R6 Zoning District.

PREMISES AFFECTED – 35 Brighton 2nd Place, premises is located on the west side of Brighton 2nd Place approximately 120 feet north of Brighton 2nd Lane, Block 8662, Lots 230, 232, 234, Borough of Brooklyn.

COMMUNITY BOARD #13BK

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 April 21, 2009, at 10 A.M., for decision, hearing closed.

277-08-BZY thru 287-08-BZY

APPLICANT – Eric Palatnik, P.C., for Opal Builders, LLC, owner.

SUBJECT – Application November 19, 2008 – Extension of time to complete construction (11-332) and obtain a Certificate of Occupancy of a minor development commenced prior to the text amendment of the zoning district regulations. R3-X SSRRD (Area LL).

PREMISES AFFECTED – 23, 26, 27, 35, 39, 43, 47, 55, 59, and 63 Opal Lane, bounded Idaho Avenue, Bloomingdale Road and Amboy Road, Block 6993, Lot 20, 4,19,18,17,16,15,14,12,11,10, Borough of Staten Island.

COMMUNITY BOARD #3SI

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 28, 2009, at 10 A.M., for decision, hearing closed.

307-08-BZY

APPLICANT – Howard Zipser, Akerman Senterfitt LLP, for 163 Orchard Street LLC, owner.

SUBJECT – Application December 17, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. C4-4A Zoning District.

PREMISES AFFECTED – 163 Orchard Street, through lot between Orchard and Houston Street between Stanton 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 April 21, 2009, at 10 A.M., for decision, hearing closed.

27-09-BZY

APPLICANT – Bryan Cave, LLP, for 126 First Place, LLC, owner.

SUBJECT – Application February 17, 2009 – Extension of time to complete construction 11-332(b) and obtain a Certificate of Occupancy for a development commenced under the prior zoning district regulations. R6 Zoning district.

PREMISES AFFECTED – 126 First Place, south side of First Place, 300’ east of intersection of First Place and Court Street, Block 459, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Frank Cheney.

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 21, 2009, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 31, 2009
1:30 P.M.**

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

ZONING CALENDAR

133-08-BZ

CEQR #08-BSA-086X

APPLICANT – Sheldon Lobel, P.C., for Pilot Realty Co., owner.

SUBJECT – Application April 25, 2008 – Special Permit (§§73-48 & 73-49) to allow rooftop parking above the first floor of an existing one and two-story commercial building and waive limitation on number of vehicles in a group parking facility, located in an M1-1 zoning district.

PREMISES AFFECTED – 1601 Bronxdale Avenue, northeast side of Bronxdale Avenue between Pierce and Van Nest Avenues, Block 4042, Lot 200, Borough of Bronx.

COMMUNITY BOARD #11BX

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 Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Deputy Borough Commissioner, dated April 21, 2008, acting on Department of Buildings Application No. 200306347, reads:

- “1. Proposed rooftop parking is contrary to ZR 44-11 and requires a special permit pursuant to ZR 73-49.
2. Proposed accessory group parking facility is in excess of 150 vehicles contrary to ZR 44-12 and requires a special permit pursuant to ZR 73-48;”
and

WHEREAS, this is an application under ZR §§ 73-48, 73-49, and 73-03 to legalize rooftop parking above the first floor of an existing one- and two-story commercial building and to waive the limitation on the number of vehicles in a group parking facility located in an M1-1 zoning district, contrary to ZR §§ 44-11 and 44-12; and

WHEREAS, a public hearing was held on this application on February 10, 2009 after due notice by publication in the *City Record*, with a continued hearing on March 17, 2009, and then to decision on March 31, 2009; and

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

WHEREAS, the site 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 Bronxdale Avenue, 675 feet south of Van Nest Avenue, within an M1-1 zoning district; and

WHEREAS, the site is occupied by a one- and two-story mixed-use commercial/warehouse building; and

WHEREAS, on May 6, 1997, under BSA Cal. No. 37-96-BZ, the Board granted a special permit pursuant to ZR § 73-49, to permit rooftop parking immediately above the first floor of an existing one- and two-story commercial building in an M1-1 zoning district; and

WHEREAS, on September 30, 2003, under BSA Cal. No. 37-96-BZ, the Board reopened and amended the resolution to allow an increase in the number of spaces to 145, to reconfigure the ramp leading to the parking level, and to extend the time to complete construction to May 6, 2005; and

WHEREAS, the applicant states that the approval for rooftop parking under BSA Cal. No. 37-96-BZ subsequently lapsed due to the applicant’s failure to meet certain compliance dates; and

WHEREAS, the applicant now proposes to legalize the existing rooftop parking and to increase the number of parking spaces to 197 located on the rooftop of the existing one-story warehouse portion of the site; and

WHEREAS, in order to meet its needs, the applicant seeks special permits pursuant to ZR §§ 73-48 and 73-49, to permit rooftop parking for more than 150 vehicles; and

WHEREAS, pursuant to ZR § 73-482, the Board may permit accessory group parking facilities with more than 150 spaces in commercial or manufacturing districts, provided the facility has adequate reservoir space at the vehicular entrance and that the streets providing access to such use will be adequate to handle the traffic generated thereby; and

WHEREAS, the applicant represents that the proposed parking facility has adequate reservoir space at the vehicular entrance; and

WHEREAS, the Board notes that the applicant is required to provide ten reservoir spaces to accommodate the proposed 197 rooftop parking spaces; and

WHEREAS, the plans submitted by the applicant indicate that the proposed parking facility provides ten reservoir spaces at the vehicular entrance on Bronxdale Avenue; and

WHEREAS, the applicant represents that the streets providing access to the proposed facility are adequate to handle the traffic generated thereby; and

WHEREAS, the applicant states that the proposed parking facility will be accessed by Bronxdale Avenue, just north of the intersection with East Tremont Avenue; and

WHEREAS, the applicant further states that both Bronxdale Avenue and East Tremont Avenue are major regional roadways exceeding 100 feet in width with multiple travel lanes in each direction that can easily accommodate traffic generated by the facility; and

WHEREAS, the applicant notes that the proposed parking facility is not a public parking garage and represents that the proposal will create no demand for additional parking

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because it seeks only to provide additional on-site accessory parking for the building's existing uses; and

WHEREAS, therefore, the applicant states that the proposed parking facility will actually improve street congestion by providing additional off-street parking spaces; and

WHEREAS, based upon the above, the Board concludes that the findings required under ZR § 73-48 have been met; and

WHEREAS, pursuant to ZR § 73-49, the Board may permit parking spaces to be located on the roof of a building in an M1-1 zoning district if the Board finds that the parking is located so as not to impair the essential character or the future use or development of the adjacent areas; and

WHEREAS, the applicant represents that the rooftop parking will not impair the essential character or future use or development of adjacent areas; and

WHEREAS, the applicant notes that the rooftop parking is located on the top of the existing one-story warehouse portion of the site; and

WHEREAS, the applicant submitted a 200-foot radius diagram indicating that the property immediately to the north and west of the subject site is improved with several two-story industrial buildings, and that all the surrounding lots with frontage on the east side of Bronxdale Avenue are improved with one-story transportation-related or commercial uses; and

WHEREAS, the applicant represents that, although there are two residential buildings located just east of the subject site, they are shielded from the proposed rooftop parking facility by the two-story portion of the subject building which fronts Bronxdale Avenue; and

WHEREAS, the applicant further represents that, because the rooftop parking facility is located behind the two-story portion of the building, the other uses on Bronxdale Avenue are also screened from the parking facility; and

WHEREAS, at hearing, the Board requested that the applicant establish that it has an easement for a proposed parking ramp; and

WHEREAS, in response, the applicant submitted an Easement Agreement between Consolidated Edison Company of New York and Pilot Realty Co., dated July 9, 2003 and recorded on March 14, 2006, granting Pilot Realty Co. a permanent easement for pedestrian and vehicular ingress and egress over the portion of the premises in which the parking ramp is proposed; and

WHEREAS, at hearing, the Board raised concerns about the ability of the roof structure to support the proposed parking use; and

WHEREAS, in response, the applicant submitted a letter from a structural engineer, dated February 27, 2009, which concludes that the roof structure is adequate to support the proposed passenger car parking deck; and

WHEREAS, based upon the above, the Board concludes that the findings required under ZR § 73-49 have been met; 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, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08-BSA-086X, dated January 5, 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; and

Therefore it is Resolved that the Board of Standards and Appeals makes each and every one of the required findings application under ZR §§ 73-48, 73-49, and 73-03 to legalize rooftop parking above the first floor of an existing one and two-story commercial building and to waive the limitation on the number of vehicles in a group parking facility located in an M1-1 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 March 3, 2009"-six (6) sheets; and *on further condition*:

THAT the parking facility shall be limited to 197 parking spaces with 10 reservoir spaces;

THAT DOB shall review and confirm the structural capacity of the building to support the rooftop parking;

THAT substantial construction shall be completed in accordance within two years of the date of this resolution;

THAT this approval 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 31, 2009.

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206-08-BZ

CEQR #09-BSA-015Q

APPLICANT – Eric Palatnik, P.C., for Paul Chait, owner.
SUBJECT – Application November 18, 2008 – Variance (§72-21) to permit the expansion of an existing three-story Use Group 3 yeshiva which includes sleeping accommodations. The proposal is contrary to ZR §24-111 (maximum floor area), §24-35 (side yard), §24-551 (side yard setback), and parking (§25-31). R2X zoning district.
PREMISES AFFECTED – 737 Elvira Avenue, southern side of Elvira Avenue, between Reads Lane and Annapolis Street, Block 15578, Lot 8, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent dated December 12, 2008, acting on Department of Buildings Application No. 410052133, reads in pertinent part;

1. Proposed plans are contrary to ZR 24-111 in that the proposed Floor Area Ratio (FAR) exceeds the permitted;
2. Proposed plans are contrary to ZR 24-35 in that minimum side yard is less than the required minimum of 8'-0";
3. Proposed plans are contrary to ZR 24-36 in that the proposed rear yard is less than required 30'-0";
4. Proposed plans are contrary to ZR 24-551 in that the proposed side yard setback is less than required 17'-6";
5. Proposed plans are contrary to ZR 25-31 in that the proposed parking is less than required;" and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site within an R2X zoning district, the legalization and enlargement of a three-story Use Group 3 yeshiva building with sleeping accommodations and an accessory synagogue which does not comply with regulations for FAR, rear yard, side yard, side yard setback, and parking, contrary to ZR §§ 24-111, 24-35, 24-36, 24-551 and 25-31; and

WHEREAS, the application is brought on behalf of Yeshiva B'nei Torah (the "Yeshiva"), a nonprofit religious educational institution; and

WHEREAS, a public hearing was held on this application on December 15, 2008, after due notice by publication in The City Record, with continued hearings on January 27, 2009 and February 24, 2009 and then to decision March 31, 2009; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 14, Queens, recommends approval of this application; and

WHEREAS, Council Member David I. Weprin submitted testimony recommending approval of the application; and

WHEREAS, the West Lawrence Civic Association submitted testimony recommending approval of the application; and

WHEREAS, the applicant submitted a petition with the signatures of 85 neighborhood residents recommending approval of the application; and

WHEREAS, other neighborhood residents submitted oral testimony in opposition to the application (the "Opposition"), citing concerns with the bulk of the building, traffic, and parking; and

WHEREAS, the subject site is located on the south side of Elvira Avenue between Reads Lane and Annapolis Street, with approximately 61'-0" of frontage on Elvira Avenue and a depth of approximately 138'-0"; and

WHEREAS, the subject site has a lot area of approximately 7,803 sq. ft.; and

WHEREAS, the site is occupied by a two-story and attic building housing a yeshiva with approximately 4,886 sq. ft. of floor area; and

WHEREAS, the proposal seeks to enlarge the existing building to provide a three story and cellar yeshiva with the following parameters: (i) an FAR of 0.95 (0.85 is the maximum permitted); (ii) a rear yard below the second floor of between 21'-6" and 14'-1" (a rear yard of 30'-0" is required for a community facility use); (iii) a 4'-11 side yard (8'-0" is the minimum required); (iii) a side yard setback of 4'-3" (a 17'-6" setback is the minimum required); and (iv) no parking (29 spaces are required); and

WHEREAS, the proposed enlargement will add 2,496 sq. ft. of floor area for a total floor area of 7,382 sq. ft. (FAR of 0.95); and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Yeshiva: (1) to provide adequate classroom and study space for 45 students; (2) to provide sleeping accommodations for 19 students; and (3) to provide worship space for its existing 284 congregants; 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 FAR, rear yard, side yard, side yard setback and parking waivers are necessary to provide the program space necessary to adequately serve its current student body and to provide sufficient synagogue space; and

WHEREAS, the existing building is currently occupied by a small synagogue/classroom, three studies, eight dormitory rooms, two kitchens and offices; and

WHEREAS, the instant application seeks to increase the size of the synagogue/ classroom and dormitory rooms and to add an additional dormitory room, computer room, lunch room, and multi-purpose room; and

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WHEREAS, the applicant represents that without the waivers, the Yeshiva would continue to have inadequate classroom and dormitory space for its students, and a synagogue that cannot accommodate its congregation; and

WHEREAS, the Board acknowledges that the Yeshiva, as a religious and 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 Westchester Reform Temple v. Brown, 22 NY2d 488 (1968), a religious institution's application is entitled to deference 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, accordingly, based upon the above, the Board finds that the limitations of the Yeshiva's current facility, when considered in conjunction with the programmatic needs of the Yeshiva, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since the Yeshiva is a non-profit religious institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, a 400-foot radius diagram submitted by the applicant indicates that the surrounding area is characterized predominately by one- and two-story residential uses; and

WHEREAS, the applicant represents that the enlargement has been designed to maintain the residential character of the existing building; and

WHEREAS, the applicant notes that the recent rezoning of the subject district from R2 to R2X permits greater bulk than was formerly permitted; and

WHEREAS, neighborhood residents testified as to concerns with traffic and parking impacts; and

WHEREAS, the applicant represents that parking demand by Yeshiva students would be limited, as 16 of the 45 students will reside on-site and that no more than 10 of the 20 students who drive to the site will need parking at the same time of day; and

WHEREAS, the applicant represents that parking demand by congregants would be limited to morning services attracting an average of ten members daily, evening services attracting five congregants and holiday services attracting approximately 15 members and guests; and

WHEREAS, the applicant represents that traffic and parking demand would also be minimal as congregants are close enough to walk to services and are not permitted to

drive to worship on religious holidays, Fridays, or Saturdays – the synagogue's peak usage periods; and

WHEREAS, a submission by the applicant indicates that approximately 85 percent of the congregants live within three-quarters of a mile from the premises; and

WHEREAS, the applicant initially stated 73 parking spaces were available within a one-block radius of the subject site; and

WHEREAS, the Board directed the applicant to provide a traffic study that evaluated parking availability on the streets in which demand from the Yeshiva would be most likely to conflict with that of neighboring homeowners; and

WHEREAS, a parking study submitted by the applicant indicated that a total of 73 on-street parking spaces are located within one block of the Yeshiva, of which 53 spaces were available between 4:20 p.m. and 4:40 p.m. on a representative weekday afternoon; and

WHEREAS, the applicant further represents that the number of available on-street parking spaces far exceeds the expected demand by yeshiva students and synagogue congregants; and

WHEREAS, at hearing, neighborhood residents raised concerns with the impact of the proposed building on light and air, specifically regarding the proposed encroachment into the rear yard, initially proposed at an irregular depth of 8'-1" to 15'-6"; and

WHEREAS, in response, the Board directed the applicant to reduce the encroachment in the rear yard; and

WHEREAS, in response, the applicant submitted revised plans indicating a rear yard of 21'-6" to 14'-1" at grade and a rear yard of 58'-4" to 50'-11" above the first floor; and

WHEREAS, the Board further notes that the required rear yard for a complying residential use would be no more than 20'-0"; and

WHEREAS, the Board also asked the applicant to investigate whether it was possible to reduce the height of the rear yard encroachment by reducing the apex of the synagogue wing of the proposed building; and

WHEREAS, in response, the applicant explained that the proposed pitched roofline was necessary to provide an appropriate worship space and to allow the Ark to be visible from all points in the sanctuary; and

WHEREAS, the applicant submitted interior elevation plans demonstrating the necessity for a higher elevation; and

WHEREAS, the Board notes that the proposed FAR of 0.95 represents no more than a modest increase in the permitted FAR of 0.85; and

WHEREAS, the Board notes that the front yard and side yard along the western lot line comply with the parameters of the subject R2X zoning district; and

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

WHEREAS, the hardship herein was not created by

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the owner or a predecessor in title; and

WHEREAS, the applicant proposes waivers to the rear yard, side yard, side yard setback and FAR, to accommodate the required floor area given the constraints of the existing building and the programmatic needs of the Yeshiva; and

WHEREAS, the Board notes that the applicant initially requested an FAR of 1.0, which was subsequently reduced during the hearing process by the reduction in the rear yard encroachment to a proposed FAR of 0.95; and

WHEREAS, the Board further notes that the proposed FAR of 0.95 represents no more than a modest increase in the permitted FAR of 0.85; and

WHEREAS, evidence in the record demonstrates that this proposal is the minimum necessary to meet the programmatic needs of the Yeshiva; 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 ak); and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in Final Environmental Assessment Statement, CEQR No.09BSA015Q, dated November 12, 2008; and

WHEREAS, the EAS documents that the operation of the Yeshiva 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 the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 to permit, on a site within an R2X zoning district, the legalization and enlargement of a three-story Use Group 3 yeshiva building with sleeping accommodations which does not comply with regulations for FAR, rear yard, side yard, side yard setback, and parking, contrary to ZR §§ 24-111, 24-35, 24-36, 24-551 and 25-31, on condition that all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received February 19, 2009"- (7) sheets and "March 12, 2009"- (6) sheets and on further condition;

THAT the building parameters shall be: an FAR of 0.95; a rear yard of 21'-6" to 14'-1" below the first floor, a 4'-11" side yard; and a side yard setback of 4'-3"; as shown on the BSA-approved plans; and

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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 31, 2009.

230-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for A and B Bistricher, LLC, by Elsa Bistricher, owner.

SUBJECT – Application September 5, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area and open space (§23-141); and less than minimum rear yard requirement (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1019 East 23rd Street, East side of 23rd Street between Avenue J and Avenue K, Block 7605, Lot 36, 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 Montanez.....5
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated August 7, 2008, acting on Department of Buildings Application No. 310275528, reads:

"Rear Yard: Proposed rear yard is creating a new non-complying rear yard.

Floor Area: Floor area exceeds the maximum permitted, the enlargement creates a new non-compliance or increases the degree of non-compliance of the building.

Open Space: Proposed open space ratio is contrary to ZR 23-141;" and

WHEREAS, this is an application under Z.R. §§ 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 floor area,

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open space ratio, and rear yards, contrary to Z.R. §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on November 18, 2008 after due notice by publication in *The City Record*, with a continued hearing on March 17, 2009, and then to decision on March 31, 2009; 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, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east 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 4,500 sq. ft., and is occupied by a single-family home with a floor area of approximately 3,014 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 approximately 3,014 sq. ft. (0.67 FAR) to approximately 4,608 sq. ft. (1.02 FAR); the maximum floor area permitted is 2,250 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of approximately 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 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 that are being retained; 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 Z.R.

§ 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 floor area, open space ratio, and rear yards, contrary to Z.R. §§ 23-141, 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 3, 2009"-(11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of approximately 4,608 sq. ft. (1.02 FAR); an open space ratio of approximately 57 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 DOB shall confirm that the portions of the existing building shall be retained as illustrated on the BSA-approved plans; and

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 31, 2009.

3-09-BZ

CEQR #09-BSA-059X

APPLICANT – Duane Morris LLP, by Jon Popin, for Lutheran Social Services of Metropolitan New York, Inc., owner.

SUBJECT – Application January 8, 2009 – Special Permit (§73-19) to allow the conversion of an existing two-story warehouse into a high school with sleeping accommodations. The proposal is contrary to the use requirements of the underlying M1-1 district.

PREMISES AFFECTED – 831 Eagle Avenue, East Avenue, Eagle 159th Street, St. Anns Avenue, East 161st Street, Block 2619, Lot 27, Borough of Bronx.

COMMUNITY BOARD #1BX

APPEARANCES –

For Applicant: John Poppin.

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 Montanez.....5
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated February 17, 2009, acting on Department of Buildings Application No. 210055063, reads in pertinent part:

“In an M-1 district a special permit by the Board of Standards and Appeals may be granted to a school having no residential accommodations as per Section 73-19 of the Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site within an M1-1 zoning district, the proposed operation of a non-public high school for students with disabilities (Use Group 3), contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on March 17, 2009, after due notice by publication in the *City Record*, and then to decision on March 31, 2009; and

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

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

WHEREAS, certain residents of the community provided written and oral testimony in opposition to the application; and

WHEREAS, the application is brought on behalf of Lutheran Social Services of Metropolitan New York, Inc., a not-for-profit institution, and will be operated by The New LIFE School, Inc. (“The New LIFE School”), an affiliate of the applicant; and

WHEREAS, the site is located on the west side of Eagle Avenue between East 159th Street and East 161st Street, in an M1-1 zoning district; and

WHEREAS, the site has a lot area of 16,480 sq. ft.; and

WHEREAS, the site is currently occupied by a vacant two-story warehouse building; and

WHEREAS, the applicant proposes to renovate the existing building for use as a non-public high school (Use Group 3) with a floor area of 32,559 sq. ft.; and

WHEREAS, the applicant states that The New LIFE School will service high school students needing non-public school placement and services due to an extensive range of severe handicapping emotional, behavioral, academic and vocational conditions; 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 an M-1 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 150 students from ninth through 12th grade in year one, and is anticipated to reach its full capacity of 265 students by year three; and

WHEREAS, the School’s program includes 19 traditional classrooms, a band room, computer room, cafeteria, art room, library and media center, gymnasium and fitness center, special therapy rooms, and administrative offices; and

WHEREAS, the applicant states that The New LIFE School’s program requires a two-story building with a floor area of at least 30,000 sq. ft. and a flexible floor plate configuration; and

WHEREAS, the applicant represents that the program of The New LIFE School also requires high ceilings and column free space to locate an indoor gymnasium and fitness center, and concrete covered steel framing able to support a potential roof-top enlargement for additional recreational space; and

WHEREAS, the applicant further represents that close proximity to multiple sources of public transportation is necessary to accommodate The New LIFE School’s program; and

WHEREAS, the applicant states that The New Life School has an additional programmatic need to be located in the South Bronx; and

WHEREAS, the applicant further states that the Bronx is the only borough in New York City without a program servicing high school students with such disabilities in a non-public school setting; and

WHEREAS, the applicant represents that, although students referred out of the public school system due to behavioral and learning disabilities are able to attend any non-public school in the City of New York, these students typically enroll in schools closest to their homes; and

WHEREAS, the applicant further states that because the majority of the students are anticipated to live in the South Bronx, it conducted a 12-month search for a suitable location for the school in that borough; and

WHEREAS, the applicant states that it evaluated the feasibility of six Bronx buildings, including 731 E. 133rd Street, 105 Bruckner Boulevard, 327 Rider Avenue, 1923-1925 West Farms Road and 1905 West Farms Road, and that each of the aforementioned buildings was found to be either geographically remote and not readily accessible by public transportation, structurally unsuitable, or economically infeasible; and

WHEREAS, the applicant states that none of the sites investigated were therefore found to be able to accommodate the proposed school; and

WHEREAS, the applicant maintains that the results of the site search show 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, therefore, 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

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school is permitted as of right; and

WHEREAS, the applicant submitted a land use map which reflects that the eastern lot line of the subject site abuts Eagle Avenue, which forms the western border of the adjacent R6 zoning district 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 represents that, although the site is within an M1-1 zoning district, the surrounding area is largely developed with residential and commercial uses which are compatible with the proposed school; and

WHEREAS, the applicant further represents that there are no industrial emission sources among the uses in the surrounding area; and

WHEREAS, the applicant states that the east side of the subject site adjoins an R6 zoning district and fronts a series of three-story multi-family apartment buildings, and that the area directly south of 159th Street was recently rezoned to an R7X district; and

WHEREAS, the applicant represents that, while there are semi-industrial uses on the St. Ann's Avenue frontage of the subject site, a 70-foot slope between the west side of Eagle Avenue and the east side of St. Ann's Avenue creates a vertical separation between the subject site and the semi-industrial uses; and

WHEREAS, the applicant states that adequate separation from noise, traffic and other adverse effects of the surrounding M1-1 zoning district will also be provided through the building's existing solid masonry exterior walls and the use of double-glazed windows; and

WHEREAS, the applicant represents that there will be little traffic entering Eagle Avenue near the subject site because the site fronts upon a lightly traveled one-way street; and

WHEREAS, the applicant further represents that the closure of the intersecting street directly to the south of the site (159th Street) and the fact that the intersecting street directly to the north of the site (161st Street) crosses underneath Eagle Avenue, further limits traffic entering Eagle Avenue near the subject site; and

WHEREAS, the Board finds that the conditions surrounding the site, the construction of the building, and the installation of double-glazed windows will adequately separate the school from noise, traffic and other adverse effects of any of the uses within the surrounding M1-1 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, although the school's hours of operation have not yet been established, the applicant represents that

school hours will begin no earlier than 8:30 a.m. and end no later than 3:30 p.m., Monday through Friday; and

WHEREAS, the applicant states that approximately one-third of the students are anticipated to arrive to the school using 16-passenger mini-buses provided by the New York City Department of Education ("DOE"); and

WHEREAS, the applicant represents that, at maximum enrollment, it is anticipated that eight to ten mini-buses will be required to pickup and drop-off students; and

WHEREAS, the applicant further represents that the school bus pick-up and drop-off area will be located directly in front of the site, on the west side of Eagle Avenue; and

WHEREAS, the applicant further represents that students will be closely supervised by school staff during pickup and drop-off times and while entering the school's main entrance on the south end of the building; and

WHEREAS, the applicant represents that the remainder of students are anticipated to travel to the school by public transportation, as learning to travel by public transportation will be encouraged as a vocational training goal; and

WHEREAS, the applicant states that the flow of traffic near the site will be further controlled because public schools are currently located one block from the subject site in either direction, at the intersections of Eagle Avenue and East 159th Street and Eagle Avenue and East 163rd Street, and each of the public schools have DOE required school safety measures installed on Eagle Avenue; and

WHEREAS, specifically, the applicant states that a speed bump and speed bump signage is located on Eagle Avenue near 163rd Street, and a school crossing sign is located on Eagle Avenue near 159th Street; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation ("DOT"); and

WHEREAS, by letter dated February 26, 2009, DOT states that it has no objection to the proposed school; and

WHEREAS, by correspondence dated March 17, 2009, DOT states that the existing "No Parking Anytime" signage in front of the subject site on the west side of Eagle Avenue sufficiently permits expeditious school bus loading and unloading; and

WHEREAS, the Board finds that the above-mentioned measures can control traffic so as to protect children going to and from the school; 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 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. 09BSA059X, dated March 27, 2009; and

WHEREAS, the EAS documents that the proposed

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

WHEREAS, the New York City Department of Environmental Protection (“DEP”) Office of Environmental Planning and Assessment has evaluated the following submissions from the Applicant: (1) a January 2009 Environmental Assessment Statement; (2) a February 2008 Phase I Environmental Site Assessment; and (3) a January 2009 Phase II Workplan and Subsurface Investigation Report; and

WHEREAS, the applicant has agreed to implement hazardous materials remediation required by a March 20, 2009 revised Remedial Action Plan (“RAP”), pursuant to a Restrictive Declaration executed on March 26, 2009 and submitted to be recorded against the subject property on March 30, 2009; and

WHEREAS, after approval of the executed Restrictive Declaration and the revised RAP, DEP will remit a Notice to Proceed to the Department of Buildings (“DOB”); and

WHEREAS, after implementation of the RAP, one or more Remedial Closure Report(s) certified by a professional engineer must be submitted to DEP; subsequent to its approval, DEP will forward Notice(s) of Satisfaction to DOB; 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 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 operation of a school (Use Group 3), on a site within an M1-1 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 8, 2009” (2) sheets, and “Received March 27, 2009” (5) sheets and *on further condition*:

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT the issuance of a permanent certificate of occupancy be conditioned on the securing of a charter allowing operation of the school pursuant to the requirements of the New York State Education Law;

THAT the issuance of building permits shall be

conditioned on the submission of a DEP Notice to Proceed;

THAT issuance of a permanent certificate of occupancy shall be conditioned on the issuance by DEP of a Notice of Satisfaction;

THAT sound-attenuating double-glazed windows, achieving a minimum of 25 dBA noise attenuation, shall be installed and maintained to limit the noise level from the surrounding M1-1 zoning district; and

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 other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, March 31, 2009.

11-07-BZ

APPLICANT – Dominick Salvati and Son Architects, for Joseph Giahn, owner.

SUBJECT – Application January 9, 2007 – Variance (§72-21) to allow a five (5) story office building with ground floor retail, contrary to use regulations (§22-00). R6B district.

PREMISES AFFECTED – 41-06 Junction Boulevard, south west corner formed by Junction Boulevard and 41st Avenue, Block 1598, Lots 7 & 8, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Mark McCarthy.

ACTION OF THE BOARD – Laid over to May 19, 2009, at 1:30 P.M., for an adjourned hearing.

63-08-BZ

APPLICANT – Eric Palatnik for Royal Palace, lessee. Manton Holding, owner

SUBJECT – Application March 27, 2008 – Special Permit (§73-244) to legalize an eating and drinking establishment with entertainment and a capacity of more than 200 persons with dancing within a C4-2 zoning district.

PREMISES AFFECTED – 116-33 Queens Boulevard, Between 77th and 78th Avenues, Block 2268, Lot 23, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Eric Palatnik, Darya Kulyk and Hiram Rothkrug.

For Opposition: Eric Goidel, Charlotte Picot, Carole Keit, James Messemer, Amelia M.Clancy and Nancy Jorisim

ACTION OF THE BOARD – Laid over to May 19,

MINUTES

2009, at 1:30 P.M., for continued hearing.

229-08-BZ

APPLICANT – Sheldon Lobel, P.C. for Edward Haddad, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) for the construction of a new single family home. This applications seeks to vary floor area (§23-141), less than the minimum side yards (§23-461) and the location of the required off street parking to the front yard (§25-62) in an R2X zoning district.

PREMISES AFFECTED – 866 East 8th Street, West side of East 8th Street, north of Avenue I, and adjacent to railroad, Block 6510, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to April 28, 2009, at 1:30 P.M., for continued hearing.

222-07-BZ

APPLICANT – Stuart A. Klein, Esq., for Century Realty Corp./Randall Co. LLC., owner.

SUBJECT – Application September 27, 2007 – Variance pursuant to §72-21 to legalize residential uses on the second and third floor of an existing building. M1-6 District.

PREMISES AFFECTED – 110 West 26th Street, between Sixth Avenue and Seventh Avenue, Block 801, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Abby L. Paterson.

ACTION OF THE BOARD – Laid over to April 28, 2009, at 1:30 P.M., for continued hearing.

246-08-BZ

APPLICANT – Slater & Beckerman, LLP, for St. Barnabas Hospital, owner.

SUBJECT – Application October 3, 2008 – Special Permits pursuant to §73-481 and 73-49 to allow for the construction of a five story parking garage and rooftop parking and Variance pursuant to 72-21to allow for an accessory sign contrary to §22-331 and 22-342. R7-1 District.

PREMISES AFFECTED – 4400 Third Avenue, block bounded by Third Avenue and East 184th Street, Quarry Road, and East 181st Street, Block 3064, Lot 1, 20 tent 100, Borough of The Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Carole Slater, Neil Weisband, Rodrigo Torres, John DiGirolomo and Ted Mallin.

ACTION OF THE BOARD – Laid over to April 28, 2009, at 1:30 P.M., for continued hearing.

247-08-BZ

APPLICANT – Howard S. Weiss, Esq., for Davidoff Malito, for 3454 Star Nostrand LLC, owner.

SUBJECT – Application October 6, 2008 – Special Permit filed pursuant to §73-243 to allow the operation of a accessory drive-through facility in connection with a planned as-of-right eating and drinking establishment (Starbucks Coffeehouse) (Use Group 6) located in a C1-2/R4 zoning district.

PREMISES AFFECTED – 3454 Nostrand Avenue and approx. 49’ along Gravesend Neck Road, Block 7362, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Howard S. Weiss, Ron Mandell and Jim Himmon.

ACTION OF THE BOARD – Laid over to April 21, 2009, at 1:30 P.M., for continued hearing.

266-08-BZ

APPLICANT – Lewis E. Garfinkel R.A., for Harold Willig, owner.

SUBJECT – Application October 28, 2008 – Special Permit (§73-621) for the enlargement of an existing single family home. This application seeks to vary 34-141(b) as the proposed floor area ratio (FAR) exceeds what is permitted in an R-4 zoning district.

PREMISES AFFECTED – 2007 New York Avenue, east side of New York Avenue between Avenue K and Avenue L, Block 7633, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Lewis E. Garfinkel.

ACTION OF THE BOARD – Laid over to April 28, 2009, at 1:30 P.M., for continued hearing.

26-09-BZ & 48-09-A

APPLICANT – Sheldon Lobel, P.C., for CAMBA Housing Ventures, Inc., owner.

SUBJECT – Application February 17, 2009 – Variance (§72-21) to permit the construction of a nine-story community facility building. The proposal is contrary to ZR section 24-36. R7-1 district. Waiver of Section 36 of the General City Law to permit the construction of a building without the 30-foot turnaround frontage space.

PREMISES AFFECTED – 97 Croke Avenue, north side of Croke Avenue, 164’ west of Ocean Avenue, Block 5059, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel, Nkiruka Nwokoye, William Stein and Joanne Oplustic.

For Opposition: Ama ..., Roslyn Daisley and Mark Peterson.

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 May 12,
2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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April 16, 2009

DIRECTORY

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DOCKETS

New Case Filed Up to April 7, 2009

51-09-BZ

2032 East 17th Street, East 17th Street and Avenue T., Block 7321, Lot(s) 20, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of a single family home. R5 district.

52-09-BZ

1438 East 26 Street, West Side of East 26th Street between Avenue N & Avenue O., Block 7679, Lot(s) 66, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home. R2 district.

53-09-BZ

540 Schenck Avenue, Southwest corner of Dumont Avenue, between Schenck Avenue & Hendrix Street., Block 4075, Lot(s) 118, Borough of **Brooklyn, Community Board: 5**. Variance to allow a three-family residential building, contrary to use regulations. 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

APRIL 28, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 28, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

727-86-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Suco Selimaj, owner.

SUBJECT – Application January 24, 2009 – Extension of Term of a previously granted Variance (§72-21) to allow an eating and drinking establishment (UG6) at the cellar, basement and first floor of a three story building in an R8B zoning district which expired on January 17, 2009.

PREMISES AFFECTED – 240 East 58th Street, south side of East 58th Street, 140' west of Second Avenue, Block 1331, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #6M

185-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Raymond Chakkalo, owner.

SUBJECT – Application March 23, 2009 – Extension of Time/waiver to complete construction of a previously granted Special Permit (§73-622) for the enlargement of an existing home in an R4 (Special Ocean Parkway) district which expired on January 11, 2009.

PREMISES AFFECTED – 2275 East 2nd Street, east side of 2nd Street, between Avenue W and Gravesend Neck Road, Block 7154, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEALS CALENDAR

267-08-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Robert & Mary Baldrian, owners.

SUBJECT – Application October 31, 2008 – Proposed reconstruction and enlargement of an existing single family home located within the bed of a mapped street (Oceanside Avenue) contrary to General City Law Section 35 and does not front a mapped street contrary to General City Law Section 36 with a private disposal system located within the bed of the service road contrary to Department of Buildings policy. R4 zoning district

PREMISES AFFECTED – 2 Devon Walk, east side of Devon Walk, 24' south of paved Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

5-09-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Michele Nagel, lessee.

SUBJECT – Application January 13, 2009 – Proposed reconstruction and enlargement of an existing single family not fronting a mapped street and the upgrade of a private disposal system is in the bed of a private service road contrary to Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 7 Manville Lane, north side of Manville Lane, 206.70' east of Beach 203rd Street, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APRIL 28, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 28, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

259-08-BZ

APPLICANT – Jeffrey A. Chester, Esq., for AAC Douglaston Plaza, LLC, owner.

SUBJECT – Application October 20, 2008 – Variance (§72-21) to permit the proposed expansion to an existing supermarket. The proposal is contrary to ZR §52-41 (increase in the degree of non-conforming use of the building. R4 district.

PREMISES AFFECTED – 242-02 61st Avenue, Douglaston Parkway at 61st Avenue, Block 8266, Lot 185, Borough of Queens.

COMMUNITY BOARD #11Q

314-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 437-51 West 13th Street, LLC, owner.

SUBJECT – Application December 22, 2008 – Variance pursuant to §72-21 to allow for the construction of a 12 story commercial building contrary to bulk regulations §§43-12, 43-43, 43-26 and use regulations §42-12. M1-5 District.

PREMISES AFFECTED – 437-447 West 13th Street, 862-868 Washington Street, southeast portion, block bounded by West 13th, West 14th and Washington Streets, Tenth Avenue, Block 646, Lots 19, 20, Borough of Manhattan.

COMMUNITY BOARD #2M

CALENDAR

8-09-BZ

APPLICANT – Sheldon Lobel, P.C., for CMG Group, LLC, owner; Facial and Tanning Consulting, Inc., lessee.

SUBJECT – Application January 22, 2009 – Special Permit (§73-36) to allow the operation of a physical culture establishment on the second floor of an existing two-story commercial building. The proposal is contrary to ZR Section 32-10. C6-4 district.

PREMISES AFFECTED – 125 Fulton Street, north side of Fulton Street, between Nassau Street and William Street, Block 91, Lot 11, Borough of Manhattan.

COMMUNITY BOARD #1M

20-09-BZ

APPLICANT – MetroPCS New York, LLC, for Valerie Arms Apt. Corp., owner; MetroPCS New York, LLC, lessee.

SUBJECT – Application February 10, 2009 – Special Permit (§§73-03, 73-30), to permit in an R3-2 within a C1-2 district, a non-accessory radio tower.

PREMISES AFFECTED – 54-44 Little Neck Parkway, north west of intersection of Little Neck Parkway and Nassau Boulevard, Block 8256, Lot 108, Borough of Queens.

COMMUNITY BOARD #11Q

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, APRIL 7, 2009
10:00 A.M.**

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

709-55-BZ

APPLICANT – Walter T. Gorman, P.E., for LMT Realty LLC, owner; Mobil Oil Corporation, lessee.

SUBJECT – Application February 23, 2009 – Extension of Time to obtain a Certificate of Occupancy for a Gasoline Service Station (Mobil), in a C1-2/R4 zoning district, which expired on March 24, 2009.

PREMISES AFFECTED – 2000 Rockaway Parkway, north west of Seaview Avenue, Block 8299, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Cindy 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 a reopening and an extension of time to obtain a certificate of occupancy for a gasoline service station, which expired on March 23, 2009; and

WHEREAS, a public hearing was held on this application on March 24 after due notice by publication in *The City Record*, and then to decision on April 7, 2009; and

WHEREAS, the site is located at the northwest corner of the intersection of Rockaway Parkway and Seaview Avenue, within a C1-2 (R4) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 16, 1956 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; and

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

WHEREAS, on January 9, 2001, the Board extended the grant for a term of ten years from the expiration of the prior grant, to expire on February 2, 2010, with a condition that a certificate of occupancy be obtained by January 9, 2003; and

WHEREAS, on September 23, 2008, the Board granted the applicant a six-month extension of time to obtain a certificate of occupancy, to expire on March 23, 2009, and legalized existing conditions that did not conform to the previously approved plans; and

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the stipulated date due to an outstanding Environmental Control Board (“ECB”) violation; and

WHEREAS, the applicant therefore seeks a six-month 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 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 16, 1956, so that as amended this portion of the resolution shall read: “to grant a six-month extension of time to obtain a certificate of occupancy, to expire on October 7, 2009; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans associated with the prior approval; and *on condition*:

THAT a certificate of occupancy shall be obtained by October 7, 2009;

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. 310066781)

Adopted by the Board of Standards and Appeals April 7, 2009.

111-71-BZ

APPLICANT – Walter T. Gorman, P.E., for Motiva Enterprises LLC, owner; Erol Bayrdktar, lessee.

SUBJECT – Application March 16, 2009 – Extension of Time/waiver to obtain a Certificate of Occupancy for a UG16 Gasoline Service Station (Shell) with accessory convenience store, in a C2-2/R3-2 zoning district, which expired on October 16, 1997.

PREMISES AFFECTED – 185-25 North Conduit Avenue, northwest corner of Springfield Boulevard, Block 13094, Lot p/o 63, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Cindy Bachan.

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 28, 2009, at 10 A.M., for decision, hearing closed.

MINUTES

336-98-BZ & 337-98-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP for 312 Flatbush Avenue LLC, owner; AGT Crunch, lessee.

SUBJECT – Application December 31, 2008 – Application filed pursuant to §73-11 to Extend the term of a special permit granted pursuant to §73-36 authorizing a physical culture establishment (PCE) (Crunch Fitness), extend the PCE to include additional area in the cellar and on the first floor, permit a change in operator and extend the time to obtain a certificate of occupancy. The subject site is located in a C2-4 zoning district.

PREMISES AFFECTED – 312/18 & 324/34 Flatbush Avenue, 157' west of the northwest corner of the intersection of Flatbush Avenue and Sterling Place, Block 1057, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD # 6BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to April 28, 2009, at 10 A.M., for continued hearing.

301-03-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Isabell Wassner and Leonard Wassner, owner.

SUBJECT – Application February 20, 2009 – Extension of Time/waiver to Complete Construction and obtain a Certificate of Occupancy of previously granted Special Permit (§73-622) for the enlargement of single family home and an Amendment to modify the previously approved plans, in an R2 zoning district, which expired on January 13, 2008.

PREMISES AFFECTED – 1103 East 22nd Street, between Avenue J and Avenue K, Block 7604, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to April 28, 2009, at 10 A.M., for continued hearing.

APPEALS CALENDAR

245-08-BZY

APPLICANT – Sheldon Lobel, P.C., for Airport Hotels, LLC, owner.

SUBJECT – Application October 23, 2008 – Extension of time to complete construction (§11-331) of minor development commenced under the prior C2-2/R3-2 district regulations. C1-1/R3X.

PREMISES AFFECTED – 219-05 North Conduit Boulevard, bounded by Springfield Boulevard, 144th Avenue and North Conduit Boulevard, Block 13085, Lot 4, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Application granted.

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 §11-331 to rescind a stop work order, to renew a building permit and to extend the time for the completion of the foundation of a three-story (Use Group 5) 65-room transient hotel; and

WHEREAS, a public hearing was held on this application on January 13, 2009, after due notice by publication in *The City Record*, with a continued hearing on February 24, 2009, and then to decision on April 7, 2009; 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 13, Queens recommends disapproval of this application; and

WHEREAS, City Council Member James Sanders, Jr. and City Council Member Leroy Comrie provided written and oral testimony in opposition to the application; and

WHEREAS, representatives of the Springfield Gardens Taxpayers & Citizens Association, Federated Blocks of Laurelton, the Jamaica chapter of the National Association for the Advancement of Colored People and the Concerned Citizens of Laurelton also testified in opposition to this application; and

WHEREAS, a number of neighborhood residents also testified in opposition to the 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 concerns: (1) excavation was not completed; (2) substantial progress on the foundation was not made; (3) construction took place after working hours or when work was stopped; (4) the proposed sewer system may not comply with applicable regulations; and (5) the proposed hotel is incompatible with neighborhood character; and

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WHEREAS, the subject site is located on a through block site bounded by 144th Avenue to the north, Springfield Boulevard to the west and North Conduit Avenue to the south; and

WHEREAS, the site has a frontage of approximately 283 feet on 144th Avenue, 120 feet on Springfield Boulevard and 303 feet on North Conduit Avenue; and a total lot area of approximately 18,383 sq. ft.; and

WHEREAS, the site is proposed to be occupied with a three-story transient hotel with one subcellar (the "Building"); and

WHEREAS, the Building is proposed to have a total floor area of approximately 18,267 sq. ft. (1.0 FAR); and

WHEREAS, the site was formerly located within a C2-2 (R3-2) zoning district; and

WHEREAS, on May 15, 2008, New Building Permit No. 402590665-01-NB (the "Permit") was issued by the Department of Buildings ("DOB") permitting construction of the Building; and

WHEREAS, on September 4, 2008 (hereinafter, the "Enactment Date"), the City Council voted to enact the Laurelton Rezoning, which changed the zoning district to C1-1 (R3X); and

WHEREAS, the applicant represents that the Building complies with the former C2-2 (R3-2) zoning district parameters; specifically, the proposed use as a Use Group 5 transient hotel; and

WHEREAS, because the Building does not conform to the permitted uses of the C1-1 (R3X) zoning district and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on September 9, 2008 halting work on the Building; and

WHEREAS, the applicant now applies to the Board to reinstate the Permit pursuant to ZR § 11-331, so that the proposed development may be fully constructed under the parameters of the prior C2-2 (R3-2) zoning district; 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 May 15, 2008, the Permit was issued by DOB authorizing construction of the entire Building; and

WHEREAS, by letter dated January 12, 2009, DOB states that the Permit was lawfully issued; and

WHEREAS, thus, the Board finds that the Permit was lawfully issued by DOB on May 15, 2008; 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 one building, it meets the definition of a minor development; and

WHEREAS, since the proposed development is a minor development, the Board must find that excavation was completed and substantial progress was made as to the required foundation; and

WHEREAS, the applicant states that excavation was completed on July 11, 2008, and that substantial progress was made on the foundation as of the Enactment Date; and

WHEREAS, in support of this statement, the applicant has submitted affidavits by the construction manager, a construction log documenting the amount and type of work performed each day of construction, and photographs of the site; and

WHEREAS, the Opposition asserts that excavation is not complete because photographs show two large mounds of dirt on the north and west sides of the site and that the location of several pile caps to be installed require excavation; and

WHEREAS, in response, the applicant states that excavation is deemed completed under ZR § 11-331 when all soil has been excavated from the portion of the site in which the foundations are to be installed and does not require the remaining portion of the site, where the mounds of dirt are found, to be excavated or cleared; and

WHEREAS, the applicant further states that excavation of the foundation area was performed to install all the foundation elements and necessary piles, but that some excavated pile locations were backfilled to ensure site safety; and

WHEREAS, the applicant represents that for the pile caps to be installed at these locations, some soil may need to be removed; however, this would not constitute incomplete excavation (citing BSA Cal. No. 204-07-BZY); and

WHEREAS, the Board further notes that the photographs submitted by the Opposition indicate that the area within the

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foundation has been fully excavated; and

WHEREAS, the Board notes that excavated areas are often backfilled to ensure site safety and 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 states that, as of the Enactment Date, the following work had been completed: (1) 212 linear feet of shoring, constituting 100 percent of shoring; (2) 240 piles driven, constituting 100 percent of the piles; (3) 37 pile caps, constituting 93 percent of the pile caps; (4) pouring of 310 cubic yards of concrete, constituting 32 percent of the concrete to be poured; and (5) all rebar for pile caps and basement slab and 285 linear feet of rebar for grade beams, constituting 29 percent of the grade beam rebar; and

WHEREAS, as discussed below, the concrete counted toward progress on the foundation does not include concrete poured on days when work was stopped by DOB, or concrete poured on the Enactment Date; and

WHEREAS, in support of this statement, the applicant has submitted executed contracts for the foundations, invoices and cancelled checks, affidavits by the construction manager and architect, a Pile Identification Plan and Pile Driving Reports certified by an engineer; concrete delivery tickets, a foundation plan, a foundation survey dated September 5, 2008, the construction log referenced above, and photographs of the foundation work as of the Enactment Date; and

WHEREAS, the applicant has also submitted financial documents indicating that the applicant incurred \$769,020 or approximately 65 percent of the total estimated foundation cost of approximately \$1.18 million as of the Enactment Date; and

WHEREAS, the applicant represents that both the more complex foundation elements as well as the most costly foundation elements have been completed; and

WHEREAS, the applicant states that 138 days of foundation work have been completed and that 22 days of work remain, constituting 14 percent of the workdays necessary to complete the foundation; and

WHEREAS, in support of its contention that amount of work performed on the foundations of the subject site is consistent with previous Board vestings under ZR § 11-331, the applicant cites to decisions in BSA Cal. Nos. 168-05-BZY, 349-04-BZY and 202-08-BZY; and

WHEREAS, in BSA Cal. No. 168-05-BZY, the applicant had completed underpinning and a substantial share of the footing and strap beams but had installed no foundation walls; and

WHEREAS, in BSA Cal. No. 349-04-BZY, the applicant had completed footings and rebar and had poured 21 percent of the concrete but had installed no foundation walls; and

WHEREAS, in BSA Cal. No. 202-08-BZY, the applicant had driven all the piles but had installed no pile caps, mat slab or vibration isolators;

WHEREAS, the applicant represents that the aggregate of the foundation work completed at the subject site exceeds the foundation work performed in the cited cases; and

WHEREAS, the aggregated foundation work includes

work performed pursuant to an earlier permit issued for construction of a Use Group 5 transient hotel at the site which the applicant contends should be included in the measure of the completion of the foundation prior to the rezoning; and

WHEREAS, the applicant explains that on October 17, 2005, New Building Permit No. 402097529-01-NB was issued to the owner by DOB authorizing construction of a three-story transient hotel with two sub-cellars at the subject site (the “First Permit”); and

WHEREAS, the applicant states that excavation commenced on October 25, 2005 and 240 piles were driven between December 29, 2005 and January 6, 2006; and

WHEREAS, the applicant further states that after piles were driven at the site, the water table was found to be higher than anticipated and the plans were revised to eliminate one proposed subcellar level; and

WHEREAS, after approval of the revised plans on August 27, 2007, New Building Permit No. 402590665-01-NB (the “Permit”) was issued by DOB permitting construction of the Building on May 15, 2008; and

WHEREAS, an affidavit by the architect states that the foundation piles were driven pursuant to a foundation plan approved under the First Permit and that a foundation plan incorporating the piles was approved under the Permit; and

WHEREAS, the applicant states that Pile Driving Reports certified by a professional engineer evidencing that the piles were driven pursuant to the Pile Identification Plan were filed with DOB; and

WHEREAS, the Opposition argues that the work performed under the First Permit should not be considered as it was “faulty/illegal”, as evidenced by the issuance of a stop work order halting work in effect between January 20, 2006 and January 23, 2006; and

WHEREAS, in response, the applicant states that the stop work order imposed on January 19, 2006 was in response to a fence maintenance issue that was corrected and that the First Permit was never revoked; the work performed under the First Permit was therefore valid; and

WHEREAS, the applicant further states that since the First Permit was not revoked and foundation piles authorized by the First Permit were installed prior to the January 19, 2006 stop work order, that the work performed and expenses incurred under the First Permit should be considered by the Board; and

WHEREAS, the Board notes that neither DOB, nor the Opposition, has asserted that the work performed under the First Permit was inconsistent with the approved plans, the Permit or the Building Code; and

WHEREAS, the Board therefore concludes that the foundation work performed pursuant to the First Permit should be included in the measure of the completion of the foundation prior to the Enactment Date; and

WHEREAS, the Opposition also argues that work on the foundation was performed during the period when a stop work order was in effect and after working hours and should not be considered in evaluating whether substantial progress was made; and

WHEREAS, in response to the concerns raised by the

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Opposition, at hearing the Board asked the applicant to provide a detailed chronology of work done pursuant to valid permits; and

WHEREAS, based on a detailed chronology submitted by the applicant, the Board notes that stop work orders halting construction of the Building were in effect from May 21, 2008 to June 10, 2008, from July 23, 2008 to August 6, 2008 and from September 5, 2008 to the present; and

WHEREAS, the initial analyses of work completed included (i) concrete pours during August 4, 2008 and August 6, 2008 during a stop work order, based on a representation that DOB gave verbal permission to continue work; and (ii) a concrete pour on September 4, 2008, the date of the rezoning; and

WHEREAS, the applicant subsequently revised the analysis deleting the work performed on August 4, 2008 and August 6, 2008, and the work performed on the Enactment Date; and

WHEREAS, the Board notes that the Opposition was not able to document any additional after-hours work; and

WHEREAS, as to expenditures, the Opposition contends that the canceled checks submitted by the applicant are confusing and fail to establish that substantial progress was made on the foundation as of the Enactment Date; and

WHEREAS, the Board notes that the foundation survey, concrete delivery slips, photographs, and pile reports provide sufficient and credible evidence that excavation was completed and substantial progress was made on the foundation as of the Enactment Date; and

WHEREAS, the Board further notes that it has not relied on canceled checks in making the determination herein, as there is sufficient evidence substantiating the amount of work done, as well as the costs associated with that work from the contracts, as well as the other evidence in the record; 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, the Opposition additionally argues that the proposed sewer system does not comply with Department of Environmental Protection ("DEP") requirements; and

WHEREAS, a response by the applicant states that DEP initially approved a dry well system to dispose of storm water but that after the discovery of the high water table, DEP required that a retention and release system be designed to mitigate the impacts of storm water runoff into City sewers; and

WHEREAS, the applicant further states that DEP has reviewed and approved the proposed site's proposed retention and release sewer system for the site; and

WHEREAS, the Opposition also argues that the application should be denied because the proposed hotel will be incompatible with the surrounding residential community and may attract illegal uses; and

WHEREAS, however, if the owner has met the test for a vested rights determination pursuant to ZR § 11-331, the

owner's property rights may not be negated merely because of concerns about neighborhood character and speculation of future illegal activities; and

WHEREAS, while the Board is not swayed by any of the Opposition's arguments, it nevertheless understands that the community residents and elected officials worked diligently on the Laurelton Rezoning and that the Building does not comply with the new zoning parameters; and

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant and the Opposition, as outlined above, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under ZR § 11-331 and is entitled to the requested reinstatement of the Permit, and all other related permits necessary to complete construction; and

WHEREAS, because the Board finds that excavation was complete and that substantial progress had been made on the foundation, it concludes that the applicant has adequately satisfied all the requirements of ZR § 11-331.

Therefore it is Resolved that this application to renew New Building Permit No. 402590665-01-NB pursuant to ZR § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of six months from the date of this resolution, to expire on October 7, 2009.

Adopted by the Board of Standards and Appeals, April 7, 2009.

147-08-BZY

APPLICANT – Hui-Li Xu, for Beachway Equities, Inc., owner.

SUBJECT – Application May 23, 2008 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on April 30, 2008. R5 zoning district.

PREMISES AFFECTED – 95-04 Allendale Street, between Atlantic Avenue and 97th Avenue, Block 10007, Lot 108, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 12, 2009, at 10 A.M., for continued hearing.

180-08-A thru 184-08-A

APPLICANT – Tobias Guggenheimer Architect, P.C., for Schley Avenue Development, LLC, owner.

SUBJECT – Application July 10, 2008 – Proposed construction of Four three family homes and parking lot located within the bed of mapped street (Shore Drive) contrary to General City Law Section 35. C3A zoning district.

PREMISES AFFECTED – 3236, 3238, 3240, 3242 and 3244 Schley Avenue, south east corner of Schley Avenue and Clarence Avenue, Block 5490, Lot (tent.) 7, 108, 109, 110, 111, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

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For Applicant: Joanna Stocia and Jim Heineman.
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 28,
2009, at 10 A.M., for decision, hearing closed.

REGULAR MEETING
TUESDAY AFTERNOON, APRIL 7, 2009
1:30 P.M.

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

ZONING CALENDAR

215-08-BZ

CEQR #09-BSA-018X

APPLICANT – Davidoff Malito & Hatcher, LLP by
Howard S. Weiss, for SoBRO Development Corp., owners.
SUBJECT – Application August 20, 2008 – Variance (§72-
21) to allow a new ten (10) story mixed-use building
containing ninety eight (98) dwelling units and ground floor
retail use; contrary to use regulations (§32-00). C8-3 district.
PREMISES AFFECTED – 1778-1800 Southern Boulevard,
intersection of East 174th Street, Boston Post Road and
Southern Boulevard, Block 2984, Lots 1 & 7, Borough of
Bronx.

COMMUNITY BOARD #3BX

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough
Commissioner, dated July 18, 2008, acting on Department
of Buildings Application No. 210058088, reads, in pertinent
part:

“Proposed residential occupancy, Use Group 2 in a
C8-3 Zoning District is not permitted as per ZR 32-
00 -- obtain Board of Standards and Appeals (BSA)
approval”; and

WHEREAS, this is an application under ZR § 72-21, to
permit, within a C8-3 zoning district, the proposed construction
of a seven-story mixed-use residential / commercial /
community facility building, contrary to ZR § 32-00; and

WHEREAS, a public hearing was held on this
application on January 27, 2009 after due notice by publication
in *The City Record*, with a continued hearing on February 24,
2009 and then to decision on April 7, 2009; and

WHEREAS, this application is brought on behalf of the
South Bronx Overall Economic Development Corporation
(“SoBRO”), a not-for-profit entity; and

WHEREAS, Community Board 3, Bronx, recommends
approval of this application, conditioned on SoBRO’s
agreement to provide enhanced perimeter lighting and
windows providing sound attenuation; and

WHEREAS, City Council Member Joel Rivera provided
a letter recommending approval of this application; and

WHEREAS, Assemblyman Michael Benjamin and
Assemblyman Ruben Diaz, Jr. submitted letters in support of
the proposal; and

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

WHEREAS, the site is located at the intersection of East
174th Street, Boston Post Road and Southern Boulevard and
has a lot area of 11,776 sq. ft.; and

WHEREAS, the site is vacant and with remnants of a
gasoline service station that formerly occupied Lot 1; and

WHEREAS, the site consists of Tax Lot 1 and Tax Lot 7,
which were under separate ownership on December 15, 1961;
and

WHEREAS, Lot 1 has been under the jurisdiction of the
Board since September 23, 1932 when, under BSA Cal. No.
251-32-BZ, the Board granted a variance to permit the
alteration of an existing building for the operation an
automotive repair business; and

WHEREAS, most recently, on October 13, 1987, under
BSA Cal. No. 535-87-A, the Board granted an Administrative
Appeal to permit the operation of a self-service gasoline station
on Lot 1, contrary to Chapter 27-4081(b) of the NYC
Administrative Code; and

WHEREAS, the applicant states that operation of the
automotive service station was discontinued approximately five
years ago and that Lot 7, formerly occupied by a car wash, has
been vacant since about 1993; and

WHEREAS, the applicant proposes to construct a seven-
story mixed use residential/commercial/ community facility
building on the subject site; and

WHEREAS, the applicant proposes to develop 68 Use
Group 2 residential (studio, one-bedroom and two bedroom)
units ranging in size from 494 sq. ft. to 892 sq. ft.; and

WHEREAS, however, since the site is within a C8-3
zoning district, which does not permit residential development
as of right, the requested use waiver is required; and

WHEREAS, the proposed building has the following
parameters: a total floor area of 68,336 sq. ft. (FAR of 5.81),
including 58,241 sq. ft. of residential floor area (FAR of 4.95);
9,280 sq. ft. of ground floor retail floor area (FAR of 0.79), and
815 sq. ft. of community facility floor area (FAR of 0.07); a
total height of 69’-0” and a terrace setback at the western
portion of the seventh floor; and

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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 triangular shape; (2) the site's subsurface contamination and resultant need for remediation; (3) the site's high water table; and (4) the adjacency of an elevated subway track structure; and

WHEREAS, as to the site's shape, the applicant states that the triangular shape of the site limits the floor plates for a conforming commercial development; and

WHEREAS, because of the large amount of street frontage in relation to the depth of the lot, there is a high ratio of exterior walls to usable interior space which increases the cost of construction; and

WHEREAS, the applicant states that premium construction costs are associated with the need for such a high proportion of exterior walls; and

WHEREAS, the applicant represents that the irregular configuration of the site would not accommodate efficient floor plates for a conforming development and constrains its development potential; and

WHEREAS, the applicant further represents that the hardship created by the irregular configuration and its consequentially decreased marketability is evidenced by its complete vacancy over the past five years and partial vacancy for 15 years; and

WHEREAS, as to the history of use at the site, as noted above, the site was occupied by an automotive service station for more than sixty years; and

WHEREAS, accordingly, a Phase I Environmental Assessment and Remedial Action Work Plan identified volatile organic compounds associated with the historic use of automotive repair and vehicle storage and metals in the groundwater of the site and in soil vapor above ambient air at the site; and

WHEREAS, the applicant states that as a consequence of its contamination, extracted groundwater must be containerized for offsite disposal or treated in conformance with Department of Environmental Protection requirements; and

WHEREAS, the applicant further states that groundwater at the site was measured from six to ten feet below land surface; and

WHEREAS, the applicant represents that dewatering with the use of multiple sump pumps, well points or other types of dewatering systems will therefore be required during excavation and foundation construction below the groundwater table; and

WHEREAS, the applicant further represents that the unusually high water table will therefore also add construction and maintenance premium costs to the development of the site; and

WHEREAS, the applicant states that an additional hardship is created by the adjacent elevated subway tracts along its Boston Post Road frontage; and

WHEREAS, the applicant represents that this condition requires extraordinary measures to safeguard the elevated structure during excavation; and

WHEREAS, the applicant states that, based on a report by its consulting engineer and discussion with the New York City Transit Authority ("NYCTA"), drilled soldier beams and a lagging wall will be required along Southern Boulevard during excavation to support the soil load; and

WHEREAS, the applicant further states that the NYCTA additionally will require the proposed dewatering system, foundation walls and construction equipment to meet particular engineering specifications; and

WHEREAS, NYCTA review and approval is also anticipated to impose fees for review and inspection, and an expense for the installation of monitoring devices at the project site during construction; and

WHEREAS, the applicant represents that any conforming development at the site would be burdened by the irregular shape of the site, the subsoil conditions, and the need to protect the elevated subway structure; and

WHEREAS, the applicant states that the premium construction costs associated with remediation of the subsurface contamination, dewatering, and protecting the elevated subway structure are approximately \$2.7 million; 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 use variance is requested based on SoBRO's programmatic need to provide affordable housing to 68 households with low and moderate incomes; and

WHEREAS, the applicant states that SoBRO is seeking financing from State and City programs including the Department of Housing Preservation and Development ("HPD") Housing Trust Fund and Participation Loan Program, the Housing Development Corporation and the Division of Housing and Community Renewal Trust Fund to subsidize the proposed development; and

WHEREAS, a letter dated January 23, 2009 from the HPD Assistant Commissioner for Development confirms that financing of the proposed development is contemplated by the agency; 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 two as-of-right alternatives: a four-story and cellar community facility building and a one-story and cellar commercial retail building; and

WHEREAS, the financial analysis indicates that neither of the as-of-right scenarios are financially viable due to the premium costs associated with the unique conditions of the site, while an as-of-right commercial retail building without the

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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 manufacturing uses; and

WHEREAS, as to residential use, the applicant states that R7-1 zoning districts are mapped to the north, east and south of the subject site and that there is extensive surrounding residential development; and

WHEREAS, the proposed building will have a floor area of 68,336 sq. ft. and an FAR of 5.81; and

WHEREAS, the applicant represents that the proposed bulk is consistent with the permitted bulk for an as of right Use Group 4 community facility building in the C8-3 zoning district, which would be permitted a maximum 6.5 FAR; and

WHEREAS, specifically, a building with a floor area of 76,554 could be built as-of-right; and

WHEREAS, the applicant represents that the 69'-0" height of the proposed seven-story building is also consistent with that of the surrounding area; and

WHEREAS, in response to a request by the Board, the applicant provided a graphical representation of the buildings between the Cross Bronx Expressway and East 173rd Street indicating that a substantial number of buildings have heights ranging between 50 and 70 feet; and

WHEREAS, the applicant further represents that, because of varying elevations, nearby buildings which are shorter than the proposed building appear much taller and have a height that is comparable to that of the proposed building; and

WHEREAS, as to the ground floor commercial use, the applicant notes that the proposed as-of-right commercial use on the first floor fits into the neighborhood character; and

WHEREAS, the applicant states that a C4-2 district which permits commercial and residential development is located immediately to the east of the site and that commercial overlay districts are mapped along East 174th Street in the R7-1 district to the south of the site, as well as on Boston Post Road immediately to the southwest, and along Southern Boulevard immediately to the southeast; and

WHEREAS, the applicant additionally states that the block to its immediate south bounded by Boston Post Road, Southern Boulevard and 173rd Street is located within an R7-1 district that is mapped with a commercial overlay; and

WHEREAS, as to parking, the applicant states that the low and moderate income residents of the proposed building are expected to generate limited parking demand; and

WHEREAS, the applicant further states that parking demand can be accommodated by its future housing development at 1825 Boston Post Road across East 175th Street ("Crotona Plaza") which will provide 150 parking spaces, forty percent more than required by the zoning, and that it will continue to explore additional parking opportunities for the tenants of the subject site; 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 two as-of-right alternatives and determined that neither could be supported financially; and

WHEREAS, the applicant initially proposed a ten-story 98-unit building with a total floor area of 94,147 sq. ft. (FAR of 8.0) and a total height of 96'-0"; and

WHEREAS, prior to the hearing, the applicant revised the proposal to provide a seven-story building with a total floor area 68,336 (FAR of 5.81), and a total height of 69'-0"; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief and allow SoBRO 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, 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. 09BSA018X, dated March 5, 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 ("DEP") Office of Environmental Planning and Assessment has evaluated the following submissions from the Applicant: (1) a March 5, 2009 Environmental Assessment Statement; (2) an October 2007 Phase I Environmental Site Assessment; and (3) a June 2008 Remedial Investigation report; and

WHEREAS, the applicant has agreed to implement hazardous materials remediation measures outlined in the June 2008 Remedial Investigation report, pursuant to a Restrictive Declaration executed on March 4, 2009 and submitted to be recorded against the subject property on March 12, 2009; and

WHEREAS, after its approval of a Remedial Action Plan (RAP) and a Construction Health & Safety Plan, DEP will remit a Notice to Proceed to the Department of Buildings ("DOB"); and

WHEREAS, after implementation of the RAP, one or more Remedial Closure Report(s) certified by a professional engineer must be submitted to DEP; subsequent to its

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approval, DEP will forward Notice(s) of Satisfaction to DOB; and

WHEREAS, DEP has reviewed the applicant's March 5, 2009 EAS and March 13, 2009 Revised Noise Chapter and has determined that a minimum window/wall noise attenuation of 35 dBA is required in the proposed building to achieve an interior noise level of 45 dBA; 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 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 seven-story mixed-use residential / commercial / community facility building, contrary to ZR § 32-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received January 9, 2009"-twelve (12) 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: seven stories, a total floor area of 68,336 sq. ft. (FAR of 5.81); a community facility floor area of 518 sq. ft. (FAR of 0.07); a commercial floor area of 9,280 sq. ft. (FAR of 0.79); and a residential floor area of 58,241 sq. ft. (FAR of 4.95); a street wall height and total height (without bulkhead) of 69'-0" and a terrace setback at the western portion of the seventh floor;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

THAT the issuance of building permits shall be conditioned on the submission of a DEP Notice to Proceed;

THAT issuance of a permanent certificate of occupancy shall be conditioned on the issuance by DEP of a Notice of Satisfaction;

THAT a minimum window/wall noise attenuation of 35 dBA shall be installed in and maintained in the proposed building; 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 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, April 7, 2009.

216-08-BZ

APPLICANT – Eric Palatnik, P.C., for Valeri Gerval, owner.

SUBJECT – Application August 22, 2008 – Special Permit (§73-622) In-Part Legalization for the enlargement and modification of a single family home. This application seeks to vary floor area, open space and lot coverage (§23-141) and side yard (§23-461) in an R3-1 zoning district.

PREMISES AFFECTED – 1624 Shore Boulevard, Shore Boulevard and Oxford Street, Block 8757, Lot 88, 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 9, 2009, acting on Department of Buildings Application No. 300956044, reads in pertinent part:

1. Proposed floor area ratio is contrary to ZR 23-141(a).
2. Proposed open space is contrary to ZR 23-141(a).
3. Proposed lot coverage is contrary to ZR 23-141(a).
4. Proposed side yard is contrary to ZR 23-461.
5. Proposed front yard is contrary to ZR 23-45"; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-1 zoning district, the proposed partial legalization and modification of a two-story and attic single-family home that exceeds the permitted floor area ratio (FAR) and lot coverage requirements and does not provide the required open space, side yard and front yard, contrary to ZR §§ 23-141(a), 23-461 and 23-45; and

WHEREAS, a public hearing was held on this application on November 25, 2008, after due notice by publication in *The City Record*, with continued hearings on January 13, 2009, February 10, 2009, March 3, 2009 and March 24, 2009, and then to decision on April 7, 2009; 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,

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recommends disapproval of the application; and

WHEREAS, the Manhattan Beach Community Group provided written and oral testimony recommending disapproval of the application; and

WHEREAS, the subject site is a corner lot located on the southwest corner of Shore Boulevard and Oxford Street, in an R3-1 zoning district; and

WHEREAS, the subject site has a frontage of approximately 25 feet on Shore Boulevard and a frontage of approximately 90 feet on Oxford Street; and

WHEREAS, the site has a total lot area of 2,249 sq. ft. and is currently occupied by a two-story and attic single-family home (the "existing home") containing 2,366 sq. ft. of floor area (1.05 FAR); and

WHEREAS, the applicant seeks a partial legalization of the existing home, including waivers to permit a floor area of 1,911 sq. ft.; an FAR of 0.85 FAR (0.6 FAR is the maximum permitted with an attic bonus); an open space ratio of 0.58 (0.65 is the minimum required); lot coverage of 42 percent (35 percent is the maximum permitted); a side yard of 3'-1" along the western lot line (5'-0" is the minimum required); and a front yard of 3'-1 1/4" along Oxford Street (10'-0" is the minimum required); and

WHEREAS, on August 2, 2005, the applicant was issued a building permit by the Department of Buildings ("DOB") authorizing construction of a two-story home at the site pursuant to professionally-certified plans; and

WHEREAS, on May 6, 2006, a stop work order was issued halting construction based on a finding by DOB that the existing home was non-compliant with the zoning requirements for FAR, attic, balcony, and front and side yard; and

WHEREAS, to legalize the existing home, which was built within the footprint of a building formerly on the site, the applicant initially sought a special permit under ZR §§ 73-622 and 73-03 to waive FAR, open space, lot coverage, and side yard requirements and a variance under ZR § 72-21 to waive front yard requirements; and

WHEREAS, during the hearing process, the Board noted in its review of the 2005 approved DOB plans submitted by the applicant that the original building on the site had been demolished; therefore the existing building to be legalized would not qualify as an enlargement under ZR § 73-622; and

WHEREAS, further, the Board noted that the existing home exceeded the allowable perimeter wall height and building envelope under ZR § 23-631; and

WHEREAS, the applicant subsequently revised the proposal to eliminate the special permit request and reduce the floor area of the existing home by removing the attic, and to instead seek only a variance to permit an FAR of 0.85, an open space ratio of 0.58, a lot coverage of 42 percent, a side yard of 3'-1" on the western lot line, and a front yard along Oxford Street of 3'-1 1/4"; and

WHEREAS, the applicant represents that FAR, front yard, side yard, lot coverage, and open space relief are 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 site is a small corner lot with a narrow width and a shallow depth; and that the site, prior to construction of the existing home, was significantly underdeveloped with a one-story bungalow that was obsolete for living purposes; and

WHEREAS, the site has a width of 25 feet and a depth of approximately 90 feet; and

WHEREAS, the applicant represents that, prior to the construction of the existing home, the site was occupied by a one-story bungalow with a floor area of 781 sq. ft. and an FAR of 0.35 (the "original home"); and

WHEREAS, the district allows an FAR of 0.6 as-of-right (with the attic bonus), thereby permitting a maximum floor area on the subject site of 1,349 sq. ft.; and

WHEREAS, the applicant provided a 1999 site survey and an early photograph establishing that the site was occupied by a one-story bungalow with a width of approximately 19 feet, a depth of approximately 40 feet, a floor area of 781 sq. ft. and an FAR of 0.35; and

WHEREAS, as an initial proposition, the applicant states that a narrow corner lot in the subject zoning district, such as the subject site, is more burdened than a narrow interior lot; and

WHEREAS, the applicant further states that the aggregated side yard requirement of an interior lot in the R3-1 zoning district is 13 feet and that non-complying side yards can be vertically enlarged either as-of-right or under the Zoning Resolution special permit provisions; and

WHEREAS, a corner lot within the R3-1 district requires an aggregate minimum width for a required front yard and parallel side yard of 15 feet, and a non-complying front yard cannot be vertically enlarged either as-of-right or under the Zoning Resolution special permit provisions; and

WHEREAS, as to the uniqueness of these conditions, the applicant submitted an analysis of 42 corner lots in the surrounding area (the "corner lot study") that found that the subject lot is one of only four lots with a lot area of less than 2,500 sq. ft and is one of only three lots with a width of 25 feet or less, and that 37 of the 42 corner lots had larger lot widths; and

WHEREAS, the applicant further states that the corner lot study indicates that existing residential developments on similarly-sized lot areas of between 2,000 and 2,500 sq. ft. have an average floor area of 2,155 sq. ft. (1.1 FAR); and

WHEREAS, the Board notes that the original home was the smallest in size within the study area, and that 39 of the 42 lots (93 percent) are occupied with homes with floor areas in excess of 1,600 sq. ft; and

WHEREAS, the applicant states that the original home of 781 sq. ft., suffered a hardship by being disadvantaged in size as compared to other homes in the surrounding area, thus constraining its habitability; and

WHEREAS, the applicant states that any enlargement of the original home would require a variance as it would trigger waivers of lot coverage and open space requirements, or waivers of front and side yard requirements, as the

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original home was non-complying under the R3-1 zoning district; and

WHEREAS, specifically, the maximum permitted lot coverage is 35 percent and the minimum open space requirement is 65 percent -- the survey and photograph submitted by the applicant establish that the original home occupied 34.7 percent of the lot and provided 65.3 percent of the required open space; and

WHEREAS, the applicant states, therefore, that any horizontal enlargement of the original home would necessarily create non-compliances with lot coverage and open space requirements; and

WHEREAS, the applicant states that the original home consists of a non-complying front yard along Oxford Street of approximately three feet and a non-complying side yard along the western lot line of approximately three feet; and

WHEREAS, the applicants states that any complying vertical enlargement of the original home would result in a constrained floor plate at the second floor which would render such enlargement inhabitable; and

WHEREAS, an as-of-right enlargement of the original home would require a setback from the Oxford Street front lot line, thereby creating a second floor with a maximum width of 10 feet; and

WHEREAS, the Board notes that the grant of a special permit under ZR § 73-622 permits only a nominally larger floor plate with a maximum width on the second floor of 12 feet; and

WHEREAS, the applicant represents, therefore, that in order to be habitable and provide a reasonable floor plate at the second floor, a vertical enlargement would necessarily increase the degree of non-compliance with R3-1 zoning district requirements for front and side yards; and

WHEREAS, the applicant states that the 781 sq. ft. original home was the smallest in the surrounding area with no ability to enlarge without a variance and that only two other sites are similarly burdened; and

WHEREAS, the applicant further states that any new development on the site, due to the narrow width and corner lot location, would result in a complying home with a width of only ten feet; and

WHEREAS, the applicant represents that the requested waivers of lot coverage, open space, front and side yard requirements are necessary to develop the site with a habitable home; and

WHEREAS, the applicant states that the FAR waiver requested is necessary to develop a habitable home -- a complying FAR development would produce a home with 1,349 sq. ft of floor area, which is smaller than 40 of the 42 corner lot developments analyzed by the applicant; and

WHEREAS, the requested front yard, side yard, open space and lot coverage waivers would allow a home with a width of 18'-10" and a building footprint of approximately 960 sq. ft.; and the requested floor area waiver would allow a home with approximately 1,911 sq. ft.; 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 floor area, front yard, side yard, open space and lot coverage

regulations; and

WHEREAS, the applicant represents that the grant of the variance is necessary to enable the owner to realize a reasonable return from the subject zoning lot; and

WHEREAS, as discussed above, the applicant states that a complying development would result in a home that is not habitable due to its inadequate size and narrow width; 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 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 because development in the surrounding community predates adoption of the applicable zoning requirements, sites throughout the surrounding area are characterized by non-compliant front yards and floor area; and

WHEREAS, the applicant further states that the subject site is one of ten corner lots in the surrounding area that lack two required front yards; and

WHEREAS, the applicant represents that the average FAR of corner lot buildings is well in excess of 0.5, and that non-compliance with FAR requirements is particularly prevalent among sites with smaller lot areas; and

WHEREAS, as discussed earlier, the proposed floor area of 1,911 sq. ft. is less than the 2,155 sq. ft. average floor area of homes on similarly-sized lots 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 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 initial proposal sought to legalize the existing home with a floor area of approximately 2,366 sq. ft. (1.05 FAR); and

WHEREAS, during the hearing process, the applicant modified the proposal to remove the existing attic level, thereby reducing the proposed floor area to 1,911 sq. ft. (0.85 FAR) and complying with district height and setback requirements; 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; and

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, the proposed partial legalization and modification of a two-story single-family home that exceeds the permitted floor area ratio and lot coverage and does not

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provide the required open space, side yard or front yard contrary to ZR §§ 23-141(a), 23-461 and 23-45; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “March 6, 2009”– (10) sheets; and *on further condition*:

THAT the parameters of the proposed home shall be as follows: a maximum floor area of 1,911 sq. ft.; an FAR of 0.85; an open space ratio of 0.58; a lot coverage of 42 percent; a side yard of 3’-1” along the western lot line; and a front yard of 3’-1 1/4” along the eastern lot line, as per the BSA-approved plans; 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 approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT construction shall be substantially complete by April 7, 2010;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant 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 7, 2009.

236-08-BZ

APPLICANT – Sheldon Lobel, for Joey Aini, owner.

SUBJECT – Application September 18, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (§23-141) and the permitted perimeter wall height (§23-631) in an R2X (OPSD) zoning district.

PREMISES AFFECTED – 1986 East 3rd Street, west side of East 3rd Street, 100’ south of Avenue S, Block 7105, Lot 152, 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, the decision of the Brooklyn Borough Superintendent, dated August 19, 2008, acting on Department of Buildings Application No. 310129063, reads:

“Floor area exceeding the allowable floor area ratio and is contrary to Section 23-141 of the Zoning Resolution.

Height is exceeding the permitted maximum height and is contrary to Section 23-631 of the Zoning Resolution;” and

WHEREAS, this is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R2X zoning district within the Special Ocean Parkway District, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio and perimeter wall height, contrary to Z.R. §§ 23-141 and 23-631; and

WHEREAS, a public hearing was held on this application on November 25, 2008 after due notice by publication in *The City Record*, with continued hearings on January 13, 2009, February 10, 2009, March 3, 2009 and March 24, 2009, and then to decision on April 7, 2009; 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, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of East 3rd Street, between Avenue S and Avenue T, in an R2X zoning district within the Special Ocean Parkway 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 2,617 sq. ft. (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 approximately 2,617 sq. ft. (0.65 FAR) to approximately 4,757 sq. ft. (1.19 FAR); the maximum floor area permitted is 3,400 sq. ft. (0.85 FAR); and

WHEREAS, the applicant further seeks a waiver to ZR § 23-631 to allow an increase in the perimeter wall height; and

WHEREAS, the Board notes that a special permit under ZR § 73-622 allows a perimeter wall height to exceed the permitted height, provided that the perimeter wall height is equal to or less than the perimeter wall height of an adjacent building; and

WHEREAS, the applicant seeks an increase in the perimeter wall height to 22’-4” (a maximum perimeter wall height of 21’-0” is permitted); and

WHEREAS, in support of making the finding, the applicant provided an affidavit from an architect who measured the perimeter walls of the two adjacent homes and represents that their respective heights are between 22’-6” and 22’-8”;

WHEREAS, the applicant represents that the perimeter wall of the proposed home therefore falls within the scope of the special permit; and

WHEREAS, at hearing, the Board requested that the applicant establish that the floor area of the proposed home is consistent with the character of the neighborhood; and

WHEREAS, in response, the applicant submitted property information for a sample of six homes with FARs ranging from 1.16 to 2.52 located within a 200-foot radius of the subject site; and

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WHEREAS, the Board notes that five of the homes identified by the applicant had FARs in excess of 1.19; and

WHEREAS, the applicant represents that the proposed FAR is consistent with the surrounding neighborhood; 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 that were being retained; 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 Z.R. § 73-622 and 73-03, to permit, in an R2X zoning district within the Special Ocean Parkway District, the proposed enlargement of a single-family home which does not comply with the zoning requirements for floor area ratio and perimeter wall height, contrary to Z.R. §§ 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 February 24, 2009"-(8) sheets and "March 13, 2009"-(4) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of approximately 4,757 sq. ft. (1.19 FAR) and a perimeter wall height of 22'-4", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT DOB shall confirm that the portions of the existing building shall be retained as illustrated on the BSA-approved plans; and

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 7, 2009.

250-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sari Dana and Edward Dana, owners.

SUBJECT – Application October 10, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area (§23-141) and less than the required rear yard (§23-47) in an R2X (OP) Special Ocean Parkway District.

PREMISES AFFECTED – 1925 East 5th Street, east side of East 5th Street between Avenues R and S, Block 6681, Lot 490, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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 Brooklyn Borough Superintendent, dated September 10, 2008, acting on Department of Buildings Application No. 310279070, reads:

1. Proposed floor area ratio is greater than the maximum permitted, contrary to ZR 23-141.
2. Proposed rear yard is less than minimum required rear yard of 30 feet, contrary to ZR 23-47;" and

WHEREAS, this is an application under Z.R. §§ 73-622 and 73-03, to permit, in an R2X zoning district within the Special Ocean Parkway District, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio and rear yard, contrary to Z.R. §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on December 16, 2008 after due notice by publication in *The City Record*, with continued hearings on January 27, 2009, March 3, 2009 and March 24, 2009, and then to decision on April 7, 2009; and

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

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

WHEREAS, the subject site is located on the east side of East 5th Street, between Avenue R and Avenue S, in an

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R2X zoning district within the Special Ocean Parkway 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 2,500 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 2,500 sq. ft. (0.63 FAR) to 5,090 sq. ft. (1.27 FAR); the maximum floor area permitted is 3,400 sq. ft. (0.85 FAR); and

WHEREAS, the proposed enlargement will maintain the existing non-complying perimeter wall height of 23'-0"; 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, the applicant initially sought an increase in the floor area from 2,500 sq. ft. (0.63 FAR) to 5,392 sq. ft. (1.35 FAR); and

WHEREAS, the Board requested that the applicant establish that the floor area of the proposed home is consistent with the character of the neighborhood; and

WHEREAS, in response, the applicant submitted photographs indicating that a home in the subject zoning district located 50 feet south of the subject premises has an FAR of 1.64, and that the rear yard of the subject premises abuts a six-story multiple dwelling with a FAR of 4.06 located in the adjacent R6A zoning district; and

WHEREAS, the applicant subsequently revised its proposal to reduce the requested floor area to 5,090 sq. ft. (1.27 FAR); and

WHEREAS, the applicant initially proposed to maintain the existing perimeter wall height of 23'-0" and total height of 38'-6 3/4" (a maximum perimeter wall height of 21'-0" and a maximum total height of 35'-0" are permitted); and

WHEREAS, at hearing, the Board raised concerns about the total height of the proposed home, specifically because the proposal included rebuilding the entire attic; and

WHEREAS, in response, the applicant reduced the total height of the proposed home to a complying height of 35'-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 Z.R. §§ 73-622 and 73-03, to permit, in an R2X zoning district within the Special Ocean Parkway District, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio and rear yard, contrary to Z.R. §§ 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 March 10, 2009"-(10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 5,090 sq. ft. (1.27 FAR); 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, April 7, 2009.

178-07-BZ

APPLICANT – Dominick Salvati and Son Architects, for Bronx Jewish Boys, owners.

SUBJECT – Application July 12, 2007 – Variance (§72-21) to permit the proposed seven-story residential building above the existing three-story community facility building. The proposal is contrary to residential floor area and FAR and lot coverage (§23-141(b)), number of dwelling units (§23-222), rear yard (§23-47 & §24-36), sky exposure plane and setback, (§23-631(d)), required residential and community facility parking (§25-23 & §25-31). R5 district. PREMISES AFFECTED – 2261-2289 Bragg Street, 220' north from intersection of Bragg Street and Avenue W, Block 7392, Lot 57, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Mark McCarthy.

MINUTES

ACTION OF THE BOARD – Laid over to May 19, 2009, at 1:30 P.M., for continued hearing.

40-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Laconia Land Corporation, owner.

SUBJECT – Application February 25, 2008 – Special Permit (§§11-411 & 11-413) to allow the re-instatement and extension the term, to amend the previous BSA approval of an Automotive Service Station (UG 16) to a Automotive Repair Facility (UG 16). The application seeks to subdivide the zoning lot and allow a portion to be developed as of right in a C1-2/R5 zoning district.

PREMISES AFFECTED – 3957 Laconia Avenue, Northwest corner of east 224th Street, Block 4871, Lot 1, Borough of Bronx.

COMMUNITY BOARD #1BX

APPEARANCES –

For Applicant: Todd Dale and Ramnarine Persaud.

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 28, 2009, at 1:30 P.M., for decision, hearing closed.

45-08-BZ

APPLICANT – Rampulla Associates Architects, for 65 Androvetta Street, LLC, owner.

SUBJECT – Application February 29, 2008 – Variance (§72-21) to construct a four-story, 108 unit age restricted residential building contrary to use regulations (§42-00, §107-49). M1-1 District / Special South Richmond Development District.

PREMISES AFFECTED – 55 Androvetta Street, north side Androvetta Street, corner of Manley Street, Block 7407, Lots 1, 80, 82, (Tent. 1), Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phil L. Rampulla.

For Opposition: Dennis D. Dell’Angelo and Dee Vanderburg.

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 19, 2009, at 1:30 P.M., for decision, hearing closed.

161-08-BZ

APPLICANT – Eric Palatnik, P.C., for Oleg F. Kaplun, owner.

SUBJECT – Application June 10, 2008 – Special Permit

(§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, open space and lot coverage (§23-141) and less than the required rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 136 Dover Street, between Hampton Street and Oriental Boulevard, Block 8735, Lot 80, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik and Igor Zaslauskiy.

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 28, 2009, at 1:30 P.M., for decision, hearing closed.

188-08-BZ

APPLICANT – Rizzo Group, for Hotel Carlyle Owners Corp., owners; The Hotel Carlyle, lessee.

SUBJECT – Application July 14, 2008 – Special Permit (§73-36) and Variance (§72-21) to allow the legalization of a Physical Culture Establishment and to extend this use into an R8B district for the subject hotel which exists in the C5-1MP and R8B zoning districts. The proposal is contrary to ZR Section 32-10.

PREMISES AFFECTED – 35 East 76th Street, (975-983 Madison; 981 Madison; 35-53 East 76th Street) northeast corner of Madison Avenue and East 76th Street, Block 1391, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Ken Barbino.

ACTION OF THE BOARD – Laid over to May 19, 2009, at 1:30 P.M., for continued hearing.

234-08-BZ

APPLICANT – Eric Palatnik, P.C., for 1702 Avenue Z, Inc., owner.

SUBJECT – Application September 9, 2008 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment at the cellar and a portion of the first and second floors in a seven-story mixed-use building. The proposal is contrary to ZR §32-10. C4-2 district.

PREMISES AFFECTED – 1702 Avenue Z, southeast of the corner formed by Avenue Z and East 17th Street, Block 7462, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to April 28, 2009, at 1:30 P.M., for continued hearing.

MINUTES

237-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Rocky Mount Baptist Church, owner; Rocky Mount Development, LLC., lessee.

SUBJECT – Application September 18, 2008 – Variance pursuant to §72-21 to allow for a 19 story community facility and residential building with 124 affordable units, contrary to bulk regulations (§23-145, §23-633, §24-552(b)) R7-2 District.

PREMISES AFFECTED – 37 Hillside Avenue, south side of Hillside Avenue, 450’ east of the intersection of Broadway and Hillside Avenue, Block 2170, Lot 118, Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Josh Rinesmith.

For Opposition: Anna Maria Jones, Office of Council Member Miguel Martinez, Jose L. Simms, Lester Carpenter, Frank Lefever, Rebecca Edmonston, Ed Orngwshi, Kebra Rhedrick, Barbara A. Jones, Jacob Kanner, Vadian Moldouan.

ACTION OF THE BOARD – Laid over to June 9, 2009, at 1:30 P.M., for continued hearing.

275-08-BZ

APPLICANT – Eric Palatnik, P.C., for South Side House LLC, owner.

SUBJECT – Application November 20, 2008 – Special Permit (§73-36) to allow a physical culture establishment on the ground floor of an existing building. The proposal is contrary to ZR §42-10. M1-2/R6 (MX8) district.

PREMISES AFFECTED – 98 South 4th Street, south side of South 4th Street, between Bedford Avenue and Berry Street, Block 2443, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #1BK

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 28, 2009, at 1:30 P.M., for decision, hearing closed.

276-08-BZ

APPLICANT – Alfonso Duarte, for Kesy LLC, owner; Beljanski Wellness Center Inc., lessee.

SUBJECT – Application November 12, 2008 – Special Permit (§73-36) to allow a physical culture establishment on the sixth floor in a seven-story office building. The proposal is contrary to ZR §32-10. C5-2 district.

PREMISES AFFECTED – 150 East 55th Street, south side, 155’ east of Lexington Avenue, Block 1309, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES – None.

For Applicant: Alfonso Duarte and Kevin McCarthy.

ACTION OF THE BOARD – Laid over to May 12, 2009, at 1:30 P.M., for continued hearing.

298-08-BZ

APPLICANT – Lewis E. Garfinkel, for Abraham Zlotnick, owner.

SUBJECT – Application December 4, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141(a)) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1156 East 22nd Street, between Avenue J and Avenue K, Block 7603, Lot 81, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lewis E. Garfinkel.

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 28, 2009, at 1:30 P.M., for decision, hearing closed.

303-08-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Luciano Calandra, owner; Lou-Cal Auto Service, Inc., lessee.

SUBJECT – Application December 10, 2008 – Special Permit filed pursuant to §11-411 of the zoning resolution to re-establish an expired variance which permitted the erection and maintenance of a gasoline service station with accessory uses (UG 16) C2-2/R5-B zoning district.

PREMISES AFFECTED – 34-67 Francis Lewis Boulevard, northeast corner of 35th Avenue, Block 6077, Lot 43, Borough of Queens.

COMMUNITY BOARD # 11Q

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 April 28, 2009, at 1:30 P.M., for decision, hearing closed.

308-08-BZ

APPLICANT – Davidoff Malito & Hutter, LLP, for 201 East 67 LLC, owner; MonQi Fitness, lessee.

SUBJECT – Application October 17, 2008 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment located on the third through fifth

MINUTES

floors in a five-story building. The proposal is contrary to ZR §32-00. C1-9 district.

PREMISES AFFECTED – 201 East 67th Street, northeast corner of the intersection of Third Avenue and East 67th Street, Block 1422, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Ron Mandel.

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 12, 2009, at 1:30 P.M., for decision, hearing closed.

316-08-BZ

APPLICANT – Bryan Cave LLP/Robert S. Davis, for The Simons Foundation, Inc., owner.

SUBJECT – Application December 23, 2008 – Variance (§72-21) to permit the development of a three- and eight-story school building. The proposal is contrary to ZR Section 35-24c (minimum base height). R9A with a C1-5 district overlay.

PREMISES AFFECTED – 345-349 Second Avenue, a/k/a 247-249 East 20th Street, northwest corner of East 20th Street and Second Avenue, Block 901, Lots 26, 27 & 28, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 12, 2009, at 1:30 P.M., for deferred decision.

1-09-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 39-01 QB LLC c/o Rhodes Management, owner; TSI Sunnyside LLC dba New York Sports Club, lessee.

SUBJECT – Application January 2, 2009 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment on a portion of the ground floor in a three-story building. The proposal is contrary to ZR §42-00. M1-4 district.

PREMISES AFFECTED – 39-01 Queens Boulevard, northerly side of Queens Boulevard, easterly of 39th Street, Block 191, Lot 5, Borough of Queens.

COMMUNITY BOARD #2Q

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 12, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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54-09-BZ

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55-09-A

1 Kildare Walk, Southeast corner of Kildare Walk & Oceanside Avenue., Block 16350, Lot(s) p/o 400, Borough of **Queens, Community Board: 14**. Construction within a bed of a mapped street, contrary to Article 3, Section 35 of the General City Law. R4 district.

56-09-BZ

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57-09-A

97 Santa Monica Lane, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 64, Borough of **Staten Island, Community Board: 3**. An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district regulations .R3-2 (SSRD) zoning district

58-09-A

99 Santa Monica Lane, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 66, Borough of **Staten Island, Community Board: 3**. An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district regulations .R3-2 (SSRD) zoning district

59-09-A

103 Santa Monica Lane, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 68, Borough of **Staten Island, Community Board: 3**. An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district regulations .R3-2 (SSRD) zoning district

60-09-A

105 Santa Monica Lane, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 70, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continued development under the prior zoning.

61-09-A

109 Santa Monica Lane, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 72, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continued development under the prior zoning.

62-09-A

111 Santa Monica Lane, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 74, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continued development under the prior zoning.

63-09-A

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64-09-A

117 Santa Monica Lane, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 78, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continued development under the prior zoning.

65-09-A

121 Santa Monica Lane, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 80, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continued development under the prior zoning.

66-09-A

123 Santa Monica Lane, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 82, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continued development under the prior zoning.

67-09-A

126 Santa Monica Lane, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 84, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continued development under the prior zoning.

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68-09-A

124 Santa Monica Lane, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 86, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continued development under the prior zoning.

69-09-A

120 Santa Monica Lane, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 88, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continued development under the prior zoning.

70-09-A

118 Santa Monica Lane, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 90, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continued development under the prior zoning.

71-09-A

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72-09-A

164 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 94, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continued development under the prior zoning.

73-09-A

158 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 96, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continued development under the prior zoning.

74-09-A

156 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 98, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continued development under the prior zoning.

75-09-A

152 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 100, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continued development under the prior zoning.

76-09-A

150 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 102, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continued development under the prior zoning.

77-09-A

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78-09-A

25 Moreno Court, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 106, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under the prior zoning.

79-09-A

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80-09-A

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81-09-A

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82-09-A

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83-09-A

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84-09-A

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85-09-A

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86-09-A

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87-09-A

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88-09-A

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89-09-A

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90-09-A

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91-09-A

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92-09-A

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93-09-A

128 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 136, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

94-09-A

126 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 138, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

95-09-A

118 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 140, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

96-09-A

116 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 142, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

97-09-A

112 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 144, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

98-09-A

110 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 146, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

99-09-A

106 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 148, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

DOCKET

100-09-A

104 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 150, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continu development under prior zoning.

101-09-A

100 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 152, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continu development under prior zoning.

102-09-A

98 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 154, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continu development under prior zoning.

103-09-A

94 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 156, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continu development under prior zoning.

104-09-A

92 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 158, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continu development under prior zoning.

105-09-A

88 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 160, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continu development under prior zoning.

106-09-A

86 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 162, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continu development under prior zoning.

107-09-A

82 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 164, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continu development under prior zoning.

108-09-A

80 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 166, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continu development under prior zoning.

109-09-A

76 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 168, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continu development under prior zoning.

110-09-A

74 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 170, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continu development under prior zoning.

111-09-A

70 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 172, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continu development under prior zoning.

112-09-A

68 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 174, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continu development under prior zoning.

113-09-A

14 Malibu Court, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 176, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

114-09-A

18 Malibu Court, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 178, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

115-09-A

20 Malibu Court, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 180, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

DOCKET

116-09-A

22 Malibu Court, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 182, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

117-09-A

26 Malibu Court, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 184, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

118-09-A

28 Malibu Court, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 186, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

119-09-A

29 Malibu Court, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 188, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

120-09-A

27 Malibu Court, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 190, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

121-09-A

23 Malibu Court, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 192, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

122-09-A

21 Malibu Court, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 194, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

123-09-A

17 Malibu Court, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 196, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

124-09-A

15 Malibu Court, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 198, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

125-09-A

46 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 200, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

126-09-A

42 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 202, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

127-09-A

40 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 204, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

128-09-A

36 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 206, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

129-09-A

167 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 304, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

130-09-A

165 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 306, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

131-09-A

161 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 308, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

DOCKET

132-09-A

159 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 310, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

133-09-A

155 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 312, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

134-09-A

153 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 314, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

135-09-A

141 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 316, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

136-09-A

139 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 318, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

137-09-A

135 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 320, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

138-09-A

133 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 322, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

139-09-A

129 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 324, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

140-09-A

127 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 326, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

141-09-A

93 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 328, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

142-09-A

91 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 330, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

143-09-A

87 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 332, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

144-09-A

85 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 334, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

145-09-A

81 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 336, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

146-09-A

79 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 338, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

147-09-A

75 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 340, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

DOCKET

148-09-A

73 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 342, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

149-09-A

69 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 344, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

150-09-A

67 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 346, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

151-09-A

63 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 348, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

152-09-A

61 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 350, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

153-09-A

55 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 352, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

154-09-A

53 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 354, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

155-09-A

49 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 356, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

156-09-A

47 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 358, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

157-09-A

43 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 360, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

158-09-A

41 El Camino Loop, Maguire Woods in the Woodrow section of Staten Island., Block 6979, Lot(s) 362, Borough of **Staten Island, Community Board: 3**. Appeal for vested rights to continue development under prior zoning.

159-09-A

85 Woodland Avenue, 175' east of the intersection of Colon Avenue and Woodland Avenue., Block 5442, Lot(s) 44, Borough of **Staten Island, Community Board: 3**. Proposed construction of a single family home located within the bed of a mapped street (Doane Avenue). R2 zoning district .

160-09-A

112-15 Northern Boulevard, Between 112th Street and 112th Place., Block 1706, Lot(s) 25, Borough of **Queens, Community Board: 3**. Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior C2-4/R6 zoning district . C2-4/R6A

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 12, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 12, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

951-55-BZ

APPLICANT – Eric Palatnik, P.C., for Deborah Luciano, owner; Gaseteria Oil Corporation, lessee.
SUBJECT – Application March 18, 2009 – Amendment (§11-411) to permit the installation of a canopy and minor modifications to the existing pump islands to a previously granted variance for a UG16 gasoline service station in a C2-1/R3-2 zoning district.
PREMISES AFFECTED – 1098 Richmond Road, Targee Street and Richmond Road, Block 3181, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

23-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Kehilat Sephardim of Ahavat Achim, owners.
SUBJECT – Application April 7, 2009 – Extension of Time/waiver to Complete Construction (which expired on July 2, 2008) and to obtain a Certificate of Occupancy (which expired on January 2, 2009) of a previously granted Variance (§72-21) for the expansion of an existing three story synagogue with accessory Rabbi's apartment in an R-4 zoning district.
PREMISES AFFECTED – 150-62 78th Road, southeast corner of the intersection formed by 78th Road and 153rd Street, Block 6711, Lot 84, Borough of Queens.

COMMUNITY BOARD #8Q

APPEALS CALENDAR

19-09-A

APPLICANT – Elizabeth Safian of Sheldon Lobel Associates, for 34th and 35th Avenues Realty, LLC, owners.
SUBJECT – Application February 10, 2009 – Legalization of an existing building constructed within the bed of a mapped street contrary to General City Law Section 35. M2-1 Zoning District.
PREMISES AFFECTED – 132-55 34th Avenue, north side of 34th Avenue, 75' east of the intersection formed by Collins Place and 34th Avenue, Block 4946, Lot 126, Borough of Queens.

COMMUNITY BOARD #7Q

47-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Maureen & John Tully, lessees.
SUBJECT – Application March 23, 2009 – Reconstruction and enlargement of an existing single family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R4 Zoning District.
PREMISES AFFECTED – 114 Beach 215th Street, west side Beach 215th Street, 240' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

MAY 12, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 12, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

297-08-BZ

APPLICANT – Lewis E. Garfinkel, for Itzhak Bardror, owner.
SUBJECT – Application December 4, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141(a)); and less than the required rear yard (§23-47) in an R2 zoning district.
PREMISES AFFECTED – 3496 Bedford Avenue, between Avenue M and Avenue N, Block 7660, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #14BK

10-09-BZ

APPLICANT – Francis R. Angelino, Esq., for Religious Org. Tenseishinbikai USA, Inc., owner.
SUBJECT – Application January 23, 2009 – Variance pursuant to § 72-21 to allow a community facility use (house of worship), contrary to front yard regulations, §24-34. R3-2 District.
PREMISES AFFECTED – 2307 Farragut Road/583 East 23rd Street, north east corner of Farragut Road and East 23rd Street, Block 5223, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #14BK

17-09-BZ

APPLICANT – MetroPCS New York, LLC, for Pearl Beverly, LLC, owner; MetroPCS New York, LLC, lessee.
SUBJECT – Application February 4, 2009 – Special Permit (§73-03 & §73-30) to allow a non-accessory radio facility and all accessory equipment.

CALENDAR

PREMISES AFFECTED – 5421 Beverly Road, northside of Beverly Road, between East 54th and East 55th Street, Block 4739, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #17BK

21-09-BZ

APPLICANT – MetroPCS New York, LLC, for Braddock Avenue Owners, Inc., owner; MetroPCS New York, LLC, lessee.

SUBJECT – Application February 10, 2009 – Special Permit (§73-03 & §73-30) to allow a non-accessory radio facility on the rooftop of the existing building.

PREMISES AFFECTED – 222-89 Braddock Avenue, north west corner of Braddock Avenue and Ransom Street, Block 7968, Lot 31, Borough of Queens.

COMMUNITY BOARD #13Q

35-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for East 103rd Street Realty LLC c/o Glenwood Management Corporation, owner.

SUBJECT – Application March 2, 2009 – Special Permit filed pursuant to §11-411 & §11-412 of the New York City Zoning Resolution to renew for an additional ten (10) years and to extend a use district exception previously granted pursuant to Section 7(e) of the pre-1961 Zoning Resolution, allowing the use of the ground floor of a two-story building located in an R7A zoning district as a contractors' establishment (Use Group 16).

PREMISES AFFECTED – 345-347 East 103rd Street, for North side of East 103rd Street between First and York Avenues, Block 1675, Lot 21, 22, Borough of Manhattan.

COMMUNITY BOARD #11M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, APRIL 21, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

316-73-BZ

APPLICANT – Vassalotti Associates Architects, for 31-02 68th Realty Corporation, owner.

SUBJECT – Application February 9, 2009 – Extension of Term for the continued operation of a (UG16) Gasoline Service Station (Husky) in an R4 zoning district which expired on January 8, 2009.

PREMISES AFFECTED – 31-02 68th Street, south west corner of 68th Street and 31st Avenue, Block 1138, Lot 27, Borough of Queens.

COMMUNITY BOARD #3BX

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 Montanez.....5
Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of term for the continued use of a gasoline service station; and

WHEREAS, a public hearing was held on this application on March 17, 2009, after due notice by publication in *The City Record*, with a continued hearing on March 31, 2009, and then to decision on April 21, 2009; and

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

WHEREAS, Community Board 3, Queens, recommends approval of this application, with the condition that the applicant install planters along 31st Avenue and the south side of the property line; and

WHEREAS, the site is located on the southwest corner of the intersection at 68th Street and 31st Avenue, within an R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 8, 1974 when, under the subject calendar number, the Board granted a variance to permit the reconstruction of an automotive service station with accessory uses for a term of 15 years; and

WHEREAS, on June 27, 1989, under the subject calendar number and in conjunction with a change to a self-service gasoline station under BSA Cal. No. 263-89-A, the

grant was extended for a term of ten years from the expiration of the prior grant, to expire on January 8, 1999, and the Board permitted the erection of a new steel canopy over three new gasoline pump islands with self-serve pumps, and the alteration of the existing accessory building to accommodate an attendant's booth; and

WHEREAS, on June 26, 1990, the Board amended the grant to relocate the existing 30'-0" curb cut on the 68th Street side of the station; and

WHEREAS, most recently, the grant was extended on July 27, 1999 for a term of ten years from the expiration of the prior grant, to expire on January 8, 2009; and

WHEREAS, the applicant now seeks to extend the term of the variance for another ten years; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant submitted revised drawings indicating that planters will be installed on the south side of the property line; 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 8, 1974, so that as amended this portion of the resolution shall read: "to extend the term for ten years from January 8, 2009, to expire on January 8, 2019; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked "Received February 9, 2009"-(1) sheet and "March 3, 2009"-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on January 8, 2019;

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

THAT a new certificate of occupancy shall be obtained by October 21, 2009;

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." (Alt. 96-89)

Adopted by the Board of Standards and Appeals, April 21, 2009.

337-90-BZ

APPLICANT – Sheldon Lobel, P.C., for Giuseppe LaSorsa, owner.

SUBJECT – Application November 10, 2008 – Extension of Term/waiver for the continued operation of a one story (UG16) Automotive Repair Shop and a two story (UG6) business and (UG2) dwelling unit on a portion of the site, which expired on June 2, 2002, in a C1-2/R4 zoning district and an Extension of Time/waiver to obtain a Certificate of Occupancy which expired on March 29, 1987.

MINUTES

PREMISES AFFECTED – 1415/17 East 92nd Street, northeast corner of East 92nd Street and Avenue L, Block 8238, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Elizabeth Safian.

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, an extension of term for the continued operation of a one-story automotive repair shop (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 16, 2008, after due notice by publication in *The City Record*, with continued hearings on January 13, 2009, February 10, 2009, March 17, 2009, and March 31, 2009, and then to decision on April 21, 2009; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application, with conditions; and

WHEREAS, the site is located on the northeast corner of the intersection at 92nd Street and Avenue L, within a C1-2 (R4) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 19, 1950 when, under BSA Cal. No. 337-50-BZ, the Board granted a variance to permit the reconstruction of an existing gasoline service station and the construction of a lubritorium 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 2, 1992, under the subject calendar number, the Board granted a special permit to permit the re-establishment of an expired variance for an automotive service station (Use Group 16) and the legalization of a change of use to an automotive repair establishment (Use Group 16) for a term of ten years, to expire on June 2, 2002; and

WHEREAS, the applicant now seeks a ten-year extension of the term of the variance and a six-month extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant states that a certificate of occupancy was not obtained by the stipulated date due to an administrative oversight by the owner; and

WHEREAS, at hearing, the Board requested that the applicant remove the non-complying signage from the site and establish that cars are not being parked on the sidewalk; and

WHEREAS, in response, the applicant submitted photographs indicating that the non-complying signage has been removed and that cars are no longer being parked on the sidewalk; and

WHEREAS, at hearing, the Board requested that the applicant establish that a Department of Environmental Protection (“DEP”) approved soil and/or groundwater sampling plan was implemented to determine the extent of contamination, if any, from underground storage tanks located on the site, in accordance with the prior BSA resolution; and

WHEREAS, in response, the applicant submitted an invoice from an environmental contractor, dated November 12, 1997, evidencing that the requisite soil testing was conducted at the site; 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 set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated June 2, 1992, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 2, 2002, to expire on June 2, 2012, and to grant an extension of time to obtain a certificate of occupancy to October 21, 2009; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked “Received December 8, 2009”-(6) sheets; and *on further condition*:

THAT the term of the grant shall expire on June 2, 2012;

THAT there shall be no parking on the sidewalk;

THAT the site shall be maintained free of debris and graffiti;

THAT all automobile repairs shall be conducted inside the building and there shall be no automobile body repairs at the premises;

THAT all lighting shall be directed downward and away from adjacent residential uses;

THAT the hours of operation for the automotive repair establishment shall be Monday through Friday from 8:00 a.m. to 6:00 p.m., and Saturday from 8:00 a.m. to 2:00 p.m. to minimize noise and vehicular impacts on the adjacent residential uses;

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

THAT a certificate of occupancy shall be obtained by October 21, 2009;

THAT all conditions from the 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 Application No. 1017/49)

Adopted by the Board of Standards and Appeals, April 21, 2009.

MINUTES

217-03-BZ

APPLICANT – Sheldon Lobel, P.C., for 140 Pennsylvania Avenue, LLC, owner.

SUBJECT – Application July 17, 2008 – Extension of Time to Complete Construction of a previously granted variance for the proposed expansion of a one story and cellar building in an R-5 zoning district.

PREMISES AFFECTED – 142 Pennsylvania Avenue, southeast corner of Pennsylvania Avenue and Liberty Avenue, Block 3703, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Elizabeth Safian.

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 time to complete construction of a previously granted variance for the expansion of a one-story and cellar building; and

WHEREAS, a public hearing was held on this application on August 19, 2008 after due notice by publication in *The City Record*, with continued hearings on September 16, 2008, October 28, 2008, December 9, 2008, January 27, 2009, February 24, 2009, and March 31, 2009, and then to decision on April 21, 2009; and

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

WHEREAS, the subject site is located on the southwest corner of the intersection at Pennsylvania Avenue and Liberty Avenue, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 29, 1993 when, under BSA Cal. No. 48-90-BZ, the Board granted a variance to permit the enlargement of an existing non-conforming food store (Use Group 6) which increased the degree of non-conformance; and

WHEREAS, on March 30, 2004, under the subject calendar number, the Board granted a variance to permit the expansion of the one-story and cellar food store; and

WHEREAS, substantial construction was to be completed by March 30, 2008 in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that 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 directed the applicant to remove all graffiti and to improve the façade of the building; and

WHEREAS, in response, the applicant submitted photographs establishing that the graffiti had been removed, and provided a contract between the owner and a construction

contractor indicating that the owner is proceeding with building repairs and improvements; and

WHEREAS, at hearing, the Board requested that the applicant remove the non-complying signage and lighting from the exterior of the building; and

WHEREAS, in response, the applicant submitted photographs establishing that the signage and lighting have been removed; 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 March 30, 2004, 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 expiration of the previous grant, to expire on March 30, 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 condition*:

THAT construction shall be substantially complete by March 30, 2012;

THAT the site shall be maintained free of debris and graffiti;

THAT all signage shall comply with C1 zoning regulations;

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. 301521333)

Adopted by the Board of Standards and Appeals, April 21, 2009.

395-60-BZ

APPLICANT – Sheldon Lobel, P.C., for Ali A. Swati, owner.

SUBJECT – Application December 22, 2006 – Pursuant to ZR §11-411 & §11-413 for an Extension of Term/Amendment/waiver for the change of use from a (UG16) gasoline service station to (UG16) automotive repair establishment; to remove a portion of the subject lot from the scope of the granted variance and to request a UG6 designation for the convenience store, in an R-5 zoning district, which expired on December 9, 2005 and an Extension of Time to obtain a Certificate of Occupancy which expired on January 19, 2000.

PREMISES AFFECTED – 2557-2577 Linden Boulevard, north side of Linden Boulevard between Euclid Avenue and Pine Street, Block 4461, Lot 27, Borough of Brooklyn.

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COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to June 23, 2009, at 10 A.M., for continued hearing.

7-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for HKAL 34th Street Limited Partnership, owner; TSI East 34 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application February 9, 2009 – Extension of Term of a previously granted Special Permit for the operation of Physical Culture Establishment (New York Sports Club (NYSC)), located in a C1-9 (TA) zoning district, which expired on January 11, 2009.

PREMISES AFFECTED – 300 East 34th Street, southeast corner of East 34th Street, and Second Avenue, Block 939, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to May 19, 2009, at 10 A.M., for continued hearing.

5-98-BZ

APPLICANT – Maxfield Blaufeux & Heywood Balaufeux, for Priority Landscaping Incorporated, owner.

SUBJECT – Application March 13, 2009 – Extension of Term of a previously granted Variance (§72-21) for a garden supply sales and nursery establishment (UG17) with accessory parking and storage in an R5 zoning district which expired on February 23, 2009.

PREMISES AFFECTED – 1861 McDonald Avenue, east side 200' north of Quentin Road, Block 6633, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Heywood Blaufeux.

ACTION OF THE BOARD – Laid over to May 19, 2009, at 10 A.M., for continued hearing.

209-04-BZ

APPLICANT – Joseph P. Morsellino, for Waterfront Resort, Incorporated, owner.

SUBJECT – Application March 23, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to permit the conversion and enlargement of an existing industrial building to residential use in an M2-1 zoning district which expires on July 19, 2009.

PREMISES AFFECTED – 109-09 15th Avenue, northwest corner of 15th Avenue and 110th Street, Block 4044, Lot 60, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

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 28, 2009, at 10 A.M., for decision, hearing closed.

41-06-BZ

APPLICANT – Akerman Senterfitt Stadtmauer Bailkin, for New York Hospital Queens, owner.

SUBJECT – Application February 9, 2009 – Amendment of a previously approved variance (§72-21) which permitted, on a portion of the campus of New York Hospital, the construction of a underground parking structure with 372 accessory parking spaces. The application did not comply with the front and side yard requirements. (§§24-33 & 24-34). The current application seeks to legalize a 4'-8" open area along the side lot line within the C1-2 overlay which does not comply with §33-25 (Minimum Required Side Yards). The site is located in a R6/C1-2 zoning district.

PREMISES AFFECTED – 139-24 Booth Memorial Avenue, south side of Booth Memorial Avenue and West Side of 141st Street, Block 6401, Lot 19, Borough of Queens.

COMMUNITY BOARD #7Q

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 12, 2009, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

272-08-A

APPLICANT – Elizabeth Safian, Sheldon Lobel, P.C., for Brighton 2nd Place, LLC, owner.

SUBJECT – Application November 5, 2008 – Proposed construction of residential building not fronting on a legally mapped street contrary to General City Law Section 36. R6 Zoning District.

PREMISES AFFECTED – 35 Brighton 2nd Place, premises is located on the west side of Brighton 2nd Place approximately 120 feet north of Brighton 2nd Lane, Block 8662, Lots 230, 232, 234, Borough of Brooklyn.

COMMUNITY BOARD #13BK

APPEARANCES –

For Applicant: Elizabeth Safian.

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 Montanez.....5
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated October 20, 2008, acting on Department of Buildings Application No. 302368961, reads in pertinent part:

“The street giving access to the proposed new building is not duly placed on the official map of the City of New York, therefore:

A certificate of occupancy may not be issued as per Article 3, Section 36 of the General City Law. The new building does not have at least 8 percent of the 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 March 3, 2009, after due notice by publication in the *City Record*, with a continued hearing on March 31, 2009, and then to decision on April 21, 2009; and

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

WHEREAS, this is an application to legalize the construction of a five-story, eight-unit residential building which does not have at least eight percent of the total perimeter of the building fronting directly upon an officially mapped street, contrary to General City Law Section 36; and

WHEREAS, the site is located on the west side of Brighton 2nd Place, approximately 120 feet north of Brighton 2nd Lane, within an R6 zoning district; and

WHEREAS, by letter dated March 23, 2009, the Fire Department stated that it objects to the proposed development unless the following conditions are met: (1) the building is protected throughout by a sprinkler system complying with the requirements of the New York City Building Code; (2) the New York City Department of Transportation (“DOT”) prohibits parking for a distance of twenty feet on the northwest corner of Brighton 2nd Lane at its intersection with Brighton 2nd Place; (3) DOT prohibits parking on both sides of Brighton 2nd Place, from its intersection with Brighton 2nd Lane to the north curve of Brighton 2nd Place; (4) the building is equipped with a standpipe system installed in compliance with the requirements of the New York City Building Code, including a riser accessible from all floors of the building (including below-grade floors); (5) the building is equipped with interconnected smoke alarms in compliance with the requirements of the 2008 New York City Building Code; and (6) the building is designed, constructed, operated and maintained in accordance with the Building Code, Fire Code and other applicable laws, rules, and regulations; and

WHEREAS, the applicant submitted revised plans in accordance with the conditions requested by the Fire Department in the March 23, 2009 letter; and

WHEREAS, by letter dated April 21, 2009, the Fire Department states that it has approved the revised plans and

has no further 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 Brooklyn Borough Superintendent, dated October 20, 2008, acting on Department of Buildings Application No. 302368961, 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 April 13, 2009”–(2) 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 the Bureau of Fire Communications, Outside Plant Operations Engineering Office, shall review the proposed plans for any alarm box requirements;

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 Building Code, Fire Code, and any other relevant 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 21, 2009.

307-08-BZY

APPLICANT – Howard Zipser, Akerman Senterfitt LLP, for 163 Orchard Street LLC, owner.

SUBJECT – Application December 17, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the zoning district regulations. C4-4A Zoning District.

PREMISES AFFECTED – 163 Orchard Street, through lot between Orchard and Houston Street between Stanton and Rivington Street, Block 416, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Application granted.

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 §11-331 to renew a building permit and extend the time for the completion of the foundation of an 11-story transient hotel (Use Group 5)

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building; and

WHEREAS, a public hearing was held on this application on March 3, 2009, after due notice by publication in *The City Record*, with continued hearings on March 24, 2009 and March 31, 2009, and then to decision on April 21, 2009; 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, 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, 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 required street wall height of 40'-0", or the maximum total building height of 80'-0"; and

WHEREAS, because the Building violated these provisions of the C4-4A zoning district and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on November 24, 2008 halting work on the building; and

WHEREAS, the applicant now applies to the Board to reinstate the Permit pursuant to ZR § 11-331, so that the proposed development may be fully constructed under the prior C6-1 zoning district; 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 a permit was issued to the owner by DOB on July 8, 2008 authorizing construction of a ten-story transient hotel (Use Group 5) building; and

WHEREAS, the applicant states that on October 24, 2008, a PAA application to amend the permit an 11-story hotel was approved by DOB; and

WHEREAS, by letter dated February 13, 2009, DOB stated that the Permit was lawfully issued on December 5, 2007; and

WHEREAS, DOB then initiated a special audit review of the Permit on February 20, 2009, and certain zoning and Building Code objections were raised (the "Objections"); and

WHEREAS, by letter dated March 27, 2009, DOB reported that the Objections had been resolved and therefore, the Permit was lawfully issued; and

WHEREAS, thus, the Board finds that the Permit was lawfully issued by DOB on July 8, 2008; 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 one building, it meets the definition of minor development; and

WHEREAS, since the proposed development is a minor development, the Board must find that excavation was completed and substantial progress was made as to the required foundation; and

WHEREAS, the applicant states that excavation began on July 28, 2008 and was completed on November 15, 2008, and that substantial progress was made on the foundation 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 approximately 80 percent of the foundation was complete as of the Enactment Date; and

WHEREAS, specifically, the applicant states that as of the Enactment Date, all shoring and underpinning was complete, all of the required 26 H-piles and foundation rebar was installed and 246 of the 450 cubic yards of concrete for the foundation was poured; and

WHEREAS, a Stop Work Order was issued by DOB on September 3, 2008 which was not fully rescinded until November 10, 2008, at hearing the Board asked why any work performed during that period should be considered; and

WHEREAS, in response, the applicant states that, to ensure the stability of the neighboring building, part of the eastern portion of the site was backfilled and temporary bracing was installed immediately after the issuance of the September 3, 2008 Stop Work Order, under the supervision of DOB, and should therefore be considered as progress on the foundations; and

WHEREAS, the applicant further states that after the backfilling and bracing were performed, DOB issued a second Stop Work Order on September 10, 2008 which was partially lifted on September 15, 2008 to install rakers and shoring, and partially lifted on September 30, 2008 to permit installation of mat slab and foundation walls; and

WHEREAS, the applicant states that concrete pouring for additional underpinning resumed on October 3, 2008 after the stop work order was partially lifted, and concrete pouring for the mat slab began on October 22, 2008, when the pour was permitted; and

WHEREAS, the applicant states that all work performed between the issuance of the stop work order on September 3, 2008 and its full lift on November 10, 2008 was authorized by DOB; and

WHEREAS, the DOB Building Information System indicates that the stop work order was partially lifted on September 15, 2008 and September 30, 2008 to perform the aforementioned work; and

WHEREAS, the applicant states that the subject application considers only work performed before the Enactment Date which was authorized by DOB; and

WHEREAS, the Board notes that the Stop Work Order issued by DOB on November 24, 2008 indicated that the foundation was approximately 70 percent complete as of the Enactment Date; and

WHEREAS, the applicant states that other essential work required to complete the foundation includes preparation, mobilization and excavation and that the total completed work comprises approximately 80 percent to 85 percent of the work required to complete the foundation

WHEREAS, the applicant states that if underpinning work were not considered, 164 of the 268 cubic yards of concrete required for the foundation was poured as of the Enactment Date, which is 61 percent of the concrete

required to be poured to complete the foundation; and

WHEREAS, an affidavit by the project manager states that three additional days would be necessary to pour the remaining 204 cubic yards of concrete to complete the foundation; and

WHEREAS, the applicant has also submitted financial documents, including invoices, cancelled checks, contracts, concrete pour tickets, a foundation survey, and dated photographs which reflect significant expenditure associated with the excavation and foundation work incurred as of the Enactment Date; and

WHEREAS, specifically, the applicant states \$404,844, or approximately 49 percent, of the total estimated foundation cost of approximately \$816,000 was spent as of the Enactment Date; 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 Permit, and all other related permits necessary to complete construction.

WHEREAS, because the Board finds that excavation was complete and that substantial progress had been made on the foundation, it concludes that the applicant has adequately satisfied all the requirements of ZR § 11-331.

Therefore it is Resolved that this application to renew New Building Permit No. 104762570-01-NB pursuant to ZR § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of six months from the date of this resolution, to expire on October 21, 2009.

Adopted by the Board of Standards and Appeals, April 21, 2009.

27-09-BZY

APPLICANT – Bryan Cave, LLP, for 126 First Place, LLC, owner.

SUBJECT – Application February 17, 2009 – Extension of time to complete construction §11-332(b) and obtain a Certificate of Occupancy for a development commenced under the prior zoning district regulations. R6 Zoning district.

PREMISES AFFECTED – 126 First Place, south side of First Place, 300' east of intersection of First Place and Court Street, Block 459, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Frank Chaney.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

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Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application under ZR § 11-332(b) to renew a building permit and extend the time to complete construction and obtain a certificate of occupancy for a two-story enlargement to an existing three-story residential building; and

WHEREAS, a public hearing was held on this application on March 31, 2009, after due notice by publication in *The City Record*, and then to decision on April 21, 2009; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of First Place, between Clinton Street and Court Street; and

WHEREAS, the subject site has a total lot area of approximately 2,495 sq. ft. and is currently occupied by a three-story residential building; and

WHEREAS, the applicant proposes a two-story enlargement, with an increase in floor area from 5,035 sq. ft. (2.0 FAR) to approximately 7,467 sq. ft. (3.0 FAR); and

WHEREAS, the subject site is located on a "Place Street" which is the subject of a recently adopted zoning text amendment, described below, within an R6 zoning district;

WHEREAS, on August 16, 2007, Alteration Permit No. 302334365-01-AL (the "A1 Permit") was issued by the Department of Buildings ("DOB") for the proposed enlargement; and

WHEREAS, when the A1 Permit was issued, First Place was a "wide street" under the Zoning Resolution because it is flanked by 30-foot deep gardens on land claimed to be City-owned, which are mapped as part of the City street on the official City Map and which must be maintained as courtyards pursuant to a 19th century statute; and

WHEREAS, on July 23, 2008 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Carroll Gardens Narrow Street/Wide Street Zoning Text Amendment (the "Amendment"), which redefined First Place as a "narrow street;" and

WHEREAS, the applicant represents that the proposed enlargement complies with the Quality Housing Program requirements applying to a wide street in an R6 zoning district; specifically, a proposed FAR of 3.0 (a maximum FAR of 3.0 is permitted) and a proposed lot coverage of 63 percent (a maximum lot coverage of 65 percent is permitted); and

WHEREAS, because, as a result of the Amendment, the site now fronts a narrow street within an R6 zoning district, the Building would not comply with the requirements providing for a maximum FAR of 2.2 and a maximum lot coverage of 60 percent; and

WHEREAS, because the proposed enlargement violates these limitations on development fronting on a narrow street and construction was not completed as of the Enactment Date, the A1 Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work

Order on July 24, 2008 for the permit; and

WHEREAS, ZR § 11-30 et seq. sets forth the regulations that apply to the subject application for a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, ZR § 11-31(c)(3) defines construction such as the proposed enlargement as "other construction"; and

WHEREAS, for "other construction," an extension of time to complete construction may be granted by the Board pursuant to ZR § 11-332(a) for one term of not more than three months; and

WHEREAS, on November 25, 2008, under BSA Cal. No. 217-08-BZY, the Board granted an application under ZR § 11-332(a) to reinstate the permit for "other construction" and to extend the time to complete the proposed enlargement and obtain a certificate of occupancy for one term of three months, to expire on February 25, 2009; and

WHEREAS, the applicant now applies to the Board to renew the A1 Permit pursuant to ZR § 11-332(b) and to extend the time to complete the proposed enlargement and obtain a certificate of occupancy for a one-year term, so that the proposed enlargement may be fully constructed under the prior R6 zoning as applied to a wide street; and

WHEREAS, ZR § 11-332(b) reads, in pertinent part: "[I]n the event that construction has not been completed at the expiration of the extended terms specified in paragraph (a) of this Section...such building permit may be renewed by the Board for terms of one year each upon the following findings: (1) that the applicant has been prevented from completing such construction by hardship or circumstances beyond the applicant's control; (2) that the applicant has not recovered all or substantially all of the financial expenditures incurred in construction, nor is the applicant able to recover substantially all of the financial expenditures incurred through development that conforms and complies with any applicable amendment to this Resolution; and (3) that there are no considerations of public safety, health and welfare that have become apparent since the issuance of the permit that indicate an overriding benefit to the public in enforcement of the applicable amendment to this Resolution;" and

WHEREAS, as a threshold issue, under ZR § 11-31(a) the Board must determine that the permits were lawfully issued; and

WHEREAS, as discussed in BSA Cal. No. 217-08-BZY, the Board reviewed the record and agreed that the A1 Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date; 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, the applicant notes that as reflected in BSA Cal. No. 217-08-BZY, the following remained to be completed as of the issuance of the July 24, 2008 Stop Work Order: 15 percent of the mechanical work; 20 percent of the work on interior partitions; 25 percent of the elevator and sprinkler work; 50 percent of the electrical work; and 70 percent of the plumbing work; and

WHEREAS, the applicant represents that it has been prevented from completing the proposed construction by

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hardship or circumstances beyond its control; and

WHEREAS, the applicant states that the three-month extension was granted by the Board on November 25, 2008, but that the Stop Work Order was not lifted until December 5, 2008 due to delays in transmitting and processing the approval at DOB; and

WHEREAS, the applicant represents that, because December 5, 2008 fell on a Friday, work could not resume at the site until Monday, December 8, 2008, approximately two weeks into the allotted 12-week extension to complete construction; and

WHEREAS, the applicant represents that the proposed construction was further delayed because the owner's subcontractors had been assigned to other projects during the four months that work at the site was stopped, and were unavailable to resume work until January 2009; and

WHEREAS, the applicant further represents that nearly all work was halted between December 24, 2008 and January 5, 2009 due to the Christmas and New Year holidays and the fact that many workers were on previously scheduled holiday vacations; and

WHEREAS, the applicant states that when work resumed on January 5, 2009, the plumbing subcontractor was only available part-time and the elevator contractor was unavailable; and

WHEREAS, the applicant further states that the elevator subcontractor did not resume work until January 15, 2009, and had only two workers available three days per week; and

WHEREAS, the applicant represents that, due to the unusually cold and inclement weather during January 2009, no outside work, including masonry and window installation, could be performed, and certain interior work, such as laying sub-flooring, taping sheetrock, and installing cabinetry could not be performed because the cold weather inhibited glue from properly adhering; and

WHEREAS, based upon the above, the Board finds that the applicant has been prevented from completing the proposed construction by hardship or circumstances beyond its control; and

WHEREAS, the applicant states that it has not recovered all or substantially all of the financial expenditures incurred in construction, nor would it be able to recover substantially all the incurred financial expenditures through a complying development; and

WHEREAS, as discussed in BSA Cal. No. 217-08-BZY, from the date of the issuance of the A1 Permit to the date of the zoning amendment, the total expenditures for the enlargement were approximately \$1,011,292, or 64 percent of the total cost to complete; and

WHEREAS, the applicant states that, between November 25, 2008 and the February 17, 2009 filing of the instant application, the owner expended an additional \$139,200 on the enlargement, for a total of \$1,150,492, or 72 percent of the cost to complete construction; and

WHEREAS, the applicant notes that because the project is incomplete it cannot be occupied, and therefore the owner has not recovered any of the expenditures it

incurred in construction; and

WHEREAS, the applicant represents that recovery of its financial expenditures is entirely dependent on completing construction; and

WHEREAS, the applicant states that, in order to comply with the new zoning regulations, it would have to remove more than 2,000 sq. ft. of floor area, including the entire rear yard extension of the basement through the third floor and the rooftop addition of the fourth and fifth floors; and

WHEREAS, the applicant represents that it would not be able to recover the financial expenditures of constructing the approximately 2,000 sq. ft. enlargement, the expenditures incurred in demolishing the enlargement, nor the expenditures incurred in redesigning the building and reconstructing the entire rear wall and roof of the building in compliance with the new zoning regulations; and

WHEREAS, the Board agrees that the applicant has not recovered all or substantially all of the financial expenditures incurred in construction, nor would it be able to recover such expenditures through development that complies with the new zoning regulations; and

WHEREAS, the Board finds that there are no considerations of public safety, health and welfare that have become apparent since the issuance of the permit that indicate an overriding benefit to the public in enforcement of the applicable zoning amendment; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332(b), and that the owner is entitled to the requested renewal of the permit, and all other permits necessary to complete the proposed enlargement; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a one-year extension of time to complete construction, pursuant to ZR § 11-332(b).

Therefore it is Resolved that this application made pursuant to ZR § 11-332(b) to renew Permit No. 302334365-01-AL, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed enlargement and obtain a certificate of occupancy for one year from the date of this resolution, to expire on April 21, 2010.

Adopted by the Board of Standards and Appeals, April 21, 2009.

311-08-BZY

APPLICANT – Slater & Beckerman, LLP, for D.A.B. Group LLC, owner.

SUBJECT – Application December 18, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the Zoning district regulations. C4-4A.

PREMISES AFFECTED – 77, 79 & 81 Rivington Street, Block 415, Lots 61, 62, 63, 66, 67, Borough of Manhattan.

COMMUNITY BOARD #3M

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APPEARANCES –

For Applicant: Neil Weisbard, Daniel Bossa, Edward Mills and Stuart Beckerman.

For Opposition: Sheila Saks.

ACTION OF THE BOARD – Laid over to May 19, 2009, at 10 A.M., for continued hearing.

32-09-BZY thru 34-09-BZY

APPLICANT – William Alicea for Treadwell LLC, owner.
SUBJECT – Application February 27, 2009 – Extension of time to complete construction (§11-332) and obtain a Certificate of Occupancy of a major development commenced prior to the text amendment of the zoning district regulations. R3A.

PREMISES AFFECTED – 122, 124 & 126 Treadwell Avenue, southwest corner of Treadwell Avenue and Harrison Avenue, Block 1088, Lot 49, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: William Alicea and Joan Humphreys.

ACTION OF THE BOARD – Laid over to May 19, 2009, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING

TUESDAY AFTERNOON, APRIL 21, 2009

1:30 P.M.

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

ZONING CALENDAR

253-08-BZ

APPLICANT – Law Office of Fredrick A. Becker for Paula Digrazia and Lisa Tapani, owner.

SUBJECT – Application October 15, 2008 – Variance (§72-21) to legalize a prior enlargement at the rear of the home and to allow for a new enlargement to an existing single family home on a narrow zoning lot. This variance seeks to vary floor area ratio, open space lot coverage (§23-141(b)); side yards (§23-461(a) & (§23-48) and less than the required rear yard (§23-47) in an R-4 zoning district.

PREMISES AFFECTED – 2623 East 11th Street, East side of East 11th Street between Avenue Z and William Court, Block 7455, Lot 31, 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

THE RESOLUTION:

WHEREAS, the Brooklyn Borough Commissioner, on September 16, 2008, acting on Department of Buildings Application No. 310147374, stated, in pertinent part:

1. proposed legalization and enlargement increases the degree of non-compliance of an existing building with respect to floor area ratio, which is contrary to ZR 23-141(b);
2. proposed legalization and enlargement increases the degree of non-compliance of an existing building with respect to open space and lot coverage, which are contrary to ZR 23-141(b);
3. proposed legalization and enlargement results in two side yards less than 5'-0" and the total of both yards less than 10 feet, which is contrary to ZR Section 23-461(a) and 23-48;
4. proposed legalization and enlargement results in a rear yard of less than 30 feet, which is contrary to ZR 23-47;" and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R4 zoning district, a legalization of an enlargement and an additional enlargement to an existing

MINUTES

single-family home that exceeds the permitted floor area ratio and does not provide the required open space, lot coverage, side yards and rear yard, contrary to ZR §§ 23-141(b), 23-461, 23-48 and 23-47; and

WHEREAS, a public hearing was held on this application on February 10, 2009 after due notice by publication in *The City Record*, with continued hearings on February 24, 2009 and March 24, 2009, and then to decision on April 21, 2009; and

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

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

WHEREAS, the site is located on the east side of East 11th Street, between Avenue Z and William Court, in an R4 zoning district; and

WHEREAS, the site has a width of approximately 21 feet, a maximum depth of approximately 47 feet, and a total lot area of approximately 979 sq. ft.; and

WHEREAS, the site is currently occupied by a one-story single-family home which is believed to have been constructed in 1920; and

WHEREAS, the applicant proposes to legalize a one-story rear enlargement and to add a second story to the existing home; and

WHEREAS, the applicant seeks a legalization of a one-story rear enlargement, necessitating waivers to permit lot coverage of 82 percent (45 percent is the maximum permitted), open space of 18 percent (55 percent is the minimum required), and a rear yard of 0'-11" (10'-0" is the minimum required for a shallow lot); and which increase pre-existing non-compliances to a side yard with a width of 1'-1 3/4" and a side yard with a width of 0'-2 1/2" (two side yards with minimum widths of 5'-0" are required); and

WHEREAS, the applicant additionally proposes to add a second story to the existing home requiring a waiver of the floor area ratio for a total floor area of 1,365 sq. ft. of floor area (881 sq. ft. is the maximum permitted) and an FAR of 1.39 (0.90 FAR with an attic bonus is the maximum permitted); and

WHEREAS, the applicant states that FAR, open space, lot coverage, side yard and rear 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 zoning regulations: the site is an undersized lot with a narrow width and shallow depth; and the existing building, prior to its enlargement (the original home) is obsolete for living purposes; and

WHEREAS, the applicant states that the site has an existing lot size of approximately 979 sq. ft, a width of approximately 21'-0" feet and depth of approximately 47'-0" feet which cannot accommodate a complying building or home that is habitable; and

WHEREAS, specifically, a complying building results in a home with a maximum of 881 sq. ft of floor area, an interior width of approximately 9'-0" and depth of approximately 25'-0", and a floor plate size of no more than approximately 225 sq. ft.; and

WHEREAS, further the applicant states that the original home is obsolete for living purposes -- the original home had a floor area of 633 sq. ft. and lacked sufficient floor area and floor plate size to accommodate any bedrooms; and

WHEREAS, the applicant states that, neither the original home, nor a new building that complies with the zoning regulations, are habitable as compared to other homes in the area; and

WHEREAS, as to the small lot size and configuration, the applicant has provided documentation including copies of recorded deeds that reflect that the site has existed in its current configuration prior to December 15, 1961 and its ownership has been independent of the ownership of the adjoining lots; and

WHEREAS, further, as to the uniqueness of such condition, the applicant provided a 400-foot radius diagram and analysis that indicates that the subject site is one of six lots (out of a total of 113 lots) that are less than 1,500 sq. ft. in lot area; and that it is the only site that is less than 1,000 sq. ft in lot area; and

WHEREAS, the applicant represents that the other five lots are developed with homes which exceed the permitted FAR; and

WHEREAS, the applicant further states that the original home is one of seven homes (out of 107 buildings or 6.5 percent) within the 400-foot radius that has less than 1,100 square feet in floor area -- and that it is the smallest home in the surrounding area with no ability to enlarge without a variance; and

WHEREAS, the applicant states that any horizontal enlargement of the original home would trigger waivers of lot coverage, open space and side yard requirements, as the original home was non-complying under the R4 zoning district requirements; and

WHEREAS, specifically, the maximum permitted lot coverage is 45 percent and the minimum open space requirement is 55 percent and the applicant states that the existing home occupies 81 percent of the lot and provides 19 percent open space; and

WHEREAS, the original home had two non-complying side yards of 1'-1 3/4" and 0'-2 1/2", respectively; and

WHEREAS, the applicant represents, therefore, that in order to be habitable and provide a reasonable floor plate at the first floor, a horizontal enlargement would necessarily increase the degree of non-compliance with R4 zoning district requirements for side yards and rear yard; and

WHEREAS, the applicant states that a vertical enlargement (an addition of a second floor) is necessary in order for the proposed home to be habitable with regards to its size and floor area and comparable to other homes in the surrounding area; and

WHEREAS, specifically, the proposed enlargement results in a home containing 1,365 square feet (1.39 FAR) and

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exceeds the permitted floor area of 881 sq. ft (0.9 FAR); and therefore triggers a floor area waiver; and

WHEREAS, as evidence, the applicant points to the 400-radius diagram and associated analysis that indicates that 74 percent of the lots within a 400-foot radius are developed with buildings that are larger than the proposed home; and that buildings larger than that proposed would be permitted as-of-right on 92 percent of the lots within the surrounding area; and

WHEREAS, the applicant concludes that the requested waivers of FAR, lot coverage, open space, and rear and side yard 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 notes that the proposed bulk is compatible with nearby residential development and that the height complies with zoning regulations; and

WHEREAS, the Board notes that the second floor enlargement complies with the zoning district requirements for the front yard; and

WHEREAS, the applicant submitted a streetscape showing that the height and bulk of the proposed home is consistent with that of the adjoining homes; and

WHEREAS, further, as discussed above, the area surrounding the subject site is characterized by homes with floor areas in excess of that proposed; 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, as pertains to the (d) finding under ZR § 72-21, the Board is required to find that the practical difficulties or unnecessary hardship burdening the site have not been created by the owner or by a predecessor in title; the purchase of a zoning lot subject to the cited hardship shall not constitute a self-created hardship; and

WHEREAS, the applicant states that the unnecessary hardship encountered by compliance with the zoning regulations is inherent to the site's size, narrow width and shallow depth, and existing home; 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 applicant complies with the R4 zoning district regulations for use and height; and

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

and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II Declaration under 6 NYCRR Part 617.5 and 617.13, §§ 5-02(a), 5-02(b)(2), and 6-15 of the Rules of Procedure for City Environmental Quality Review, and makes the required findings under ZR § 72-21 to permit, within an R4 zoning district, a legalization of a horizontal enlargement and an additional one-story vertical enlargement to an existing single-family home that exceeds the permitted floor area ratio and does not provide the required open space, lot coverage, side yards and rear yard, contrary to ZR §§ 23-141(b), 23-461, 23-48 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 October 15, 2008"– (11) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: two stories, 1,365 sq. ft. of floor area (1.39 FAR), lot coverage of 82 percent, open space of 18 percent, a rear yard of 0'-11"; a side yard with a width of 1'-1 ¾" and a side yard with a width of 0'-2 ½", 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, April 21, 2009.

310-08-BZ

CEQR #09-BSA-053M

APPLICANT – Friedman & Gotbaum, LLP, for Convent of the Sacred Heart, owner.

SUBJECT – Application December 18, 2008 – Special Permit (§73-19) to allow construction of a school building in a C8-4 zone, contrary to use regulations. C8-4 District.

PREMISES AFFECTED – 406 East 91st Street, south side of East 91st Street, 94' west of First Avenue, Block 1570, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Elena Aristova.

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 Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated November 19, 2008, acting on Department of Buildings Application No. 110369958, reads in pertinent part:

“ZR 32-12. Use Group 3 (educational facility and accessory uses to schools) are not permitted as-of-right in a C8 zoning district;” and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, on a site partially within a C8-4 zoning district and partially within a C2-8 zoning district, the proposed conversion and enlargement of an existing building from a Use Group 6 parking garage and Use Group 16 automotive repair shop to a Use Group 3 school, contrary to ZR § 32-12; and

WHEREAS, a public hearing was held on this application on March 3, 2009, after due notice by publication in the *City Record*, and then to decision on April 21, 2009; 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 8, Manhattan, recommends approval of this application; and

WHEREAS, certain residents of the community testified in support of the application; and

WHEREAS, the application is brought on behalf of the Trustees of Convent of the Sacred Heart (“Sacred Heart”), a not-for-profit private educational institution for girls; and

WHEREAS, the site is located on the south side of East 91st Street between 1st Avenue and York Avenue, partially within a C8-4 zoning district and partially within a C2-8 zoning district; and

WHEREAS, the site has a lot area of 12,589 sq. ft.; and

WHEREAS, the applicant represents that because the formation of the Zoning Lot predates the December 15, 1961 enactment of the Zoning Resolution, pursuant to ZR § 77-211, the bulk regulations applicable to a district in which more than fifty percent of the zoning lot’s lot area is located may be applied to the entire zoning lot, provided that the greatest distance from the mapped boundary to any lot line of the zoning lot in the district in which less than fifty percent of its area is located does not exceed 25 feet; and

WHEREAS, the applicant states that approximately 95 percent of the site is located within a C8-4 zoning district while approximately five percent of the site is located within a C2-8 zoning district; and

WHEREAS, the portion of the site located within a C2-8 zoning district amounts to a narrow strip of land measuring 6’-0” wide by 100’-8 ½” deep, and is therefore less than 25 feet from the mapped C8-4 district boundary; and

WHEREAS, thus, the Board finds that the C8-4 bulk

regulations, which allow for an FAR of 6.5, may be applied to the entire Zoning Lot; and

WHEREAS, the site is currently occupied by a three-story parking garage and automotive repair shop with accessory office space on the second and third floors; and

WHEREAS, the applicant proposes to renovate the existing building and to construct a fourth floor for use as a Use Group 3 school, specifically for Sacred Heart’s athletic and physical education program, with a floor area of 41,453 sq. ft. (the “proposed school”); and

WHEREAS, the applicant states that Sacred Heart is composed of 670 students from pre-kindergarten through twelfth grade, in addition to faculty and support staff; and

WHEREAS, the applicant further states that Sacred Heart currently occupies two buildings located at 1 East 91st Street between Fifth Avenue and Madison Avenue (the “Main Campus”); and

WHEREAS, the applicant further states that Sacred Heart’s current 1,524 sq. ft. gymnasium located at the Main Campus has the following deficiencies: (1) it does not meet high school size regulations for basketball or volleyball courts; (2) there is no space for bleacher seating, which prevents Sacred Heart from hosting competitive sporting events; (3) locker capacity for Sacred Heart students is limited, and lockers are unavailable for visitors; and (4) storage space for gymnasium equipment is insufficient; and

WHEREAS, based upon the above, the applicant represents that Sacred Heart’s athletic program is currently hindered by the lack of a sufficiently sized gymnasium; and

WHEREAS, the applicant further represents that potential classroom and study time for Sacred Heart students is routinely compromised because practice sessions for all sports require travel to a distant armory, park, or to another school’s athletic facility; and

WHEREAS, the applicant states that the proposed school would allow complementary programs to be housed under one roof, such that early morning or late afternoon practice sessions could then be followed or preceded by appropriate classroom instruction; and

WHEREAS, the applicant represents that the instant applicant meets the requirements of the special permit under ZR § 73-19 to permit a school in a C-8 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, Sacred Heart’s program for the proposed building includes eight classrooms, a gymnasium, a natatorium with a six-lane pool, locker rooms, a homework lounge, and an open air rooftop practice field; and

WHEREAS, the applicant states that Sacred Heart’s program requires a building with a footprint between 7,500 sq. ft. and 10,500 sq. ft.; and

WHEREAS, the applicant represents that Sacred Heart has an additional programmatic need for the proposed school to be located proximate to the Main Campus, to

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facilitate the transportation of students between the Main Campus and the proposed building; and

WHEREAS, the applicant further represents that it conducted an evaluation of approximately 152 properties located on the blocks bounded by 84th Street on the south, 104th Street on the north, 5th Avenue to the west, and 1st Avenue to the east, with footprints between 7,500 sq. ft. and 10,500 sq. ft.; and

WHEREAS, the applicant states that all but three of the 152 properties evaluated were found to be occupied by residential buildings, schools, religious institutions, or ongoing businesses; and

WHEREAS, the applicant states that the three sites, located respectively at 1381 Park Avenue, 1988 Second Avenue, and 1635 Lexington Avenue, were each found to be geographically remote and not readily accessible to the Main Campus; and

WHEREAS, thus, the applicant states that no site within the study area is able to accommodate the proposed school as-of-right; and

WHEREAS, the applicant maintains that the site search establishes 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, therefore, 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 radius diagram which reflects that the subject site is located approximately 357 feet west of a C8-4 (R10) district boundary line, approximately 319 feet north of a C8-4 (R8B) district boundary line, and approximately 350 feet south of a C8-4 (R8) district boundary line; the proposed use would be permitted as-of-right in all of these zoning districts; 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 C8-4 zoning district will be provided through the building's existing solid masonry exterior walls, the use of the same heavy masonry for the enlargement of the building, and the use of double-glazed insulating glass on all windows of the northern façade fronting East 91st Street and on the southern façade at the fourth floor level where classrooms will be located; and

WHEREAS, the applicant represents that adequate separation from noise is further maintained by the location of the rear yards of eight residential buildings adjacent to the subject site; and

WHEREAS, the Board finds that the conditions surrounding the site, the construction of the building, and

the installation of double-glazed windows will adequately separate the proposed school from noise, traffic and other adverse effects of any of the uses within the surrounding C8-4 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 Sacred Heart's hours are from 8:00 a.m. to 2:45 p.m. on Mondays through Fridays; and

WHEREAS, the applicant states that approximately 50 students and five faculty and staff are projected to be using the proposed school at any given time during school hours; and

WHEREAS, the applicant further states that an existing curb cut on the south side of East 91st Street will be retained for use by a small school van which will shuttle students and faculty between the Main Campus and the proposed school; and

WHEREAS, the applicant represents that approximately 25 percent of the students are expected to walk from the Main Campus to the proposed school and 75 percent are expected to take the shuttle van; and

WHEREAS, the applicant further represents that up to 150 students, faculty, and staff would use the proposed school after school hours, and an additional 60 spectators would travel to and from the facility for sporting events one to two times per week; and

WHEREAS, the applicant further represents that spectators for sporting events would travel to the proposed school by foot, public transportation, private vehicles, and taxis; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation ("DOT"); and

WHEREAS, by letter dated February 13, 2009, DOT states that it has no objection to the proposed school; and

WHEREAS, the Board finds that the above-mentioned measures can control traffic so as to protect children going to and from the proposed school; 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 applicant represents that, although the site is within a C8-4 zoning district, the surrounding area is largely developed with residential uses which are compatible with the proposed school; and

WHEREAS, the applicant states that a community facility abuts the site's western lot line, five residential buildings are located along the southern lot line, and that six of the remaining 12 zoning lots on the subject block are residential; and

WHEREAS, the applicant states a five-story residential building is located directly north of the site on East 91st

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Street; and

WHEREAS, the applicant represents that the proposed school use will result in less traffic congestion than the site's current use, which includes a truck parking garage, automobile repair shop, and accessory office space; and

WHEREAS, the applicant states that there are currently four curb cuts at the subject site by which 21 trucks enter and exit the garage during the peak morning hour of 8:15 a.m. to 9:15 a.m.; and

WHEREAS, the applicant further states that additional trucks park in front of the subject site and further east and west along East 91st Street; and

WHEREAS, therefore, the applicant represents that the proposed school use, which will eliminate three of the existing curb cuts and replace the existing truck traffic at the site with a single shuttle van, will reduce overall vehicular activity along East 91st Street and improve overall traffic safety on the subject block; 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, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 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. 09BSA053M, dated December 17, 2008; and

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

WHEREAS, the New York City Department of Environmental Protection ("DEP") Office of Environmental Planning and Assessment has evaluated the following submissions from the Applicant: (1) a December 2008 Environmental Assessment Statement ("EAS"); (2) a June 2008 Phase I Environmental Site Assessment; and (3) a March 2009 Phase II Sampling Protocol and Health and Safety Plan; and

WHEREAS, the applicant has agreed to implement hazardous materials measures pursuant to a Restrictive Declaration executed on April 7, 2009 and submitted to be recorded against the subject property on April 13, 2009; and

WHEREAS, after its approval of the Phase II Sampling

Protocol and Health and Safety Plan, Phase II testing or Investigation report and possible Remedial Action Plan ("RAP") and a Construction Health & Safety Plan, DEP will remit a Notice to Proceed to the Department of Buildings ("DOB"); and

WHEREAS, if a RAP is warranted, after its implementation, one or more Remedial Closure Report(s) certified by a professional engineer must be submitted to DEP; subsequent to its approval, DEP will forward Notice(s) of Satisfaction to DOB; and

WHEREAS, DEP has reviewed the applicant's Noise Chapter in the December 2008 EAS and has determined that sound-attenuating double-glazed windows achieving a composite window/wall noise attenuation of approximately 30 to 35 dBA will be sufficient; 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 operation of a Use Group 3 school, on a site partially within a C8-4 zoning district and partially within a C2-8 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 December 18, 2008"- (10) sheets, and *on further condition*:

THAT any change in the use, occupancy, or operator of the school requires review and approval by the Board;

THAT the issuance of building permits shall be conditioned on the submission of a DEP Notice to Proceed;

THAT issuance of a permanent certificate of occupancy shall be conditioned on the issuance by DEP of a Notice of Satisfaction;

THAT sound-attenuating double-glazed windows achieving a composite window/wall noise attenuation of approximately 30 to 35 dBA shall be installed;

THAT the premises shall comply with all applicable fire safety measures, as required and 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;

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

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laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 21, 2009.

220-07-BZ

APPLICANT – Moshe M. Friedman, P.E., for Relly Bodansky, owner.

SUBJECT – Application September 25, 2007 – Variance (§72-21) to allow the erection of a new 4-story residential building containing 4 dwelling units on a site containing an existing legal, nonconforming 3-story multiple dwelling which is proposed to be razed; contrary to use regulations (§42-10). M1-1 district.

PREMISES AFFECTED – 847 Kent Avenue, east side of Kent Avenue, 300' north of intersection of Kent Avenue and Myrtle Avenue, Block 1898, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 9, 2009 at 1:30 P.M., for deferred decision.

304-08-BZ

APPLICANT – Bryan Cave LLP, for TDS Acquisition LLC d/b/a Trevor Day School, owner.

SUBJECT – Application December 11, 2008 – Variance (§72-21) and Special Permit (§73-19) to allow a school in a C8-4 district contrary to bulk regulations (33-123, 33-451, 33-453, 33-454, 33-26). C8-4 District.

PREMISES AFFECTED – 312-318 East 95th Street, south side of 95th Street, 215 east of Second Avenue, 350' feet west of First Avenue, Block 1557, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Judy Gallent.

ACTION OF THE BOARD – Laid over to May 19, 2009, at 1:30 P.M., for deferred decision.

306-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Third and Fifty-Eight. LLC, owner; Evergreen Spa, Inc., lessee.

SUBJECT – Application December 18, 2008 – Special Permit (§73-36) to allow the operation of a physical culture establishment in the cellar of an existing 21-story mixed-use building. The proposal is contrary to ZR §32-10. C5-2 district.

PREMISES AFFECTED – 969 Third Avenue a/k/a 200 East 58th Street, Block 1331, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to May 12, 2009, at 1:30 P.M., for deferred decision.

269-06-BZ

APPLICANT – Joseph Margolis, for Bruno Salvo, owner.
SUBJECT – Application October 4, 2006 – Variance (§72-21) to permit the conversion of 11,000 sf of vacant space into retail/commercial space. The proposal is contrary to §22-00. R3-2 district (South Richmond Special District).
PREMISES AFFECTED – 125 Greaves Lane, between Timber Ridge drive on the east and Greaves Lane on the west, Block 4645, Lot 425, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Joseph Margolis, Ivan Khoury, Gaetano Donatantonio, Evan Lemonides and Rebecca Pytosh.

ACTION OF THE BOARD – Laid over to June 9, 2009, at 1:30 P.M., for continued hearing.

193-08-A

APPLICANT – Joseph Margolis, for Bruno Salvo, owner.
SUBJECT – Application July 15, 2008 – Proposed construction of retail/commercial space located in an existing shopping center not fronting on a mapped street contrary to General City Law Section 36. R3-2 Zoning District.

PREMISES AFFECTED – 125 Greaves Lane, between Timber Ridge drive on the east and Greaves Lane on the west, Block 4645, Lot 425, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Joseph Margolis, Ivan Khoury, Gaetano Donatantonio, Evan Lemonides and Rebecca Pytosh.

ACTION OF THE BOARD – Laid over to June 9, 2009, at 1:30 P.M., for continued hearing.

287-06-BZ

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

SUBJECT – Application October 27, 2006 – Variance (§72-21) to allow a residential/community facility building contrary to yard regulations. R5 zoning district.

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

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to June 9, 2009, at 1:30 P.M., for continued hearing.

177-07-BZ

APPLICANT – Manish S. Savani, for Maurice Dayan, owner.

SUBJECT – Application July 6, 2007 – Variance (§72-21) to construct a two story, two family residential building on a vacant corner lot. This application seeks to vary the front yard requirement on one street frontage (§23-45) in an R-5

MINUTES

zoning district.

PREMISES AFFECTED – 886 Glenmore Avenue, corner of Glenmore Avenue and Milford Street, Block 4208, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to June 9, 2009, at 1:30 P.M., for continued hearing.

88-08-BZ

APPLICANT – Alfonso Duarte, for Naresh M. Gehi, owner.
SUBJECT – Application April 11, 2008 – Variance pursuant to §72-21 to allow the commercial office conversion of an existing residential building; contrary to use regulations §22-00. R5 District.

PREMISES AFFECTED – 101-17 Lefferts Boulevard, East side, 150 ft. south of 101st Avenue, Block 9487, Lot 68, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Richard Lobel.

For Opposition: Lisa Gomes

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 9, 2009, at 1:30 P.M., for decision, hearing closed.

97-08-BZ

APPLICANT – Eric Palatnik, P.C., for Chesky Berkowitz, owner; Central UTA, lessee.

SUBJECT – Application April 18, 2008 – Special Permit (§73-19) to allow the proposed legalization of the existing yeshiva (Use Group 3 school). M1-1 district.

PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik, Hiram Rothkrug and Rabbi Glanz.

ACTION OF THE BOARD – Laid over to June 9, 2009, at 1:30 P.M., for continued hearing.

99-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) to construct a three story with cellar single family home on an irregular triangular lot what does not meet the rear yard requirement (§23-47) in an R3-2 (SRD) zoning district.
PREMISES AFFECTED – 102 Drumgoole Road, South

side of Drumgoole Road, 144.62 ft. west of the intersection of Drumgoole Road and Wainwright Avenue, Block 5613, Lot 221, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Todd Dole.

ACTION OF THE BOARD – Laid over to May 19, 2009, at 1:30 P.M., for continued hearing.

173-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Royal One Real Estate, LLC, owner.

SUBJECT – Application July 1, 2008 – Variance (§72-21) to allow a new twelve (12) story hotel building containing ninety nine (99) hotel rooms; contrary to bulk regulations (§117-522). M1-5/R7-3 Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area C.

PREMISES AFFECTED – 42-59 Crescent Street, northeast corner of the intersection of Crescent Street and 43rd Avenue, Block 430, Lots 37, 38, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to June 9, 2009, at 1:30 P.M., for an adjourned hearing.

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 warehouse/ commercial vehicle storage building (UG 16); contrary to use regulations (§22-00). R3X 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.

For Opposition: Jerry Iannece., Tom Basher, Kathleen Cronin, Gerda Soria, Judith O'Connor and Nancy Adams.

ACTION OF THE BOARD – Laid over to June 9, 2009, at 1:30 P.M., for continued hearing.

247-08-BZ

APPLICANT – Howard S. Weiss, Esq., for Davidoff Malito, for 3454 Star Nostrand LLC, owner.

SUBJECT – Application October 6, 2008 – Special Permit filed pursuant to §73-243 to allow the operation of an accessory drive-through facility in connection with a planned as-of-right eating and drinking establishment (Starbucks Coffeehouse) (Use Group 6) located in a C1-2/R4 zoning district.

PREMISES AFFECTED – 3454 Nostrand Avenue and approx. 49' along Gravesend Neck Road, Block 7362, Lot

MINUTES

10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Howard Weiss and Ron Mandel.

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 12, 2009, at 1:30 P.M., for decision, hearing closed.

265-08-BZ

APPLICANT – Mark A. Levine for 70 Wyckoff Avenue LLC, owner.

SUBJECT – Application October 28, 2008 – Variance pursuant to §72-21 to allow for the legalization of residential units located in a manufacturing building, contrary to §42-00; M1-1 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 and Jack Freedman.

ACTION OF THE BOARD – Laid over to May 19, 2009, at 1:30 P.M., for continued hearing.

312-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Leah Friedman and Michael Friedman, owners.

SUBJECT – Application December 18, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area and open space (§23-141), side yard (§23-461) and less than the minimum required rear yard (§23-47) in an R2 zoning district.

PREMISES AFFECTED – 1134 East 23rd Street, west side of East 23rd between Avenue K and Avenue L, Block 7622, Lot 60, 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 12, 2009, at 1:30 P.M., for decision, hearing closed.

260-08-BZ

APPLICANT – Eric Palatnik, for Moisei Tomshinsky, owner.

SUBJECT – Application October 21, 2008 – Special Permit

(§73-622) for the In-Part Legalization and enlargement of a single family home. This application seeks to vary floor area (23-141) in an R3-1 zoning district.

PREMISES AFFECTED – 148 Oxford Street, between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 9, 2009, at 1:30 P.M., for continued hearing.

268-08-BZ

APPLICANT – Sheldon Lobel, P.C., for 314 7th Avenue, LLC, owner.

SUBJECT – Application October 30, 2008 – Special Permit filed, pursuant to §73-621 of the New York City Zoning Resolution, to permit the enlargement of an as-of-right eating and drinking establishment (Use Group 6) into the footprint of an existing accessory parking garage of a mixed-use residential and commercial building. The subject site is located in a R6A/C1-4 zoning district.

PREMISES AFFECTED – 314 Seventh Avenue, southwest corner of the intersection formed by Eight Street and Seventh Avenue, Block 1006, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to May 19, 2009, at 1:30 P.M., for continued hearing.

301-08-BZ

APPLICANT – Fridman Saks LLP, for 2717 Quentin Realty LLC, owner.

SUBJECT – Application December 10, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area and lot coverage (§23-141), side yard (§23-461), perimeter wall height (23-631(b)) and less than the minimum rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 2717 Quentin Road, between East 27th and East 28th Streets, Block 6790, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Borris Saks.

ACTION OF THE BOARD – Laid over to May 19, 2009, at 1:30 P.M., for continued hearing.

16-09-BZ

APPLICANT – Slater & Beckerman, LLP, for The Devlin Building LLC, owner; Yoga Works, Inc., lessee.

SUBJECT – Application February 4, 2009 – Special Permit (§73-36) to allow a physical culture establishment on the second and third floors of an existing five-story building.

MINUTES

The proposal is contrary to ZR §42-10. M1-5B district.
PREMISES AFFECTED – 459 Broadway, south west corner of Broadway and Grand Street, Block 231, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Joshua Trauner.

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 19, 2009, at 1:30 P.M., for decision, hearing closed.

42-09-BZ

APPLICANT – Francis R. Angelino, Esq., for Arrow Linen Supply Company, Inc., owner.

SUBJECT – Application March 6, 2009 – Special Permit filed pursuant to §§11-411 & 11-412 to permit a reinstatement of a variance which expired on July 12, 1992 which allowed the extension of a legal non conforming use within a residential zoning district. The application seeks an amendment to allow for a one-story enlargement of approximately 770 sq. ft. in the rear of the lot for additional storage for the commercial laundry. The subject site is located in a R5B zoning district.

PREMISES AFFECTED – 441-477 Prospect Avenue, between Eight Avenue and Prospect Park West, Block 1113, Lot 73, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Francis R. Angelino, Vincent Trocchia, John Magliocco, Sr. and John Magliocco, Jr., Frank Park and Joseph Isidore.

ACTION OF THE BOARD – Laid over to May 19, 2009, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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May 7, 2009

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160-09-A

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161-09-BZ

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162-09-BZ

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163-09-A

115 Beach 220 Street, East side of Beach 220 Street (unmapped street) south of Breezy Point Boulevard (mapped street)., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Proposed reconstruction and enlargement of an existing single family home not fronting on an official mapped street contrary to General City Law Section 36 . R4 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

MAY 19, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 19, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

165-93-BZ

APPLICANT – Francis R. Angelino, Esq., for Claudia Stone & Goran Sare, owners.

SUBJECT – Application April 3, 2009 – Extension of Term of a previously granted Variance (§72-21) for a UG6 art gallery on the first floor of an existing three story and cellar mixed use front building in an R8B zoning district which expired on April 12, 2009.

PREMISES AFFECTED – 113 East 90th Street, between Park and Lexington Avenues, Block 1519, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #8M

MAY 19, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 19, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

100-08-BZ & 101-08-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) for the construction of a two story with basement, single family residence on a irregularly shaped vacant lot that extends into a mapped, unbuilt street which is contrary to General City Law Section 35. This application seeks to vary front yard (§23-45) in an R3-2 zoning district.

PREMISES AFFECTED – 205 Wolverine Street, northwest of intersection of Wolverine Street and Thomas Street, Block 4421, Lot 167, Borough of Staten Island.

COMMUNITY BOARD #3SI

241-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Devonshire Enterprises, Inc., owner.

SUBJECT – Application September 25, 2008 – Variance (§72-21) to permit a one-story commercial building (Use Group 6) on a vacant lot. The proposal is contrary to ZR

Section 32-10. R3-1 district.

PREMISES AFFECTED – 546 Midland Avenue aka 287 Freeborn Street, southwest corner of the intersection of Freeborn Street and Midland Avenue, Block 3803, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #2SI

295-08-BZ

APPLICANT – Akerman Senterfitt Stadtmauer Bailkin, for Ronald & Meryl Bratt, owners.

SUBJECT – Application November 25, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary lot coverage and floor area (§23-141), side yards (§23-461) and does not comply with the required perimeter wall height (§23-631) in an R3-2 zoning district.

PREMISES AFFECTED – 1934 East 26th Street, east side between Avenue S and T, Block 7304, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

25-09-BZ

APPLICANT – Law Offices of Howard Goldman LLC., for AJJ Canal LLC, owner and Champion Fitness LLC, lessee.

SUBJECT – Application February 13, 2009 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment on the third floor of a three-story commercial building. The proposal is contrary to ZR §42-10. M1-5B district.

PREMISES AFFECTED – 277 Canal Street, Northwest corner of Canal and Broadway. Block 209, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

30-09-BZ

APPLICANT – Sheldon Lobel, P.C., for 136-33 37th Avenue Realty, LLC, owner.

SUBJECT – Application February 23, 2009 – Special Permit pursuant to §73-44 to reduce the amount of required parking spaces for commercial and medical offices uses from 153 to 97 spaces. C4-3 zoning district.

PREMISES AFFECTED – 136-33 37th Avenue, north side of 37th Avenue, between Main Street and Union Street, Block 4977, Lot 95, Borough of Queens.

COMMUNITY BOARD #7Q

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, APRIL 28, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

853-53-BZ

APPLICANT – Walter T. Gorman, P.E., for Knapp LLC, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application March 4, 2009 – Extension of Time/waiver to obtain a Certificate of Occupancy for a Gasoline Service Station (Mobil) in a C-2/R3-2 which expired on January 22, 2009.

PREMISES AFFECTED – 2402/16 Knapp Street, south west corner of Avenue Z, Block 7429, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Cindy 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 a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy for a gasoline service station, which expired on January 22, 2009; and

WHEREAS, a public hearing was held on this application on March 31, 2009 after due notice by publication in *The City Record*, and then to decision on April 28, 2009; and

WHEREAS, the site is located on the southwest corner of Knapp Street and Avenue X, in a C2-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 22, 1954 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, the grant was extended on July 22, 2008 for a term of ten years from the expiration of the prior grant, to expire on October 23, 2009; a condition of the grant was that a new certificate of occupancy be obtained by January 22, 2009; and

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the stipulated date due to a delay in obtaining approval by the Department of Buildings (“DOB”) of the subject site’s fire suppression system; and

WHEREAS, the applicant therefore seeks a six-month 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 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 June 22, 1954, so that as amended this portion of the resolution shall read: “to grant a six-month extension of time to obtain a certificate of occupancy, to expire on October 28, 2009; *on condition* that the use and operation of the site shall substantially conform to BSA-approved plans associated with the prior approval; and *on condition*:

THAT a certificate of occupancy shall be obtained by October 28, 2009;

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. 310091708)

Adopted by the Board of Standards and Appeals April 28, 2009.

240-55-BZ

APPLICANT – Joseph P. Morsellino, Esq., for DLC Properties LLC, owner; Helms Brother's, lessee.

SUBJECT – Application March 11, 2009 – Extension of Time to complete construction of a second story addition (5,000sf) to an existing commercial building in a C2-2(R6B) & R4 zoning district which expired on February 13, 2009.

PREMISES AFFECTED – 207-22 Northern Boulevard, Northern Boulevard and 208th Street, Block 7305, Lot 19, 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:

MINUTES

WHEREAS, this is an application for a reopening and an extension of time to complete construction of a second story addition to an existing commercial building, which expired on February 13, 2009; and

WHEREAS, a public hearing was held on this application on March 31, 2009 after due notice by publication in *The City Record*, and then to decision on April 28, 2009; and

WHEREAS, the subject site is located on the south side of Northern Boulevard between 208th Street and Oceania Street, partially within a C2-2 (R6B) zoning district and partially within an R4 zoning district; and

WHEREAS, the site is improved upon with a 5,000 sq. ft. one-story commercial building occupied by an automotive repair shop and accessory retail area; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 13, 1955 when, under the subject calendar number, the Board granted a variance to permit the reconstruction of an automotive repair facility in a residential zoning district; and

WHEREAS, subsequently, the grant was amended and extended several times; and

WHEREAS, on March 6, 2001, the Board granted a special permit to allow the construction of a second floor to the existing commercial building to be occupied by office and storage space; the time to complete construction expired on March 6, 2003; and

WHEREAS, subsequent grants extended the amount of time to complete construction and obtain a certificate of occupancy for terms of two years; and

WHEREAS, most recently, on February 13, 2007, the Board granted an extension of time to complete construction for an additional two years, to expire on February 13, 2009; and

WHEREAS, the applicant represents that construction was scheduled for the summer of 2008, but did not receive final approval due to unforeseeable adverse economic conditions; and

WHEREAS, the applicant states that the construction is now scheduled for the summer of 2010; and

WHEREAS, 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 December 13, 1955, so that as amended this portion of the resolution shall read: “to grant a three-year extension of time to complete construction, to expire on April 28, 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 condition*:

THAT substantial construction shall be completed by April 28, 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. 401113816)

Adopted by the Board of Standards and Appeals, April 28, 2009.

111-71-BZ

APPLICANT – Walter T. Gorman, P.E., for Motiva Enterprises LLC, owner; Erol Bayraktar, lessee.

SUBJECT – Application March 16, 2009 – Extension of Time/waiver to obtain a Certificate of Occupancy for a UG16 Gasoline Service Station (Shell) with accessory convenience store, in a C2-2/R3-2 zoning district, which expired on October 16, 1997.

PREMISES AFFECTED – 185-25 North Conduit Avenue, northwest corner of Springfield Boulevard, Block 13094, Lot p/o 63, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Cindy 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 a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy for a gasoline service station, which expired on October 16, 1997; and

WHEREAS, a public hearing was held on this application on April 7, 2009 after due notice by publication in *The City Record*, and then to decision on April 28, 2009; and

WHEREAS, the subject premises is located on a through-block site fronting on 144th Avenue to the north, Springfield Boulevard to the east and North Conduit Avenue to the south, within a C2-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 22, 1971 when, under the subject calendar number, the Board granted a special permit to permit the reconstruction of an automobile service station with accessory uses on the site; and

WHEREAS, on July 18, 1972, the Board granted the applicant an extension of time to obtain permits and complete construction and an amendment to permit the relocation of the gasoline pumps; and

WHEREAS, subsequent grants further extended the time

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to complete construction and obtain a certificate of occupancy; and

WHEREAS, on February 7, 1984, in conjunction with a change to a self-service gasoline station under BSA Cal. No. 699-83-A, the Board permitted the erection of a steel canopy over three new gasoline pump islands with new self-serve pumps, the installation of an 8'-0" by 20'-0" kiosk, and a reduction in the size of the existing accessory building; and

WHEREAS, on June 25, 1985, the Board extended the time to complete construction; and

WHEREAS, most recently, on October 16, 1996, the Board amended the resolution to permit the demolition of the existing kiosk and the erection of a new accessory building to house a convenience store; a condition of the grant was that a new certificate of occupancy be obtained by October 16, 1997; and

WHEREAS, notwithstanding that all previous resolutions under the subject calendar number refer to the subject site as "Lot 68," the premises is instead located on a portion of Lot 63 with the aforementioned boundaries extending to a depth of approximately 151'-4 1/2" along 144th Avenue and a depth of approximately 156'-5" along North Conduit Avenue; and

WHEREAS, the applicant states that the previous resolutions referred to "Lot 68" because the applicant intended to subdivide Lot 63 to create a new tax lot denominated as Lot 68 which would be occupied by the subject gasoline service station; and

WHEREAS, pursuant to a Declaration of Zoning Lot Restrictions (the "Declaration") executed February 8, 1994 and recorded March 17, 1994, the lessee, Shell Oil Company, agreed to treat the aforementioned portion of Lot 63 as a Zoning Lot, in accordance with the Zoning Resolution; and

WHEREAS, the applicant states that the Declaration was executed for the purpose of establishing Lot 68 as a separate zoning lot for the gasoline service station; and

WHEREAS, the applicant states that the effort to secure a separate zoning lot was discontinued; and

WHEREAS, the certificate of occupancy issued on July 25, 1995 for the subject gasoline service station identifies its location as "P/O Lot 63;" and

WHEREAS, thus, the premises has been and continues to be located on a part of Lot 63; and

WHEREAS, the applicant now seeks a six-month extension of time to obtain a 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, based upon its review of the record, the Board finds the requested extension of time to obtain a certificate of occupancy 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 June 22, 1971, so that as amended this portion of the resolution shall read: "to grant a

six-month extension of time to obtain a certificate of occupancy, to expire on October 28, 2009; on condition that the use and operation of the site shall substantially conform to drawings filed with this application marked "Received March 16, 2009"-(6) sheets; and on further condition:

THAT a certificate of occupancy shall be obtained by October 28, 2009;

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. 400612413)

Adopted by the Board of Standards and Appeals April 28, 2009.

209-04-BZ

APPLICANT – Joseph P. Morsellino, for Waterfront Resort, Incorporated, owner.

SUBJECT – Application March 23, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to permit the conversion and enlargement of an existing industrial building to residential use in an M2-1 zoning district which expires on July 19, 2009.

PREMISES AFFECTED – 109-09 15th Avenue, northwest corner of 15th Avenue and 110th Street, Block 4044, Lot 60, 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 of a previously granted variance to permit the enlargement of an existing industrial building in an M2-1 zoning district and its conversion to residential use, which expires on July 19, 2009; and

WHEREAS, a public hearing was held on this application on April 7, 2009 after due notice by publication in *The City Record*, and then to decision on April 28, 2009; 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 northwest corner of 15th Avenue and 110th Street, within an M2-1 zoning

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district; and

WHEREAS, the site is currently occupied by a three-story warehouse building, with a total floor area of 42,000 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 19, 2005 when, under the subject calendar number, the Board granted a variance to permit the conversion enlargement of an existing industrial building and its conversion to residential use; and

WHEREAS, substantial construction is to be completed by July 19, 2009, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that additional time is necessary due to unexpected delays in obtaining the required waterfront certification from the City Planning Commission (“CPC”) pursuant to ZR § 62-711, along with other necessary permits and entitlements; and

WHEREAS, the applicant further represents that construction has not been completed due to unforeseen economic conditions resulting in the withdrawal of the construction financing commitment made to the previous owner; and

WHEREAS, the applicant states that the property was transferred to the current owner in November 2008, and that approval of a new construction loan is contingent upon the grant of an extension of time to complete construction by the Board; and

WHEREAS, thus, the applicant now requests a three-year 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 July 19, 2005, 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 three years from the expiration of the previous grant, to expire on July 19, 2012; *on condition:*

THAT substantial construction shall be completed 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) and/or configuration(s) not related to the relief granted.” (DOB Application No. 401843617)

Adopted by the Board of Standards and Appeals, April 28, 2009.

237-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Anthony Perez Cassino, owner.

SUBJECT – Application March 3, 2009 – Extension of Time to Complete Construction for a previously granted Variance (§72-21) to permit the proposed construction of a two family detached home on a vacant lot, which expired on February 8, 2009, in an R3-1 zoning district.

PREMISES AFFECTED – 5722 Faraday Avenue, southeast corner of Valles Avenue, Block 5853, Lot 2198, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair 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 two-family detached home, which expired on February 8, 2009; and

WHEREAS, a public hearing was held on this application on March 31, 2009 after due notice by publication in *The City Record*, and then to decision on April 28, 2009; and

WHEREAS, the subject site is located on the southeast corner of Faraday Avenue and Valles Avenue, within an R3-1 zoning district; and

WHEREAS, the subject premises is a vacant site with a total lot area of 2,530 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 8, 2005 when, under the subject calendar number, the Board granted a variance to permit the construction of a two-family detached home (Use Group 2); and

WHEREAS, substantial construction was to be completed by February 8, 2009, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that additional time is necessary due to difficulties in connecting the proposed home to the existing sewer line, which required approval by the Department of Environmental Protection (“DEP”); and

WHEREAS, the applicant further represents that boring tests conducted at the site prompted the Department of Buildings (“DOB”) to request a water drainage plan from the owner; and

WHEREAS, the applicant states that preparation of the water drainage plan and its subsequent approval by DOB took approximately 12 months; and

WHEREAS, the applicant represents that the owner has expended in excess of \$73,000 in payment of engineering, architectural, and filing fees to secure DEP and DOB approvals since the date of the Board’s grant; and

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WHEREAS, the applicant states that the owner is now in the final stages of obtaining DOB and DEP approvals; and

WHEREAS, the applicant notes that on December 7, 2004, the City Council rezoned the site from an R3-2 zoning district to an R3-1 zoning district; however, the Board's subsequent grant reflected an R3-2 zoning district for the subject site; and

WHEREAS, the Board notes that all bulk regulations remain the same under the new R3-1 district as under the prior R3-2 district; and

WHEREAS, the applicant states that subsequent to the Board's grant the applicant amended its application to reflect the change in zoning and to indicate that the application complies in all respects with an R3-1 zoning district; and

WHEREAS, the applicant submitted a reconsideration letter, dated July 17, 2006, establishing DOB's approval of the application, notwithstanding the rezoning; and

WHEREAS, thus, the applicant requests a three-year 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 8, 2005, 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 three years from the expiration of the previous grant, to expire on February 8, 2012; *on condition:*

THAT substantial construction shall be completed by February 8, 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. 200842348)

Adopted by the Board of Standards and Appeals, April 28, 2009.

727-86-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Suco Selimaj, owner.

SUBJECT – Application January 24, 2009 – Extension of Term of a previously granted Variance (§72-21) to allow an eating and drinking establishment (UG6) at the cellar, basement and first floor of a three story building in an R8B zoning district which expired on January 17, 2009.

PREMISES AFFECTED – 240 East 58th Street, south side of East 58th Street, 140' west of Second Avenue, Block 1331, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to May 19, 2009, at 10 A.M., for decision, hearing closed.

336-98-BZ & 337-98-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP for 312 Flatbush Avenue LLC, owner; AGT Crunch, lessee.

SUBJECT – Application December 31, 2008 – Application filed pursuant to §73-11to Extend the term of a special permit granted pursuant to §73-36 authorizing a physical culture establishment (PCE) (Crunch Fitness), extend the PCE to include additional area in the cellar and on the first floor, permit a change in operator and extend the time to obtain a certificate of occupancy. The subject site is located in a C2-4 zoning district.

PREMISES AFFECTED – 312/18 & 324/34 Flatbush Avenue, 157' west of the northwest corner of the intersection of Flatbush Avenue and Sterling Place, Block 1057, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD # 6BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 19, 2009, at 10 A.M., for an adjourned hearing.

301-03-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Isabell Wassner and Leonard Wassner, owner.

SUBJECT – Application February 20, 2009 – Extension of Time/waiver to Complete Construction and obtain a Certificate of Occupancy of previously granted Special Permit (§73-622) for the enlargement of single family home and an Amendment to modify the previously approved plans, in an R2 zoning district, which expired on January 13, 2008.

PREMISES AFFECTED – 1103 East 22nd Street, between Avenue J and Avenue K, Block 7604, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to May 12, 2009, at 10 A.M., for deferred decision.

185-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Raymond Chakkalo, owner.

SUBJECT – Application March 23, 2009 – Extension of Time/waiver to complete construction of a previously

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granted Special Permit (§73-622) for the enlargement of an existing home in an R4 (Special Ocean Parkway) district which expired on January 11, 2009.

PREMISES AFFECTED – 2275 East 2nd Street, east side of 2nd Street, between Avenue W and Gravesend Neck Road, Block 7154, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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 19, 2009, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

180-08-A thru 184-08-A

APPLICANT – Tobias Guggenheimer Architect, P.C., for Schley Avenue Development, LLC, owner.

SUBJECT – Application July 10, 2008 – Proposed construction of Four three family homes and parking lot located within the bed of mapped street (Shore Drive) contrary to General City Law Section 35. C3A zoning district.

PREMISES AFFECTED – 3236, 3238, 3240, 3242 and 3244 Schley Avenue, south east corner of Schley Avenue and Clarence Avenue, Block 5490, Lot (tent.) 7, 108, 109, 110, 111, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Bronx Borough Commissioner, dated June 23, 2008, acting on Department of Buildings Application Nos. 210050898, 210051593, 210051584, 210051600 and 210050923, reads in pertinent part:

“Proposed construction in the bed of a mapped street as indicated on the tax lot and/or zoning map, is contrary to General City Law Section 35;” and

WHEREAS, these applications request permission to build four three-story, single-family detached homes partially in the bed of Shore Drive, a mapped street; and

WHEREAS, a public hearing was held on these applications on April 7, 2009, after due notice by publication in the *City Record*, and then to decision on April 28, 2009; and

WHEREAS, Community Board 10, Bronx, recommends disapproval of this proposal; and

WHEREAS, the applicant proposes to subdivide Lots 7, 107 and 25 to create (Tentative) Lots 7, 108, 109, 110, and 111 (the “subject lots”); and

WHEREAS, on March 5, 1991, under BSA Cal. No. 655-87-A, the Board granted the previous owner of Lots 7 and 107 permission to enlarge a single family home pursuant to Section 35 of the General City Law; however, the grant lapsed and the property was subsequently acquired by the current owner; and

WHEREAS, by letter dated August 4, 2008, the Fire Department stated that it had no objections to the proposed construction on Tentative Lots 7 and 108, but that it objected to the proposed construction on Tentative Lots 109 and 110 because the sites did not comply with Chapter 5 of the new Fire Code; and

WHEREAS, by letters dated August 19, 2008 and October 2, 2008, the Fire Department states that it has re-evaluated the proposed construction and withdraws its objection; and

WHEREAS, by letter dated August 15, 2008, the Department of Environmental Protection (“DEP”) states that it has reviewed the application and advises the Board that there are no existing sewers and/or water mains in the bed of Schley Avenue between Eastchester Bay and Clarence Avenue, and that there are no existing sewers and/or water mains in Shore Drive between Schley Avenue and Wilcox Avenue; and

WHEREAS, DEP also notes that, as per Amended Drainage Plan No. 45D13 45C20 (R-1) dated October 14, 1987, there is a future 12-inch diameter sanitary sewer and a future 15-inch diameter storm sewer in Shore Drive between Clarence Avenue and Wilcox Avenue, and there is a 30-inch diameter storm sewer in Schley Avenue between Eastchester Bay and Clarence Avenue; and

WHEREAS, DEP requested that the applicant submit a survey/plan indicating the mapped width of Schley Avenue east of Shore Drive; and

WHEREAS, DEP further requested that the applicant provide a 32-foot wide sewer corridor in Shore Drive between Schley Avenue and Wilcox Avenue for the installation, maintenance and/or reconstruction of the future 12-inch diameter sanitary sewer and 15-inch diameter storm sewer and a 32-foot wide sewer corridor in Schley Avenue east of Shore Drive up to Eastchester Bay for the installation maintenance and/or reconstruction of the future 30-inch diameter storm sewer; and

WHEREAS, DEP further requested that the applicant provide the distance from existing water main end caps and sewer manholes to lot lines in Schley Avenue between Shore Drive and Wilcox Avenue, and submit a copy of the as-built sewer records and water main field cards; and

WHEREAS, in response, the applicant submitted a revised site plan, dated February 19, 2009, indicating a proposed 30-foot sewer corridor/easement in the bed of Shore Drive east of Schley Avenue to the property line, which will be available for the purposes of installation, maintenance and/or reconstruction of the future 30-inch diameter storm sewer in Schley Avenue; and

WHEREAS, in addition, the applicant submitted a survey

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indicating that Lots 5, 7, 95 and 101 through 104 front an existing 2'-6" by 2'-6" combined sewer in Schley Avenue between Clarence Avenue and Wilcox Avenue and submitted evidence that Lots 95, 101, 102, 103, and 104 have Certificates of Inspection for the connections to the 2'-6" by 2'-6" combined sewer in Schley Avenue; thus, the DEP notes that the future 12-inch diameter sanitary sewer and 15-inch diameter storm sewer may not be required; and

WHEREAS, by letter dated March 11, 2009, DEP states that it has reviewed the revised proposal and has no further objections; and

WHEREAS, by letter dated November 14, 2008, the Department of Transportation ("DOT") states that it has reviewed the application and advises the Board that that the applicant is required to provide a ten-foot sidewalk in front of the subject lots; and

WHEREAS, in response, the applicant submitted a revised site plan providing the requested ten-foot sidewalk on Schley Avenue; and

WHEREAS, by letter dated March 12, 2009, DOT states that it has reviewed the revised proposal and has no further objections; and

WHEREAS, DOT states that the subject lots are not included in the agency's Capital Improvement Program; 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 Bronx Borough Commissioner, dated June 23, 2008, acting on New Building Permit Nos. 210050898-NB, 210051593-NB, 210051584-NB, 210051600-NB and 210050923-NB, is hereby modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawings filed with the application marked "Received February 23, 2009"-(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 DOB shall review the proposed lot subdivision prior to the issuance of any permit;

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

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

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

Adopted by the Board of Standards and Appeals, April 28, 2009.

5-09-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Michele Nagel, lessee.

SUBJECT – Application January 13, 2009 – Proposed

reconstruction and enlargement of an existing single family not fronting a mapped street and the upgrade of a private disposal system is in the bed of a private service road contrary to Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 7 Manville Lane, north side of Manville Lane, 206.70' east of Beach 203rd Street, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO 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 6, 2009, acting on Department of Buildings Application No. 410163200, reads in pertinent part:

"A1 – The site and building are 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 percent 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;" and

A2 – The upgraded private disposal system is in the bed of a private service road contrary to Department of Buildings Policy;" and

WHEREAS, a public hearing was held on this application on April 28, 2009 after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated April 20, 2009, 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 January 6, 2009, acting on Department of Buildings Application No. 410163200, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received January 13, 2009"–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

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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, April 28, 2009.

277-08-BZY thru 287-08-BZY

APPLICANT – Eric Palatnik, P.C., for Opal Builders, LLC, owner.

SUBJECT – Application November 19, 2008 – Extension of time to complete construction (§11-332) and obtain a Certificate of Occupancy of a minor development commenced prior to the text amendment of the zoning district regulations. R3-X SSRRD (Area LL).

PREMISES AFFECTED – 23, 26, 27, 35, 39, 43, 47, 55, 59, and 63 Opal Lane, bounded Idaho Avenue, Bloomingdale Road and Amboy Road, Block 6993, Lot 20, 4,19,18,17,16,15,14,12,11,10, Borough of Staten Island.

COMMUNITY BOARD #3SI

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 28, 2009, at 10 A.M., for decision, hearing closed.

267-08-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Robert & Mary Baldrian, owners.

SUBJECT – Application October 31, 2008 – Proposed reconstruction and enlargement of an existing single family home located within the bed of a mapped street (Oceanside Avenue) contrary to General City Law Section 35 and does not front a mapped street contrary to General City Law Section 36 with a private disposal system located within the bed of the service road contrary to Department of Buildings policy. R4 zoning district

PREMISES AFFECTED – 2 Devon Walk, east side of Devon Walk, 24’ south of paved Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Laid over to May 19,

2009, at 10 A.M., for continued hearing.

292-08-A

APPLICANT – Robert Cunningham, for Robert Cunningham, lessee.

SUBJECT – Application March 17, 2009 – An Appeal Challenging Department of Buildings interpretation that §23-49-(a) Special Provisions for Party or Side Lot lines Walls is not applicable to this site. R3-1 zoning district.

PREMISES AFFECTED – 123 87th Street, north side of 87th Street, 480’ west from northwest corner of 87th Street and Ridge Boulevard, Block 6042, Lot 67, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Robert Cunningham.

For Administration: Amandus 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 12, 2009, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, APRIL 28, 2009
1:30 P.M.**

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

ZONING CALENDAR

40-08-BZ

CEQR #08-BSA-061X

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Laconia Land Corporation, owner.

SUBJECT – Application February 25, 2008 – Special Permit (§§11-411 & 11-413) to allow the re-instatement and extension the term, to amend the previous BSA approval of an Automotive Service Station (UG 16) to a Automotive Repair Facility (UG 16). The application seeks to subdivide the zoning lot and allow a portion to be developed as of right in a C1-2/R5 zoning district.

PREMISES AFFECTED – 3957 Laconia Avenue, Northwest corner of east 224th Street, Block 4871, Lot 1, Borough of Bronx.

COMMUNITY BOARD #1BX

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 January 24, 2008, acting on Department of Buildings Application No. 210009603 reads, in pertinent part:

“Proposed extension of term of variance permitting gasoline service station (UG 16) in a C1-2(R5) zoning district and proposed change in use to automobile repair facility (UG16) and subdivision of a portion of the premises are contrary to ZR section 32-10 and approval of the Board of Standards and Appeals under Cal. No. 150-54-BZ”; and

WHEREAS, this is an application for a reinstatement of a prior Board approval and an extension of term, pursuant to ZR § 11-411, a legalization of a change in use from a gasoline service station with accessory automotive repairs (UG 16) to an automotive service station without the sale of gasoline (UG 16), pursuant to ZR § 11-413 and a subdivision of the subject site; and

WHEREAS, initially, the instant application additionally proposed an enlargement to an existing service station building; the applicant subsequently submitted a revised

application eliminating the proposed enlargement; and

WHEREAS, a public hearing was held on this application on November 25, 2008 after due notice by publication in the *City Record*, with continued hearings on January 27, 2009, March 3, 2009, and April 7, 2009, and then to decision on April 28, 2009; and

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

WHEREAS, Community Board 12, Bronx, recommended disapproval of an earlier iteration of this application; and

WHEREAS, a neighboring resident testified in opposition to the application, citing poorly maintained site conditions; and

WHEREAS, the premises is located on the northwest corner of Laconia Avenue and East 224th Street in a C1-2 (R5) zoning district; and

WHEREAS, the subject site has a total lot area of approximately 8,746 sq. ft.; and

WHEREAS, the site is currently occupied by a 1,223 sq. ft. one-story automotive service station building, with accessory parking for 15 vehicles awaiting service; and

WHEREAS, on July 27, 1954, under BSA Cal. No. 150-54-BZ, the Board granted a variance to permit the erection and maintenance of a gasoline service station with accessory uses at the site for a term of fifteen years; and

WHEREAS, the variance was subsequently extended by the Board at various times, most recently on May 8, 1990 under BSA Cal. No. 150-54-BZ, to permit an extension of term for a gasoline service station with accessory uses for a term of ten years from the expiration of the previous grant, expiring on December 4, 1999; and

WHEREAS, the applicant represents that the premises is improved upon with an existing automotive service station without the sale of gasoline (UG 16); and

WHEREAS, the applicant further represents that the only change to the site since the most recent extension is the discontinuance of gasoline sales; a UG 16 automotive repair use has been continuous since the expiration noted above; and

WHEREAS, the applicant now proposes to reinstate the prior grant and to legalize the existing use; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a request for a change in use from one non-conforming use to another non-conforming use in the same use group; and

WHEREAS, the applicant additionally proposes to amend the grant to permit a subdivision of existing Lot 1 into two tax lots: Lot 1 (the "subject lot"), with frontage along the northwest corner of East 224th Street to a depth of between 134.87 feet and 109.51 feet, and Lot 75 (the "adjacent lot") which will lie north of the subject lot with 56.44 feet of frontage of along Laconia Avenue and a depth of between 106 feet and 101.84; and

WHEREAS, the instant application includes an application to the Real Property Assessment Bureau seeking

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the formal designation of tentative lot 1 and tentative lot 75 to effect the severance of the subject lot, which will remain under the jurisdiction of the Board, from the adjacent lot, which will be developed as an-as-of-right use; and

WHEREAS, the subject lot is proposed to remain occupied by the automotive service station; and

WHEREAS, at hearing, the Board asked how vehicles awaiting repairs could be accommodated on the subject lot after the subdivision; and

WHEREAS, in response, a submission by the applicant states that approximately 15 vehicles are repaired each week by the existing service station and submitted a parking diagram indicating that a minimum of 15 vehicles could be parked on the subject lot; and

WHEREAS, the applicant further submitted photographs showing that serviced vehicles which had been stored at the site were removed; and

WHEREAS, at hearing, the Board asked whether the site complied with signage requirements for the C-1 zoning district; and

WHEREAS, in response, the applicant submitted a signage analysis and revised plans indicating the existing and proposed signage; and

WHEREAS, at hearing, the Board asked whether the fuel tanks for the prior gasoline service station use had been sealed or removed; and

WHEREAS, in response, the applicant submitted a notarized letter dated January 8, 2000 from a licensed tank installer stating that he had sealed eight 550-gallon steel tanks at the subject site after purging, cleaning, testing and filling them with K-slurry; and

WHEREAS, the applicant additionally submitted a tank removal affidavit executed on November 22, 2006 by another licensed tank installer stating that a 550-gallon fuel tank was filled with sand and permanently sealed as of that date; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411 and 11-413.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 11-411 and 11-413, for a reinstatement of a prior Board approval, an extension of term, a legalization of a change in use from a gasoline service station with accessory automotive repairs (UG 16), to an automotive service station without the sale of gasoline (UG 16), and a subdivision of the site; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received February 24, 2009"-(4) sheets and "March 30, 2009"-(1) sheet and; and *on further condition*:

THAT this permit shall be for a term of ten years, to expire on April 28, 2019;

THAT the hours of operation shall be from 9:00 a.m. to 5:00 p.m., Monday through Saturday;

THAT no repairs or servicing of automobiles shall take

place on the sidewalk;

THAT no more than 15 automobiles shall be parked on the site;

THAT no gas pumps shall be installed on the site;

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

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

THAT a certificate of occupancy shall be obtained by April 28, 2010;

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

THAT all signage shall comply with C1 zoning regulations;

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

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

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

Adopted by the Board of Standards and Appeals, April 28, 2009.

161-08-BZ

APPLICANT – Eric Palatnik, P.C., for Oleg F. Kaplun, owner.

SUBJECT – Application June 10, 2008 – Special Permit (§73-622) for the enlargement of an existing single family residence. This application seeks to vary floor area, open space and lot coverage (§23-141) and less than the required rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 136 Dover Street, between Hampton Street and Oriental Boulevard, Block 8735, Lot 80, 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 Superintendent, dated May 20, 2008, acting on Department of Buildings Application No. 310107737 reads, in pertinent part:

“The application has been disapproved for the following reasons:

1. Proposed floor area ratio is contrary to ZR 23-141(a).

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2. Proposed open space is contrary to ZR 23-141(a).
3. Proposed lot coverage is contrary to ZR 23-141(a).
4. Proposed rear yard is contrary to ZR 23-47;" and

WHEREAS, this is an application under Z.R. §§ 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 ratio (FAR), open space, lot coverage, and rear yards, contrary to Z.R. §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on January 27, 2009, after due notice by publication in *The City Record*, with continued hearings on February 24, 2009, March 3, 2009, and April 7, 2009, and then to decision on April 28, 2009; and

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

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

WHEREAS, the subject site is located on the west side of Dover Street, between Hampton Avenue and Oriental Boulevard, within an R3-1 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 1,999 sq. ft. (0.5 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. (0.5 FAR) to 3,678 sq. ft. (0.92 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement provides 36 percent of lot coverage (a maximum of 35 percent is permitted) and 64 percent of open space (a minimum of 65 percent is required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying rear yard with a depth of 23'-2 1/2" (a minimum rear yard 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 indicating the portions of the existing home that are being retained; 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 Z.R. § 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 FAR, open space, lot coverage, and rear yards, contrary to Z.R. §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 14, 2009"-(15) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 3,678 sq. ft. (0.92 FAR); a lot coverage of 36 percent; an open space of 64 percent; and a rear yard with a minimum depth of 23'-2 1/2", 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 28, 2009.

298-08-BZ

APPLICANT – Lewis E. Garfinkel, for Abraham Zlotnick, owner.

SUBJECT – Application December 4, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141(a)) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1156 East 22nd Street, between Avenue J and Avenue K, Block 7603, Lot 81, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

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For Applicant: Lewis E. Garfinkel.

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 November 06, 2008, acting on Department of Buildings Application No. 310201607, reads:

1. Proposed plans are contrary to ZR 23-141(a) in that the proposed floor area ratio (FAR) exceeds the permitted 50 percent.
2. Proposed plans are contrary to ZR 23-141(a) in that the proposed open space ratio (OSR) is less than the required 150 percent.
3. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30'-0";" and

WHEREAS, this is an application under Z.R. §§ 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 yards, contrary to Z.R. §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on April 7, 2009, after due notice by publication in *The City Record*, and then to decision on April 28, 2009; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by 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 22nd Street, between Avenue J and Avenue K, 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 2,258 sq. ft. (0.56 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 2,258 sq. ft. (0.56 FAR) to 2,370 sq. ft. (0.59 FAR); the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 94 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 23'-9" (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 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 Z.R. § 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, open space ratio and rear yards, contrary to Z.R. §§ 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 March 4, 2009"–(10) sheets and "Received April 8, 2009"–(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 2,370 sq. ft. (0.59 FAR); an open space ratio of 94 percent; and a rear yard with a minimum depth of 23'-9", 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 28, 2009.

303-08-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Luciano Calandra, owner; Lou-Cal Auto Service, Inc., lessee.

SUBJECT – Application December 10, 2008 – Special Permit filed pursuant to §11-411 of the zoning resolution to re-establish an expired variance which permitted the

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erection and maintenance of a gasoline service station with accessory uses (UG 16) C2-2/R5-B zoning district.

PREMISES AFFECTED – 34-67 Francis Lewis Boulevard, northeast corner of 35th Avenue, Block 6077, Lot 43, Borough of Queens.

COMMUNITY BOARD # 11Q

APPEARANCES –

For Applicant: Carl A. Sulfaro.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated November 19, 2008, acting on Department of Buildings Application No. 410125387, reads in pertinent part:

“Proposal to continue to occupy the premises as a gasoline service station with accessory uses on the first floor level and offices on the second floor level at a facility now located within a C2-2 zoning district within R5-B as indicated on zoning map # 10c is contrary to ZR § 35-25 and inconsistent with the terms and conditions of BSA Cal. No. 1446-39-BZ which expired on March 5, 2002 and is hereby denied;” and

WHEREAS, this is an application for a special permit pursuant to ZR § 11-411, to reinstate a prior variance which allowed the operation of a gasoline service station with accessory uses (Use Group 16) in a C2-2 (R5-B) zoning district; and

WHEREAS, a public hearing was held on this application on February 24, 2009, after due notice by publication in the *City Record*, with a continued hearing on April 7, 2009, and then to decision on April 28, 2009; and

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

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

WHEREAS, Council Member Tony Avella provided testimony in support of this application, provided that the conditions requested by the community board were satisfied; and

WHEREAS, the premises is located on the northeast corner of the intersection at Francis Lewis Boulevard and 35th Avenue, within a C2-2 (R5-B) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 5, 1957 when, under BSA Cal. No. 1446-39-BZ Vol. IV, the Board granted a variance to permit the premises 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 by the Board at various times; and

WHEREAS, on June 15, 1993, under BSA Cal. No.

1446-39-BZ Vol. IV, the grant was amended to allow the designation of six parking spaces as accessory off-street parking for the second floor livery office, and the grant was extended for a term of ten years, to expire on March 5, 2002; and

WHEREAS, most recently, on June 22, 1999, under BSA Cal. No. 1446-39-BZ Vol. IV, the grant was amended to allow the erection of a 24’-0” by 42’-0” canopy over the existing gasoline pump islands; and

WHEREAS, the term of the variance has not been extended since its expiration on March 5, 2002; 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 expiration noted above; and

WHEREAS, the applicant now proposes to reinstate the prior grant and seeks a special permit pursuant to ZR § 73-01(d); 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; and

WHEREAS, in response to concerns raised by the Community Board, the applicant submitted revised plans and an affidavit from the owner/operator of the premises indicating that there will be no overnight parking of commercial vehicles at the site; the revised plans also indicate that the trash receptacle has been relocated toward Francis Lewis Boulevard; 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 Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411 and 73-03.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 11-411 and 73-03 for a reinstatement of a prior Board approval and an extension of term for a gasoline service station with accessory uses (Use Group 16) in a C2-2 (R5-B) zoning district; *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked “Received December 10, 2008”-(4) sheets and “March 20, 2009”-(1) sheet; and *on further condition*:

THAT this permit shall be for a term of ten years, to expire on April 28, 2019;

THAT there shall be no overnight parking of commercial vehicles at the site;

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 April 28, 2010;

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

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

THAT the approved plans shall 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 28, 2009.

203-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gastar, Inc., owner.

SUBJECT – Application August 17, 2007 – Variance (§72-21) to allow a new thirteen (13) story mixed-use building containing twenty (20) dwelling units, ground floor retail and third and fourth floor community facility (medical) uses; contrary to bulk and parking regulations (§35-311 & §36-21). R6/C2-2 district.

PREMISES AFFECTED – 137-35 Elder Avenue (a/k/a 43-49 Main Street) located at the northwest corner of Main Street and Elder Avenue, Block 5140, Lot 40, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Richard Lobel and Barbara Cohen.

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 19, 2009, at 1:30 P.M., for decision, hearing closed.

222-07-BZ

APPLICANT – Stuart A. Klein, Esq., for Century Realty Corp./Randall Co. LLC., owner.

SUBJECT – Application September 27, 2007 – Variance pursuant to §72-21 to legalize residential uses on the second and third floor of an existing building. M1-6 District.

PREMISES AFFECTED – 110 West 26th Street, between Sixth Avenue and Seventh Avenue, Block 801, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Abigail Patterson and Barbara Cohen.

ACTION OF THE BOARD – Laid over to June 9, 2009, at 1:30 P.M., for continued hearing.

169-08-BZ

APPLICANT – James Chin & Associates, LLC, for Jeffrey Bennett, owner.

SUBJECT – Application June 24, 2008 – Variance (§72-21) to allow the residential redevelopment of an existing five-story commercial building. Six residential floors and six (6) dwelling units are proposed; contrary to use regulations (§42-00 & §111-104 (e)). M1-5 (TMU- Area B-2) district. PREMISES AFFECTED – 46 Laight Street, north side of Laight Street, 25' of frontage on Laight Street, Block 220, Lot 35, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Ivan Khoury and Barbara Cohen.

ACTION OF THE BOARD – Laid over to June 16, 2009, at 1:30 P.M., for continued hearing.

228-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sephardic Mikvah Israel by Isaac Hidary, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) to permit the construction of a one-story mikvah (ritual bath). The proposal is contrary to ZR §§ 24-34 (front yards) and 24-35 (side yards). R3-2 district.

PREMISES AFFECTED – 2802 Avenue R, a/k/a 1801-1811 East 28th Street, southeast corner of Avenue R and East 28th Street, Block 6834, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

For Opposition: Eric Palatnik and Stuart Klein, Rabbi Shinerman, Martin Cohen and Ed Jaworski.

ACTION OF THE BOARD – Laid over to June 9, 2009, at 1:30 P.M., for continued hearing.

229-08-BZ

APPLICANT – Sheldon Lobel, P.C. for Edward Haddad, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) for the construction of a new single family home. This applications seeks to vary floor area (§23-141), less than the minimum side yards (§23-461) and the location of the required off street parking to the front yard (§25-62) in an R2X zoning district.

PREMISES AFFECTED – 866 East 8th Street, West side of East 8th Street, north of Avenue I, and adjacent to railroad, Block 6510, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #12BK

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 May 19,

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2009, at 1:30 P.M., for decision, hearing closed.

234-08-BZ

APPLICANT – Eric Palatnik, P.C., for 1702 Avenue Z, Inc., owner.

SUBJECT – Application September 9, 2008 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment at the cellar and a portion of the first and second floors in a seven-story mixed-use building. The proposal is contrary to ZR §32-10. C4-2 district.

PREMISES AFFECTED – 1702 Avenue Z, southeast of the corner formed by Avenue Z and East 17th Street, Block 7462, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 9, 2009, at 1:30 P.M., for continued hearing.

235-08-BZ

APPLICANT – Eric Palatnik, P.C., for Agudath Taharath Mishpachan, owners.

SUBJECT – Application September 16, 2008 – Variance (§72-21) to permit the expansion of a Use Group 3 Mikvah.

The proposal is contrary to ZR §33-12 (Maximum floor area ratio) and §33-431 (Maximum height of walls and required setbacks). C2-3/R4 district.

PREMISES AFFECTED – 1508 Union Street, located at the southwest corner of Union Street and Albany Avenue, Block 1279, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Eric Palatnik and David Shteirman,

ACTION OF THE BOARD – Laid over to May 19, 2009, at 1:30 P.M., for continued hearing.

246-08-BZ

APPLICANT – Slater & Beckerman, LLP, for St. Barnabas Hospital, owner.

SUBJECT – Application October 3, 2008 – Special Permits pursuant to §73-481 and §73-49 to allow for the construction of a five story parking garage and rooftop parking and Variance pursuant to §72-21 to allow for an accessory sign contrary to §22-331 and §22-342. R7-1 District.

PREMISES AFFECTED – 4400 Third Avenue, block bounded by Third Avenue and East 184th Street, Quarry Road, and East 181st Street, Block 3064, Lot 1, 20 tent 100, Borough of The Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Neil Weisband.

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 19, 2009, at 1:30 P.M., for decision, hearing closed.

259-08-BZ

APPLICANT – Jeffrey A. Chester, Esq., for AAC Douglaston Plaza, LLC, owner.

SUBJECT – Application October 20, 2008 – Variance (§72-21) to permit the proposed expansion to an existing supermarket. The proposal is contrary to ZR §52-41 (increase in the degree of non-conforming use of the building. R4 district.

PREMISES AFFECTED – 242-02 61st Avenue, Douglaston Parkway at 61st Avenue, Block 8266, Lot 185, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Jeffrey A. Chester, Edward Weinstein, Barbara Cohen, Rosemarie Guidice, Susan Seinfeld, Eliott Socci, Marie Marsina, Arline Abdalian, Miriam Levine, Stanley Leavitt, Susan Barla Bazil, Ralenda Ferrer and Shirley Grinkel.

ACTION OF THE BOARD – Laid over to May 19, 2009, at 1:30 P.M., for continued hearing.

266-08-BZ

APPLICANT – Lewis E. Garfinkel R.A., for Harold Willig, owner.

SUBJECT – Application October 28, 2008 – Special Permit (§73-621) for the enlargement of an existing single family home. This application seeks to vary §34-141(b) as the proposed floor area ratio (FAR) exceeds what is permitted in an R-4 zoning district.

PREMISES AFFECTED – 2007 New York Avenue, east side of New York Avenue between Avenue K and Avenue L, Block 7633, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Lewis E. Garfinkel.

ACTION OF THE BOARD – Laid over to May 19, 2009, at 1:30 P.M., for continued hearing.

275-08-BZ

APPLICANT – Eric Palatnik, P.C., for South Side House LLC, owner.

SUBJECT – Application November 20, 2008 – Special Permit (§73-36) to allow a physical culture establishment on the ground floor of an existing building. The proposal is contrary to ZR §42-10. M1-2/R6 (MX8) district.

PREMISES AFFECTED – 98 South 4th Street, south side of South 4th Street, between Bedford Avenue and Berry Street, Block 2443, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

MINUTES

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to May 19, 2009, at 1:30 P.M., for deferred decision.

314-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 437-51 West 13th Street, LLC, owner.

SUBJECT – Application December 22, 2008 – Variance pursuant to §72-21 to allow for the construction of a 12 story commercial building contrary to bulk regulations §§43-12, 43-43, 43-26 and use regulations §42-12. M1-5 District.

PREMISES AFFECTED – 437-447 West 13th Street, 862-868 Washington Street, southeast portion, block bounded by West 13th, West 14th and Washington Streets, Tenth Avenue, Block 646, Lots 19, 20, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Gary Tarnoff, David Reck of Community Board #2, Marc G.-Langan, Randy Gerner, Jack Freeman, Jeff Rubin, Paul Pariser, Jaseara Lee, David del Viller, Roman Luba, Annie Washburn, David Robin, Gachot, Zach Winestine and others.

For Opposition: Richard Meryman, Elizabeth Solomon, Elaine Sg and Lindy Roy.

ACTION OF THE BOARD – Laid over to June 16, 2009, at 1:30 P.M., for continued hearing.

8-09-BZ

APPLICANT – Sheldon Lobel, P.C., for CMG Group, LLC, owner; Facial and Tanning Consulting, Inc., lessee.

SUBJECT – Application January 22, 2009 – Special Permit (§73-36) to allow the operation of a physical culture establishment on the second floor of an existing two-story commercial building. The proposal is contrary to ZR §32-10. C6-4 district.

PREMISES AFFECTED – 125 Fulton Street, north side of Fulton Street, between Nassau Street and William Street, Block 91, Lot 11, Borough of Manhattan.

COMMUNITY BOARD #1M

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 June 9, 2009, at 1:30 P.M., for decision, hearing closed.

20-09-BZ

APPLICANT – MetroPCS New York, LLC, for Valerie Arms Apt. Corp., owner; MetroPCS New York, LLC, lessee.

SUBJECT – Application February 10, 2009 – Special

Permit (§§73-03, 73-30), to permit in an R3-2 within a C1-2 district, a non-accessory radio tower.

PREMISES AFFECTED – 54-44 Little Neck Parkway, north west of intersection of Little Neck Parkway and Nassau Boulevard, Block 8256, Lot 108, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

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 9, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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May 22, 2009

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Tuesday, May 12, 2009**

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DOCKETS

New Case Filed Up to May 12, 2009

164-09-BZ

124 Irwin Street, Between Hampton Avenue and Oriental Boulevard., Block 8751, Lot(s) 416, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of an existing Two-Family home to be converted into a Single Family home. This application seeks to vary floor area, lot coverage and open space (ZR 23-141) and less than the required rear yard (ZR 23-47) in an R3-1 zoning district.

165-09-A

150 Hendricks Avenue, Between Jersey Street and Bismark Avenue., Block 44, Lot(s) 15, Borough of **Staten Island, Community Board: 1**. Appeal seeking a determination that the owner has aquired common law vested rights for a development commenced under the prior district regulations.

166-09-BZ

360-366 McGuinness Boulevard, North east corner of Freeman Street and McGuinness Boulevard., Block 2506, Lot(s) 2, 4, 5 & 52, Borough of **Brooklyn, Community Board: 1**. Special Permit pursuant to 75-53 to permit the enlargement of a manufacturing building contrary to floor area and height and setback regulations (43-12, 43-43). M1-1 District.

167-09-A

820 39th Street, South side, 150'-0" east of 8th Avenue between 8th Avenue and 9th Avenue., Block 916, Lot(s) 12, Borough of **Brooklyn, Community Board: 12**. An appeal challenging Department of Buildings determination that the reconstruction of the existing non-complying subject building must be done in accordance with ZR Section 54-41 and be required to provide a 30 foot rear yard . M1-2 Zoning district .

168-09-BZ

1435 & 1437 East 26 Street, East side of east 26th Street distant 292 south of Avenue N., Block 7680, Lot(s) 34 & 35, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of an existing single family home. This application seeks to combine two semi-attached homes to create one single family home that varies in floor area and open space (ZR 23-141(a)) and less than the required rear yard (ZR 23-47) in an R-2 zoning district.

169-09-BZ

186 Saint George's Crescent, Eastern side of St. George's Crescent, approximately 170' southeast of the corner formed by the intersection of Van Cortland Avenue east, St. George's Crescent and Grand Concourse, Block 3312, Lot(s) 12, Borough of **Bronx, Community Board: 7**. Variance to allow a twelve-story, multi-family residential building, contrary to bulk regulations.

170-09-A

24-03 Queens Plaza North, Northeast corner of Queens Plaza North and 24th Street., Block 414, Lot(s) 5, Borough of **Queens, Community Board: 1**. An appeal filed by the Department of Buildings seeking to amend the Certificate of Occupancy No. 400942655 issued on May 2, 2002 to remove the reference to "Adult" Establishment "use on the second floor. M1-5/R-9 Special Mixed Use.

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 9, 2009, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 9, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

1252-79-BZ

APPLICANT – Benjamin A. Leonardi/Miele Associates, for C.B.R. LLC (Dr. Harry Kent), owner.

SUBJECT – Application April 2, 2009 – Extension of Term/Amendment (§72-01 and §72-22) to reopen for a unlimited time limit.

PREMISES AFFECTED – 23-87-91 Bell Boulevard, aka 214-05-15 & 214-19 24th Avenue, northwest south of 24th Avenue 10' east of Bell Boulevard and 24th Avenue, Block 5958, Lot 52, Borough of Queens.

COMMUNITY BOARD #7Q

303-99-BZ

APPLICANT – Vito J. Fossella, P.E. (LPEC), for 2122 Richmond Avenue LLC, owner.

SUBJECT – Application March 26, 2009 – Extension of Time to obtain a Certificate of Occupancy which expired on September 12, 2004 and an Amendment to legalize the change in use from the previously granted Auto Sales Establishment (UG16) to Commercial/Retail (UG6) in an R3-2 zoning district.

PREMISES AFFECTED – 2122 Richmond Avenue, west side of Richmond Avenue, 111.72' north of corner formed by the intersection of Richmond Avenue and Draper Place, Block 2102, Lot 120, Borough of Staten Island.

COMMUNITY BOARD #2SI

55-01-BZ

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for 568 Broadway Perty, LLC, owner; Blissworld LLC, lessee.

SUBJECT – Application March 31, 2009 – Extension of Term/waiver of a previously granted Special Permit (§73-36) for the continued operation of a PCE (Bliss Spa) located on portions of the second and third floors of an eleven-story mixed use building in an M1-5B zoning district which expired on April 1, 2007.

PREMISES AFFECTED – 568 Broadway, north side of Prince Street, between Broadway and Crosby Street, Block 511, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

140-08-BZY

APPLICANT – Eric Palatnik, P.C., for 1016 East 13th Realty, LLC, owner.

SUBJECT – Application April 5, 2008 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 district regulations. R5 zoning district.

PREMISES AFFECTED – 1016 East 13th Street, between Avenue J and K, Block 6714, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #14BK

293-08-A & 294-08-A

APPLICANT – Juan D. Reyes, III, Riker Danzig, et al., for Alexandra Hladky, owner; Leonessa Development Corporation/Frank Volpicello, lessees.

SUBJECT – Application November 25, 2008 – Proposed construction of two semi detached two family homes located within the bed of a mapped street contrary to General City Law Section 35. R4 Zoning District.

PREMISES AFFECTED – 36-40 166th Street, northwest corner of Depot Road and 166th Street, Block 5288, Lot 39, Borough of Queens.

COMMUNITY BOARD #7Q

160-09-A

APPLICANT – Eric Palatnik, P.C., for HBC Corona, LLC, owner.

SUBJECT – Application April 22, 2009 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior C2-4 /R6 zoning district. C2-4 /R6A.

PREMISES AFFECTED – 112-15 Northern Boulevard, between 112th Street and 112th Place, Block 1706, Lot 25, Borough of Queens.

COMMUNITY BOARD #3Q

CALENDAR

JUNE 9, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 9, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

139-07-BZ

APPLICANT – Agusta & Ross, for 328 Realty Holding, LLC, owner.

SUBJECT – Application May 25, 2007 – Variance (§72-21) to permit the development of a two-story and cellar, two-family residence on a vacant lot. The proposal is contrary to section 42-10. M1-2 district.

PREMISES AFFECTED – 328 Jackson Avenue, easterly side of Jackson Avenue, 80' northerly of East 141st Street, Block 2573, Lot 5, Borough of Bronx.

COMMUNITY BOARD #1BX

210-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Samaritan Foundation, Inc., owner.

SUBJECT – Application August 15, 2009 – Variance (§72-21) to permit the two-story enlargement to the existing drug treatment facility which would result in a four-story drug treatment center with sleeping accommodations (Use Group 3). The proposal is contrary to use regulations (ZR Section 43-00) and bulk regulations (ZR Section 52-22) in an M1-1 district.

PREMISES AFFECTED – 130-15 89th Road, north side of 89th Road, approximately 125' east of 130th Street, Block 9338, Lot 147, Borough of Queens.

COMMUNITY BOARD #9Q

7-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sandra Zigelbaum and Yechiel Zigelbaum, owners.

SUBJECT – Application January 20, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (23-141), side yards (23-461) and rear yard (23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1082 East 26th Street, East 26th Street, between Avenue J and Avenue K, Block 7607, Lot 85, Borough of Brooklyn.

COMMUNITY BOARD #14Q

50-09-BZ

APPLICANT – Eric Palatnik, P.C., for Roni Mova, owner; Warrior Fitness, lessee.

SUBJECT – Application March 26, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment on the third floor in a twelve-story building. The proposal is contrary to ZR §42-10. M1-6 district.

PREMISES AFFECTED – 29 West 35th Street, West 35th Street and Fifth Avenue, Block 837, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 12, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

301-03-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Isabell Wassner and Leonard Wassner, owner.

SUBJECT – Application February 20, 2009 – Extension of Time/waiver to Complete Construction and obtain a Certificate of Occupancy of previously granted Special Permit (§73-622) for the enlargement of single family home and an Amendment to modify the previously approved plans, in an R2 zoning district, which expired on January 13, 2008.

PREMISES AFFECTED – 1103 East 22nd Street, between Avenue J and Avenue K, Block 7604, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, 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, an extension of time to complete construction of an enlargement of an existing single family home and obtain a certificate of occupancy, and an amendment to modify the previously approved plans; and

WHEREAS, a public hearing was held on this application on April 7, 2009, after due notice by publication in *The City Record*, with a continued hearing on April 28, 2009, and then to decision on May 12, 2009; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the east side of East 22nd Street, between Avenue J and Avenue K, within an R2 zoning district; and

WHEREAS, on January 13, 2004, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-622, to permit the enlargement of an existing single-family home, which resulted in non-compliances as to floor area, open space ratio, rear and side yards; and

WHEREAS, a condition of the grant was that substantial construction be completed and a new certificate of occupancy be obtained within four years, to expire on January 13, 2008; and

WHEREAS, the applicant represents that additional time is necessary to complete the project; thus, the applicant now requests an extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, in addition, the applicant now proposes to modify the approved plans; and

WHEREAS, specifically, the changes to the plans include the following: an increase in the width of the side yards from 4'-1" along the northern lot line and 8'-0" along the southern lot line, to 5'-0" and 8'-6", respectively; a decrease in the depth of the rear yard from 24'-0" to 20'-0"; and certain interior modifications; and

WHEREAS, the applicant represents that no other changes are proposed; and

WHEREAS, the Board notes that the proposed amendment cures the side yard non-compliance and that no increase in FAR is proposed; and

WHEREAS, accordingly, the Board finds that the requested change is within the scope of the original grant and does not affect the required special permit findings; and

WHEREAS, based upon its review of the record, the Board finds that the proposed amendment and extension of time to complete construction and obtain a certificate of occupancy 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 January 13, 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 from the expiration of the previous grant, to expire on January 13, 2012, and to permit the noted modifications to the BSA-approved plans *on condition* that all work and site conditions shall comply with drawings marked "Received February 20, 2009"- (7) sheets and "April 21, 2009"-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of approximately 5,167 sq. ft. (1.03 FAR); an open space ratio of approximately 53 percent; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans

THAT substantial construction shall be completed by January 13, 2012;

THAT a Certificate of Occupancy shall be obtained by January 13, 2012;

THAT all conditions from the prior resolution not specifically waived by the Board shall 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. 301622885)

Adopted by the Board of Standards and Appeals, May

MINUTES

12, 2009.

41-06-BZ

APPLICANT – Akerman Senterfitt Stadtmauer Bailkin, for New York Hospital Queens, owner.

SUBJECT – Application February 9, 2009 – Amendment of a previously approved variance (§72-21) which permitted, on a portion of the campus of New York Hospital, the construction of an underground parking structure with 372 accessory parking spaces. The application did not comply with the front and side yard requirements. (§§24-33 & 24-34). The current application seeks to legalize a 4'-8" open area along the side lot line within the C1-2 overlay which does not comply with §33-25 (Minimum Required Side Yards). The site is located in a R6/C1-2 zoning district.

PREMISES AFFECTED – 139-24 Booth Memorial Avenue, south side of Booth Memorial Avenue and West Side of 141st Street, Block 6401, Lot 19, 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 Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance which permitted, on a portion of the Queens campus of New York Hospital as part of a Large Scale Community Facility Plan, the construction of an underground accessory group parking facility with bulkheads encroaching into required front and side yards, contrary to ZR §§ 24-33 and 24-34; and

WHEREAS, a public hearing was held on this application on April 21, 2009, after due notice by publication in *The City Record*, and then to decision on May 12, 2009; and

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

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

WHEREAS, this application was brought on behalf of the New York Hospital – Queens (the “Hospital”), a not-for-profit institution; and

WHEREAS, the subject site is located at the southwest corner of the intersection of Booth Memorial Avenue and 141st Street, within a C1-2 (R4) zoning district; and

WHEREAS, on November 14, 2006, the Board granted a variance pursuant to ZR § 72-21, which permitted the construction of an underground accessory group parking facility with bulkheads encroaching into the required front and side yards, contrary to ZR §§ 24-33 and 24-34; and

WHEREAS, the applicant states that, subsequent to the Board’s grant, the neighboring property owner was unwilling to permit the underpinning of the existing adjoining structures

along the parties’ common lot line; the Hospital was therefore forced to redesign the garage to set back 4’-8” from the property line at the northwest corner of the site; and

WHEREAS, pursuant to ZR § 33-25, if an open area extending along a side lot line is provided at any level, it must either have a continuous minimum width of eight feet or a minimum width of five feet with an average width of eight feet; and

WHEREAS, the applicant represents that, due to the irregular jagged shape of the site, the egress, ingress and circulation requirements of the garage, and the demonstrated programmatic need for a parking garage with a capacity of at least 372 spaces, the Hospital is unable to comply with the requirements of ZR § 33-25; and

WHEREAS, thus, the applicant now seeks to legalize the 4’-8” open area along the side lot line at the northwest corner of the site, which does not comply with ZR § 33-25; 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 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 November 14, 2006, so that as amended this portion of the resolution shall read: “to permit the noted modification to the plans to reflect the legalization of an open area along the side lot line with a width of 4’-8”, contrary to ZR § 33-25; *on condition* that all work shall substantially conform to drawings filed with this application and marked “Received February 9, 2009”-(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) and/or configuration(s) not related to the relief granted.” (DOB Application No. 402276817)

Adopted by the Board of Standards and Appeals, May 12, 2009.

951-55-BZ

APPLICANT – Eric Palatnik, P.C., for Deborah Luciano, owner; Gaseteria Oil Corporation, lessee.

SUBJECT – Application March 18, 2009 – Amendment (§11-411) to permit the installation of a canopy and minor modifications to the existing pump islands to a previously granted variance for a UG16 gasoline service station in a C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1098 Richmond Road, Targee Street and Richmond Road, Block 3181, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

MINUTES

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 9, 2009, at 10 A.M., for continued hearing.

23-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Kehilat Sephardim of Ahavat Achim, owners.

SUBJECT – Application April 7, 2009 – Extension of Time/waiver to Complete Construction (which expired on July 2, 2008) and to obtain a Certificate of Occupancy (which expired on January 2, 2009) of a previously granted Variance (§72-21) for the expansion of an existing three story synagogue with accessory Rabbi's apartment in an R-4 zoning district.

PREMISES AFFECTED – 150-62 78th Road, southeast corner of the intersection formed by 78th Road and 153rd Street, Block 6711, Lot 84, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to June 9, 2009, at 10 A.M., for continued hearing.

APPEALS CALENDAR

292-08-A

APPLICANT – Robert Cunningham, for Robert Cunningham, lessee.

SUBJECT – Application March 17, 2009 – An Appeal Challenging Department of Buildings interpretation that §23-49-(a) Special Provisions for Party or Side Lot lines Walls is not applicable to this site. R3-1 zoning district.

PREMISES AFFECTED – 123 87th Street, north side of 87th Street, 480' west from northwest corner of 87th Street and Ridge Boulevard, Block 6042, Lot 67, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES – None.

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Srinivasan, Vice-Chair Collins, Commissioner Otley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

THE RESOLUTION: 1

WHEREAS, the instant appeal comes before the Board in response to a final determination from the Deputy Commissioner of Technical Affairs, dated October 22, 2008 (the "Final Determination"), issued in response to a request that the Department of Buildings ("DOB") reconsider a determination that ZR § 23-49 was inapplicable to a proposed

enlargement of a single-family home built before 1961 in an R3-1 zoning district (the "Final Determination"); and

WHEREAS, the Final Determination reads in pertinent part:

"We have learned from your narrative and submitted plans that the existing building is a fully detached one family residence with non-complying side yard of 9 inches on the west lot line. The proposed enlargement abuts the existing building to the east, which contradicts the provision set forth in ZR 23-49(a) in that the side yard requirement can only be waived on the east side lot line if a 8'-0" side yard is provided on the west side lot line. As such, it is the determination of this Department that the provision set forth in section ZR 23-49(a) cannot be applied"; and

WHEREAS, this appeal seeks to reverse a determination by DOB that a proposed enlargement to a single-family home in an R3-1 zoning district requires a side yard with a minimum width of 8'-0" along the western property line, and the issuance of a building permit pursuant to Alteration 1 Job Application No. 310089123; and

WHEREAS, a public hearing was held on this appeal on March 17, 2009, after due notice by publication in *The City Record*, with a continued hearing on April 28, 2009, and then to decision on May 12, 2009; and

PARTIES AND SUBMITTED TESTIMONY

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, Mathew B. Gershon, owner of a home located at 127 87th Street adjoining the subject property, (hereinafter, the "adjacent owner" and the "adjacent home") 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, Community Board 10, Brooklyn, recommended denial of the instant appeal; and

WHEREAS, State Senator Martin J. Golden and other elected officials submitted letters in opposition to the instant appeal; and

WHEREAS, a number of local residents submitted letters in opposition to the instant appeal; and

THE SITE

WHEREAS, the subject site is located within the Special Bay Ridge District in an R3-1 zoning district and is occupied by a fully-detached, two-story, single-family home which was built before the adoption of the 1961 Zoning Resolution; 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 adjacent home is built to the eastern lot line of the subject home; and

1 Headings are utilized only in the interest of clarity and organization.

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PROCEDURAL HISTORY

WHEREAS, on February 5, 2008, the Appellant filed Alteration 1 Application No. 310089123 (“No. 310089123”) proposing to convert the existing single-family dwelling into a two-family dwelling, and to enlarge it by adding a two-story foyer and masonry dwelling extending 23’-8” to the eastern lot line, thereby abutting the adjacent home; and

WHEREAS, on February 15, 2008, DOB issued a Notice of Objections; Objection No. 4 states: “Demonstrate compliance with required side yard/s as per 23-461 ZR, in that if semi-detached as per 12-10 ZR, then one 8’ minimum required side yard to be provided. If detached as per 12-10 ZR then 2 side yards totaling 13’ minimum 5’ to be provided”; and

WHEREAS, the Appellant responded by submitting a request to the Brooklyn Borough Office of DOB for an interpretation and clarification of ZR § 23-461, stating that the side yard requirements were inapplicable to the subject home as it is permitted to utilize a party wall or abut an independent wall along a side lot line existing prior to December 15, 1961; and

WHEREAS, On June 9, 2008, a response by the Chief Plan Examiner of the Brooklyn Borough Office of DOB stated that “Existing building is a fully detached building with non-complying side yard to the west, 8 ½” vs. 5’-0”, per ZR 23-461(a). Proposed enlargement abuts the existing building to the east and makes a semi-attached building which creates a new non-compliance for the side yard to the west of 8 ½” vs. 8’-0” per ZR 23-461(b). Per ZR 54-31, no enlargement may create a new non-compliance nor may it increase the degree of existing non-compliance”; and

WHEREAS, on June 23, 2008, the Appellant’s architect requested a meeting and reconsideration of the response by the Chief Plan Examiner; and

WHEREAS, on October 22, 2008, the DOB Deputy Commissioner of Technical Affairs issued the Final Determination referenced above; and

WHEREAS, the Appellant thereafter filed the instant appeal challenging the Final Determination; and

The Other Applications

WHEREAS, Alteration Type 2 Permit No. 301376767 (“Permit No. 301376767”) permitting the enlargement of the subject home was initially issued to the Appellant on August 2, 2002, based on professionally-certified plans; and

WHEREAS, on October 27, 2006 an audit of Job No. 301376767 identified 14 violations of the Zoning Resolution and Administrative Code (the “Objections”); and

WHEREAS, DOB states that on October 30, 2006, the agency issued a Letter of Intent to Revoke Permit No. 301376767 based on the Objections and the permit was revoked on December 19, 2007 after the Appellant failed to cure the Objections; and

WHEREAS, in the instant appeal, the Appellant requested that the Board rescind the revocation and reinstate Permit No. 301376767; alternatively, that the Board make a determination that work performed pursuant to Permit No. 301376767 complies with the Zoning Resolution; and

WHEREAS, a submission by the attorney representing

the adjoining owner argues that the Board can take no action concerning the aforementioned request, because it is untimely and outside the scope of the appeal; and

WHEREAS, pursuant to § 666(6)(a) of the New York City Charter and §§ 1-07(a) and 1-07(b) of its Rules of Practice and Procedure, the Board lacks subject matter jurisdiction to hear an appeal of a DOB determination unless an application is filed within thirty days of the determination; and

WHEREAS, the record indicates that Permit No. 301376767 was revoked on December 19, 2007, and that no request to the Board to review the compliance of the permit application with the Zoning Resolution was filed before January 19, 2008; and

WHEREAS, the Appellant’s request is therefore untimely and cannot be acted on by the Board; and

WHEREAS, regarding the request that the Board evaluate the compliance of the work performed with the Zoning Resolution and with Permit No. 301376767, the Board notes that the Final Determination submitted by the Appellant is silent concerning these issues; and

WHEREAS, as discussed above, the submission of a relevant final determination by DOB is a necessary precondition to any determination by the Board; and

WHEREAS, the Final Determination does not concern Permit No. 301376767, the Board is therefore without jurisdiction to render a determination thereto;

WHEREAS, the Appellant additionally requests that the Board recommend the approval of revised plans submitted in connection with Application No. 301362488 by DOB, and its issuance of a permit; and

WHEREAS, the record indicates that on June 11, 2002, the Appellant filed Alteration Application Type 2 No. 301362488 (“Application No. 301362488”) with DOB, also proposing an enlargement of the subject home; and

WHEREAS, as discussed above, the Board’s jurisdiction to hear an appeal is predicated on the issuance by DOB of a final determination concerning the subject matter of the appeal; and

WHEREAS, DOB states that agency plan examiners have been meeting with the Appellant to assist him to revise Application No. 301362488 to comply with zoning and Building Code requirements identified in a Notice of Objections issued on March 10, 2009, and further states that these discussions have not yet reached a conclusion; and

WHEREAS, because DOB has issued no final determination with respect to the compliance of Application No. 301362488, the Board therefore lacks jurisdiction to render a decision thereto; and

WHEREAS, as noted above, the Final Determination that is being appealed exclusively concerns the zoning compliance of Permit No. 310089123; and

WHEREAS, the ambit of the Board’s review in the instant appeal is therefore limited to matters related to the zoning compliance of Permit No. 310089123; and

ISSUES PRESENTED

WHEREAS, in an R3-1 zoning district, ZR § 23-461(a) requires a minimum of two side yards having a

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minimum combined total width of 13 feet with a required minimum of five feet in width for each side yard; and

WHEREAS, to comply with the minimum requirements of ZR § 23-461(a), a home in the subject district must have at least one side yard with a minimum width of eight feet and another side yard with a minimum width of five feet; and

WHEREAS, the subject home has an existing non-complying side yard of approximately 0'-9" on the west side lot line and a complying side yard of approximately 23'-8" on the east side lot line; and

WHEREAS, the Appellant proposes to maintain the existing non-complying side yard of approximately 0'-9" on the west side lot line and to eliminate the 23'-8" complying side yard on the east side lot line; and

WHEREAS, the Appellant makes the following primary arguments in support of its position that the proposed enlargement complies with all zoning district regulations: (1) that ZR § 23-49 permits the subject home to use an existing party wall along the east property line while maintaining the existing non-complying side yard to the west; (2) the subject home has a complying side yard to the west; and (3) that the proposed enlargement is permitted under ZR § 54-31; and

WHEREAS, regarding the first argument, the Appellant states that the adjacent home was built prior to the adoption of the 1961 Zoning Resolution and is within 0'-2" of the eastern side lot line of the subject home, and therefore the western wall of the adjacent home constitutes a party wall pursuant to "DOB Memo 09/02/86 – Special Provisions for Party of Side Lot Line Walls – ZR 23-49;" and

WHEREAS, ZR § 23-49 provides that in an R3-1 district, a residence may be constructed so as to "utilize a party wall or party walls, or abut an independent wall or walls along a side lot line, existing on December 15, 1961 or lawfully erected under the terms of this Resolution"; and

WHEREAS, the Appellant contends that the proposed enlargement complies with ZR § 23-49 because the western wall of the adjoining home is a party wall existing prior to the adoption of the Zoning Resolution; and

WHEREAS, DOB argues that ZR § 23-49 explicitly requires at least one 8'-0" side yard where an enlargement to a residence abuts a wall along a side yard; and

WHEREAS, ZR § 23-49 further states that "if a residence is so constructed, the side yard requirements shall be waived along that boundary of the zoning lot coincident with said party wall or party walls, or independent wall or walls along a side lot line, and one side yard shall be provided along any side lot line of the zoning lot where such a wall is not so utilized, at least eight feet wide" in the subject R3-1 zoning district; and

WHEREAS, the Appellant has conceded that an 8'-0" side yard is required and states that the 0'-9" side yard on the western lot line lies within a complying 8'-0" side yard; and

WHEREAS, the Board notes that there is no complying 8'-0" side yard indicated by the building plans initially submitted by the Appellant in connection with Permit No. 310089123, and that only the aforementioned 0'-

9" side yard is shown; and

WHEREAS, the proposed enlargement will abut the adjacent neighbor's exterior wall on the east side lot line, while the side yard on the west side lot line would remain 0'-9" wide; and

WHEREAS, therefore, the proposed enlargement would not meet the 8'-0" side yard requirement of ZR § 23-49; and

WHEREAS, the Appellant further contends that, because "the portion of the existing building located in the non-complying side yard is not being enlarged or altered," that the proposed enlargement does not increase the degree of non-compliance of the building and is consequently permitted by ZR § 54-31; and

WHEREAS, the existing non-complying home was built prior to the adoption of the Zoning Resolution, an enlargement which maintains a non-complying side yard is permitted under ZR § 54-31, provided that the degree of non-compliance is not increased; and

WHEREAS, as discussed above, the existing 23'-8" side yard on the east side lot line exceeds the 8'-0" minimum width required by the R3-1 zoning district; and

WHEREAS, DOB argues, however, that the proposed enlargement would eliminate the existing complying 23'-8" side yard, thereby increasing the degree of non-compliance since the subject home would thereafter have no complying side yard; and

WHEREAS, DOB contends that the proposed enlargement therefore increases the degree of non-compliance of the subject home, inconsistent with ZR § 54-31; and

WHEREAS, the Board agrees with DOB that: (i) ZR § 23-49 requires the provision of a minimum 8'-0" side yard for a semi-detached building; and (ii) that the existing non-complying 0'-9" side yard neither qualifies as within the required 8'-0" side yard or 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

CONCLUSION

WHEREAS, the Board has considered all of the arguments made by Appellant and DOB in light of the entire record; and

WHEREAS, the Board finds that the proposed enlargement does not provide a complying side yard as required by § 23-49; and

WHEREAS, the Board additionally finds that the proposed enlargement increases the pre-existing non-compliance of the subject home; and

WHEREAS, accordingly, the Board agrees with DOB's denial of the reconsideration; and

WHEREAS, the Board notes that its decision is limited to the question raised in this appeal concerning the applicability of ZR § 23-49 to the proposed enlargement of the subject home, and makes no determination as to whether pending Application No. 301362488 complies with zoning requirements; and

WHEREAS, the Board further notes that, after the

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hearing was closed, the Appellant submitted a set of stamped plans filed in connection with Application No. 310089123 approved by DOB on September 5, 2008 (the "approved plans), which were accepted into the record; and

WHEREAS, the Appellant represents that, due to a hold imposed by DOB, the Appellant cannot secure a building permit allowing him to proceed with construction of the home contemplated by the approved plans, and has asked for a lift of that hold by the Board; and

WHEREAS, because the validity of the approved plans is similarly outside the scope of the instant appeal, the Board can make no determination concerning their zoning or Building Code compliance.

Therefore it is Resolved that the instant appeal, seeking a reversal of the Final Determination of the Deputy Commissioner of Technical Affairs of the Department of Buildings concerning Application No. 310089123, dated October 22, 2008, is hereby denied.

Adopted by the Board of Standards and Appeals, May 12, 2009.

47-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Maureen & John Tully, lessees.
SUBJECT – Application March 23, 2009 – Reconstruction and enlargement of an existing single family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. R4 Zoning District.

PREMISES AFFECTED – 114 Beach 215th Street, west side Beach 215th Street, 240' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO 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 Superintendent, dated March 6, 2009, acting on Department of Buildings Application No. 410219699, reads in pertinent part:

"The street giving access to the existing building to be reconstructed and enlarged is not duly placed on the map of the City of New York, therefore:

A. Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.

B. Existing dwelling to be reconstructed and enlarged does not have at least 8% of the 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 May 12, 2009 after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated April 20, 2009, 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 Superintendent, dated March 6, 2009, acting on Department of Buildings Application No. 410219699, 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 23, 2009" – (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, May 12, 2009.

147-08-BZY

APPLICANT – Hui-Li Xu, for Beachway Equities, Inc., owner.

SUBJECT – Application May 23, 2008 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on April 30, 2008. R5 zoning district.

PREMISES AFFECTED – 95-04 Allendale Street, between Atlantic Avenue and 97th Avenue, Block 10007, Lot 108, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 16, 2009, at 10 A.M., for an adjourned hearing.

83-08-A

APPLICANT – NYC Department of Buildings, for H. Patel, P.M. – Purvi Enterprises, LLC, owner.

SUBJECT – Application April 9, 2008 – An appeal seeking

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to revoke Certificate of Occupancy No. 301279319 issued on January 17, 2007 as it was issued in error due to failure to comply with ZR §62-711 requiring waterfront certification. R5 SP Sheepshead Bay District.

PREMISES AFFECTED – 3218 Emmons Avenue, Emmons Avenue between Bringham Street, and Bragg Street, Block 8815, Lot 590, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 16, 2009, at 10 A.M., for postponed hearing.

19-09-A

APPLICANT – Elizabeth Safian of Sheldon Lobel Associates, for 34th and 35th Avenues Realty, LLC, owners. SUBJECT – Application February 10, 2009 – Legalization of an existing building constructed within the bed of a mapped street contrary to General City Law Section 35. M2-1 Zoning District.

PREMISES AFFECTED – 132-55 34th Avenue, north side of 34th Avenue, 75’ east of the intersection formed by Collins Place and 34th Avenue, Block 4946, Lot 126, Borough of Queens.

COMMUNITY BOARD #7Q

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 June 9, 2009, at 10 A.M., for decision, hearing closed.

Jeffrey Mulligan, Executive Director

Adjourned: 10:30 A.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, MAY 12, 2009
1:30 P.M.**

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

ZONING CALENDAR

247-08-BZ

CEQR #09-BSA-032K

APPLICANT – Howard S. Weiss, Esq., for Davidoff Malito, for 3454 Star Nostrand LLC, owner.

SUBJECT – Application October 6, 2008 – Special Permit filed pursuant to §73-243 to allow the operation of a accessory drive-through facility in connection with a planned as-of-right eating and drinking establishment (Starbucks Coffeeshouse) (Use Group 6) located in a C1-2/R4 zoning district.

PREMISES AFFECTED – 3454 Nostrand Avenue and approx. 49’ along Gravesend Neck Road, Block 7362, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Howard Weiss.

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 Brooklyn Borough Superintendent, dated September 4, 2008, acting on Department of Buildings Application No. 310109628, reads:

“Pursuant to Zoning Resolution Section 32-15, ‘eating or drinking establishments’ with accessory drive-through facilities (Use Group 6A) are permitted in C1 districts only as provided in Zoning Resolution Section 73-243, which requires a special permit from the Board of Standards and Appeals”; and

WHEREAS, this is an application under Z.R. §§ 73-243 and 73-03, to permit, on a site within a C1-2 (R4) zoning district, the operation of an accessory drive-through facility in conjunction with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR § 32-15; and

WHEREAS, a public hearing was held on this application on March 31, 2009, with a continued hearing on April 21, 2009, and then to decision on May 12, 2009; and

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

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

WHEREAS, Council Member Lewis A. Fidler provided testimony in support of the application; and

WHEREAS, several principals and managers of surrounding businesses provided testimony in support of the proposal; and

WHEREAS, the subject site is an L-shaped lot with approximately 49 feet of frontage on Nostrand Avenue along its eastern property line and approximately 52 feet of frontage on Gravesend Neck Road along its northern property line, within a C1-2 (R4) zoning district; and

WHEREAS, the subject site has a total lot area of 6,567 sq. ft. and is currently vacant; and

WHEREAS, the site will be operated by Starbucks Coffee Company (“Starbucks”) and will operate 24 hours per day; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 20, 1955 when, under BSA Cal. No. 837-55-BZ, the Board granted a variance to permit an accessory parking lot for a supermarket located at 2901-2911 Gravesend Neck Road; the variance lapsed on December 20, 1965; and

WHEREAS, under Z.R. § 73-243, the application must demonstrate that: (1) the drive-through facility provides reservoir space for not less than ten automobiles; (2) the drive-through facility will cause minimal interference with traffic flow in the immediate vicinity; (3) the eating and drinking establishment with accessory drive-through facility complies with accessory off-street parking regulations; (4) the character of the commercially-zoned street frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle; (5) the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity; and (6) there will be adequate buffering between the drive-through facility and adjacent residential uses; and

WHEREAS, the applicant submitted a site plan indicating that the drive-through facility provides reservoir space for a ten-car queue; and

WHEREAS, at hearing, the Board questioned whether the reservoir spaces might interfere with the usage of certain accessory parking spaces and whether the proposed layout could create a conflict between cars attempting to exit and enter the site through the single curb cut on Gravesend Neck Road; and

WHEREAS, the Board also raised concerns regarding the safety of pedestrians queuing at a designated bus stop located at the exit to the drive-through lane on Nostrand Avenue; and

WHEREAS, in response, the applicant submitted a revised site plan providing: (1) an overhead sign at the entrance/exit of the drive-through and accessory parking area to clearly distinguish vehicle ingress and egress routes; (2) entry/exit directional arrow signs and painted markings to complement the overhead signage; (3) a 36-inch high guard rail along the eastern edge of the drive-through lane to physically separate the drive-through lane from the accessory parking area; and (4) a stop sign at the exit of the drive-through lane to ensure the safety of pedestrians queuing at the designated bus stop on Nostrand Avenue; and

WHEREAS, the applicant represents that the facility will

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cause minimal interference with traffic flow in the immediate vicinity of the subject site; and

WHEREAS, in support of this representation, the applicant provided a traffic analysis indicating that the proposed eating and drinking establishment could generate up to 169 trips during the morning peak period and 53 trips during the evening peak period by persons traveling by car, bus, or on foot; and

WHEREAS, the applicant's traffic analysis estimates that new trips added to the network by the proposed eating and drinking establishment represent approximately 25 percent of morning peak period trips and up to 50 percent of afternoon peak period trips; and

WHEREAS, the applicant notes that the proposed eating and drinking establishment will cause minimal interference with traffic flow in the vicinity because vehicles using the drive-through lane will exit onto the southbound lane of Nostrand Avenue, a major two-lane commercial through-route; and

WHEREAS, the applicant represents that the facility fully complies with the accessory off-street parking regulations for the C1-2 (R4) zoning district; and

WHEREAS, in support of this representation, the applicant submitted a proposed site plan providing five accessory off-street parking spaces, as required by ZR § 36-21, and indicating that the open parking area complies with the minimum parking stall and maneuverability standards of ZR § 36-58(b); and

WHEREAS, the applicant represents that the facility conforms to the character of the commercially zoned street frontage within 500 feet of the subject premises, which reflects substantial orientation toward the motor vehicle; and

WHEREAS, the applicant further represents that existing restaurants, local retail uses and community facilities located within 500 feet of the site presently generate significant vehicular traffic; and

WHEREAS, the applicant submitted photographs of the premises and the surrounding area, which support this representation; and

WHEREAS, the applicant notes that existing sites in the immediate vicinity are served by accessory drive-through facilities, including a restaurant located directly across Nostrand Avenue from the subject site, and a bank located at the northwest corner of the intersection at Nostrand Avenue and Avenue U; and

WHEREAS, the applicant represents that the drive-through facility will not have an undue adverse impact on residences within the immediate vicinity of the subject premises; and

WHEREAS, the applicant states that Nostrand Avenue is characterized by commercial uses and that no residences are located along Nostrand Avenue within 400 feet to the north, south or east of the proposed drive-through facility; and

WHEREAS, the applicant further states that there will be no undue adverse impacts on residences located to the west of the subject site because vehicles will exit from the facility onto Nostrand Avenue and not traverse residential streets; and

WHEREAS, the applicant notes that the proposed eating

and drinking establishment is permitted as-of-right, and without the drive-through facility patrons would seek on-street parking in the surrounding area; thus, the applicant represents that the drive-through facility will have a positive impact on nearby residences by removing traffic that would otherwise occur; and

WHEREAS, the applicant represents that adequate buffering between the drive-through facility and adjacent residential uses is provided; and

WHEREAS, as indicated on the revised site plan, visual screening and sound attenuation is provided by: (1) a six-foot-high noise barrier wall system along the western property line and along the southern property line past the existing adjacent commercial building wall; and (2) dense plantings measuring at least four feet wide and four feet high along the south and southwest portions of the property; and

WHEREAS, the applicant notes that the rear yard setbacks separating the adjacent residences from the drive-through facility provide further buffering of the use; and

WHEREAS, the applicant states that exterior lighting will be directed away from the adjoining residences; 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 §§ 73-243 and 73-03; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09-BSA-032K dated October 6, 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, 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, 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 Z.R. §§ 73-243 and 73-03 to permit, on a site within a C1-2 (R4) zoning district, the operation of an accessory drive-through facility in connection with an as-of-right eating and drinking establishment (Use Group 6), contrary to ZR §32-15; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 21, 2009"- (3) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 12, 2014;

THAT the premises shall be maintained free of debris and graffiti;

THAT parking and queuing space for the drive-through shall be provided as indicated on the BSA-approved plans;

THAT all landscaping and/or buffering shall be maintained as indicated on the BSA-approved plans;

THAT exterior lighting shall be directed away from the adjacent residential uses;

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

THAT all signage shall conform with the underlying C1 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 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 plan(s) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, May 12, 2009.

274-08-BZ

CEQR #09-BSA-042M

APPLICANT – Jesse Masyr, Esq., Wachtel & Masyr, LLP, for West Broadway 220 LLC (47 Grand Street), owner; West Broadway 330 LLC (431, 43 Grand Street), lessee.

SUBJECT – Application November 10, 2008 – Variance pursuant to §72-21 to allow for an increase in floor area, variation in height and setback requirements and retail use below the level of the second story, contrary to §42-14, §43-12 and §43-43. M1-5A & M1-5B Districts.

PREMISES AFFECTED – 41-47 Grand Street (a/k/a 330 West Broadway) southwest corner of Grand Street and West Broadway, Block 227, Lots 19, 20, 22, Borough of Manhattan.

COMMUNITY BOARD #2M

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 12, 2009.

306-08-BZ

CEQR #09-BSA-051M

APPLICANT – Sheldon Lobel, P.C., for Third and Fifty-Eight. LLC,owner; Evergreen Spa, Inc., lessee.

SUBJECT – Application December 18, 2008 – Special Permit (§73-36) to allow the operation of a physical culture establishment in the cellar of an existing 21-story mixed-use building. The proposal is contrary to ZR §32-10. C5-2 district.

PREMISES AFFECTED – 969 Third Avenue a/k/a 200 East 58th Street, Block 1331, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Elizabeth Safian.

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 March 6, 2009, acting on Department of Buildings Application No. 110278315, reads in pertinent part:

“Proposed change of use to physical culture establishment is contrary to ZR 32-10 and is not permitted as of right in C5-2 zoning district 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 within a C5-2 zoning district, the establishment of a physical culture establishment (PCE) in a portion of the cellar of an existing 21-story mixed-use commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on March 24, 2009 after due notice by publication in *The City Record*, with a continued hearing on April 21, 2009 and then to decision on May 12, 2009; and

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

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of the intersection at Third Avenue and East 58th Street, in a C5-2 zoning district; and

WHEREAS, the site is occupied by a 21-story mixed-use commercial/residential building; and

WHEREAS, the PCE will occupy 2,735 sq. ft. in a

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portion of the cellar level of the existing building; and

WHEREAS, the PCE will be operated as the “Ever Green Spa;” and

WHEREAS, the proposed hours of operation are: 10:00 a.m. to 2:00 a.m. daily; and

WHEREAS, the applicant represents that the services at the PCE will include facilities for the practice of massage; and

WHEREAS, the applicant represents that because the existing building consists of retail and office space from the cellar level through the fourth floor, the PCE will have no impact on the residential tenants in the subject 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; 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. 09BSA051M, dated March 13, 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; 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 C5-2 zoning district, the establishment of a physical culture establishment on the cellar level of an existing 21-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 April 22, 2009” - Two (2) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 12, 2019;

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 all signage shall comply with C5 zoning 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 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;

THAT substantial construction be completed in accordance with ZR § 73-70; 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 12, 2009.

312-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Leah Friedman and Michael Friedman, owners.

SUBJECT – Application December 18, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area and open space (§23-141), side yard (§23-461) and less than the minimum required rear yard (§23-47) in an R2 zoning district.

PREMISES AFFECTED – 1134 East 23rd Street, west side of East 23rd between Avenue K and Avenue L, Block 7622, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lyra J. Altman.

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 Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated November 18, 2008, acting on Department of Buildings Application No. 310209869, reads:

“Proposed plans are contrary to ZR 23-141 in that the proposed building exceeds the maximum permitted floor area ratio of 0.50.

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’-0”.

Proposed plans are contrary to ZR 23-461 in that the proposed side yard, straight line extension, is less than the 5’-0” minimum side yard permitted;” and

WHEREAS, this is an application under Z.R. §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), open space ratio, side yards and rear yards, contrary to Z.R. §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on March 17, 2009 after due notice by publication in *The City Record*, with a continued hearing on April 21, 2009, and then to decision on May 12, 2009; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Vice-Chair Collins; 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 K and Avenue L, in 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 1,943 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 approximately 1,943 sq. ft. (0.49 FAR) to approximately 4,017 sq. ft. (1.00 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 approximately 57 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard with a width of 4’-11” along the northern lot line (a minimum width of 5’-0” is required) and will provide a complying side yard of 8’-1”

along the southern lot line; 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 whether the existing foundation was being retained; and

WHEREAS, in response, the applicant submitted a letter from the project engineer, dated March 24, 2009, explaining how the existing foundation will be retained; 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 Z.R. § 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, open space ratio, side yards and rear yards, contrary to Z.R. §§ 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 May 5, 2009”-(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of approximately 4,017 sq. ft. (1.00 FAR); an open space ratio of approximately 57 percent; a side yard with a minimum width of 4’-11” 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 DOB shall confirm that the portions of the existing building shall be retained as illustrated on the BSA-approved plans; and

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;

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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 12, 2009.

316-08-BZ

CEQR #09-BSA-055M

APPLICANT – Bryan Cave LLP/Robert S. Davis, for The Simons Foundation, Inc., owner.

SUBJECT – Application December 23, 2008 – Variance (§72-21) to permit the development of a three- and eight-story school building. The proposal is contrary to ZR Section 35-24c (minimum base height). R9A with a C1-5 district overlay.

PREMISES AFFECTED – 345-349 Second Avenue, a/k/a 247-249 East 20th Street, northwest corner of East 20th Street and Second Avenue, Block 901, Lots 26, 27 & 28, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Robert Davis.

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.....5
Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Manhattan Borough Superintendent, dated December 8, 2008, acting on Department of Buildings Application No. 110058570 reads, in pertinent part:

“The proposed new base height of the building is contrary to ZR 35-24(c) in that the minimum should be at least 60’-0”,” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within a C1-5 (R9A) zoning district, the construction of a three-story and eight-story school building, which is contrary to ZR § 35-24(c); and

WHEREAS, a public hearing was held on this application on March 17, 2009, after due notice by publication in the *City Record*, and was set for decision on April 7, 2009; and

WHEREAS, on April 7, 2009, the decision was deferred to May 12, 2009; 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 6, Manhattan, recommends approval of the application; and

WHEREAS, this application is brought on behalf of Learning Spring Elementary School (“Learning Spring”), a non-profit private school for children diagnosed as being on the high-functioning end of the autism spectrum; and

WHEREAS, the site is located on the northwest corner of the intersection at Second Avenue and 20th Street, within a C1-5 (R9A) zoning district; and

WHEREAS, the site is a corner lot with a rectangular shape, with 62 feet of frontage on Second Avenue and 79 feet of frontage on 20th Street, and a total lot area of 4,898 sq. ft.; and

WHEREAS, the applicant notes that the site was formerly comprised of three separate, rectangular-shaped tax lots: Tax Lot 26, Tax Lot 27, and Tax Lot 28; and

WHEREAS, the applicant states that Tax Lot 26 was a corner lot with 22 feet of frontage on Second Avenue and 79 feet of frontage on East 20th Street; formerly Tax Lot 27 was an interior lot with 20 feet of frontage on Second Avenue, a depth of 79 feet, and a southern lot line abutting the northern lot line of Tax Lot 26; and formerly Tax Lot 28 was an interior lot with 20 feet of frontage on Second Avenue, a depth of 79 feet, and a southern lot line abutting the northern lot line of Tax Lot 27; and

WHEREAS, the applicant represents that a tax lot merger was filed with the NYC Department of Finance on January 2, 2008, and excavation and new building permits were issued by the NYC Department of Buildings (“DOB”) for the merged area now designated as Tax Lot 26; and

WHEREAS, the subject site is currently vacant; and

WHEREAS, the applicant proposes a 27,492 sq. ft. three-story and eight-story lower and middle school servicing 110 students (the “School”) on the site; and

WHEREAS, the applicant states that the School will consist of a single building with an eight-story segment on the southern portion of the site from the site’s frontage on East 20th Street running north for 42 feet (the “Southern Portion”), and a three-story segment on the remaining 20-foot portion of the site located on former Tax Lot 28 (the “Northern Portion”); and

WHEREAS, the proposed building has the following non-compliance: a 38’-3” street wall height on the northern 20 feet of the site’s frontage on Second Avenue (a minimum street wall height of 60’-0” is required); and

WHEREAS, the applicant notes that the remaining 42 feet of the School’s frontage on Second Avenue and all of its East 20th Street frontage provide a 101’-6” street wall in compliance with the R9A zoning requirements; and

WHEREAS, the proposal provides for the following uses: (1) a shared gymnasium/multi-purpose room on the cellar level; (2) a lobby and garden terrace on the first floor; (3) a shared library, conference room, and administrative offices on the second floor; (4) lower school classrooms and a shared lunchroom on the third floor; (5) a shared play area on the roof above the third-floor lunch room; (6) lower school classrooms on the fourth floor; (7) shared classroom and therapy space on the fifth and sixth floors; and (8) middle school classrooms on the seventh and eighth floors; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the proposed school: (1)

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accommodating the current enrollment while allowing for future growth; (2) providing a middle school; (3) providing small floor plates; and (4) preserving a physical separation between the lower and middle schools while simultaneously providing communal spaces for all students' use; and

WHEREAS, in order to meet its programmatic needs, the applicant seeks a variance to ZR § 35-24; and

WHEREAS, the applicant states that Learning Spring currently leases space in an office building located at 254 West 29th Street which is now inadequate to accommodate its current and projected enrollment; and

WHEREAS, the applicant further states that the current location can accommodate only 59 kindergarten through sixth grade students; and

WHEREAS, the applicant states that Learning Spring provides educational opportunities for students diagnosed with autism spectrum disorders, including Asperger's Syndrome and Pervasive Developmental Disorder, and other neuro-cognitive disorders; and

WHEREAS, the applicant represents that there is a lack of appropriate middle schools in New York City for children diagnosed as being on the high-functioning end of the autism spectrum; and

WHEREAS, the applicant states that Learning Spring therefore proposes to create a seventh and eighth grade middle school program at the subject site, thereby increasing the size of its student body from 59 students to 110 students; and

WHEREAS, thus, the applicant represents that its relocation to the subject site is necessary in order to develop a new school building that would accommodate its current enrollment as well as new middle school students; and

WHEREAS, the applicant represents that the environment most conducive to learning for students with autism spectrum disorders is provided by small classrooms on floor plates which limit the number of classrooms to three or four per floor; and

WHEREAS, the applicant further represents that small classrooms on small floor plates are necessary to create and maintain an intimate, comprehensible learning environment to meet the unique educational and therapeutic requirements for students at the School; and

WHEREAS, the applicant further represents that the unique educational and therapeutic requirements for students at the School also require that adequate light and air be provided to each classroom and multi-use space; and

WHEREAS, the applicant states that small floor plates allow for a greater amount of light and air to reach each classroom than would be possible with larger floor plates; and

WHEREAS, the applicant states that limiting the development of the Northern Portion of the site to a height of 38'-3" enables the School to construct smaller floor plates on the upper floors, thereby providing an intimate, comprehensible environment conducive to fostering socialization in a supportive and controlled atmosphere; and

WHEREAS, the applicant submitted plans for an as-of-right school building, which indicate that compliance with the minimum street wall height would result in substantially larger third, fourth, and fifth floors than those in the proposed school,

with each floor consequently accommodating a greater number of students and a larger number of activities than is optimal; and

WHEREAS, the applicant states that such floor plates would constrain the ability to provide an intimate, comprehensible learning environment, and would not provide adequate light and air to the classrooms; and

WHEREAS, the applicant represents that the requested variance is therefore necessary in order to provide small floor plates for the School; and

WHEREAS, the applicant states that meeting its students' unique educational and therapeutic requirements requires that the lower and middle school classrooms be physically separated, while providing jointly used educational, recreational, and therapy spaces; and

WHEREAS, the applicant represents that such a physical arrangement is integral to the students' daily routines and provides the stability, safety, and intimacy needed to meet the School's educational goals; and

WHEREAS, the applicant further represents that the School's design enables Learning Spring to meet its programmatic needs by permitting students from the lower and middle schools to share common spaces, including the library, lunch room, gymnasium, computer and science labs, and specialized therapy and counseling spaces, while maintaining separate lower and middle school learning environments; and

WHEREAS, the applicant further states that the lower height of the Northern Portion of the School allows a play area to be located on the roof of that portion of the building, providing proximity to the lower school as well as separation from the shared core educational spaces; and

WHEREAS, the applicant represents that a complying school building would impair the School's ability to maintain separation between the lower and middle schools because the lower school students would be required to navigate the shared educational spaces located on the fourth and fifth floors in order to access the lunch room and rooftop play area; and

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, the Board finds that the School's programmatic needs are legitimate, and agrees that the proposed development is necessary to address its needs, given the current limitations; and

WHEREAS, accordingly, based upon the above, the Board finds that 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, the applicant states that the Northern

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Portion of the subject site is also subject to a 1969 light and air easement over former Tax Lot 28, restricting any new or enlarged building on that portion of the site to a maximum height of 12 feet above the height of the then-existing building; and

WHEREAS, the applicant notes that the height of the prior building located on former Tax Lot 28 was approximately 34'-11"; thus, the easement limits the portion of the subject building located on former Tax Lot 28 to a maximum height of approximately 46'-11"; and

WHEREAS, the applicant represents that the easement restriction also creates a practical difficulty and unnecessary hardship in complying with the applicable zoning; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical condition, when considered in conjunction with the programmatic needs of the School, creates unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, since Learning Spring is a non-profit educational institution and the variance is needed to further its non-profit mission, the finding set forth at ZR § 72-21(b) does not have to be made in order to grant the variance requested in this application; and

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

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant represents that the bulk and height of the School would be consistent with the bulk and height of buildings in the surrounding neighborhood, which is characterized by low-rise and mid-rise buildings in the mid-block areas and mid-rise and high-rise buildings on Second Avenue; and

WHEREAS, the applicant notes that the surrounding neighborhood is a mixed-use area containing residential, commercial and institutional uses, including several other schools; and

WHEREAS, the Board notes that the proposed school building is smaller than is permitted by the zoning requirements, and that the proposed 38'-3" street wall height for the Northern Portion of the School is consistent with the street wall height of the adjacent three-story 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 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 states that the requested

variance is limited to the Northern Portion of the building; the remaining 42 feet of the School's Second Avenue frontage and all of its East 20th Street frontage complies with the minimum street wall requirement; and

WHEREAS, therefore, the applicant represents that the requested waiver for street wall height is 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 Unlisted action pursuant to Sections 617.2 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. 09BSA055M, dated December 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 ("DEP") Office of Environmental Planning and Assessment has evaluated the following submissions from the applicant: (1) an August 2007 Phase I Environmental Site Assessment; (2) a December 2008 Environmental Assessment Statement ("EAS"); (3) a March 2009 Phase II Subsurface Investigation; (4) a March 2009 OITC Acoustical Analysis; and (5) an April 2009 Revised EAS Noise Analysis; and

WHEREAS, the applicant has installed a Preprufe membrane as part of the foundation to provide a barrier for water, moisture and gases; and

WHEREAS, DEP concludes that the proposed project would not result in a significant adverse hazardous materials impact provided that all DEP remedial requirements have been properly implemented; and

WHEREAS, after all remediation activities are implemented, a Remedial Closure Report certified by a professional engineer must be submitted to DEP for approval which includes, but is not limited to transportation manifests and soil, construction and demolition debris disposal/recycling certificates; and

WHEREAS, DEP has reviewed the March 2009 acoustical analysis and determined that the attenuation required to achieve an acceptable interior noise level of 45 dBA on the east façade (Second Avenue frontage) is 31 dBA and that the attenuation required to achieve an

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acceptable noise level on the south facade (East 20th Street frontage) is 26 dBA; and

WHEREAS, DEP also determined that windows with an Outdoor-Indoor Transmission Class rating (“OITC”) of at least 39 dBA are necessary on the fifth floor façade immediately adjacent to the rooftop play area to satisfy interior noise level requirements and that central air-conditioning is required as an alternate means of ventilation; 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 a C1-5 (R9A) zoning district, the construction of a three-story and eight-story school building (Use Group 3), which is contrary to ZR § 35-24(c), *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received March 3, 2009,” – (15) sheets and “Received May 8, 2009,” – (1) sheet and *on further condition*:

THAT the following shall be the bulk parameters of the building: a 38’-3” street wall height on the northern 20 feet of the site’s frontage on Second Avenue, as illustrated on the BSA-approved plans;

THAT any change in the use, occupancy, or operator of the School requires review and approval by the Board;

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

THAT the issuance of building permits shall be conditioned on the submission of a DEP Notice to Proceed;

THAT issuance of a permanent certificate of occupancy shall be conditioned on the issuance by DEP of a Notice of Satisfaction;

THAT windows with an OITC rating of at least 39 dBA be installed on the fifth floor façade adjacent to the rooftop play area, that windows with an OITC rating of at least 31 dBA be installed on the east façade (Second Avenue frontage), that windows with an OITC rating of at least 26 dBA be installed on the south facade (East 20th Street frontage), and that central air-conditioning be provided; and

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, May 12, 2009.

16-09-BZ

CEQR #09-BSA-065M

APPLICANT – Slater & Beckerman, LLP, for The Devlin Building LLC, owner; Yoga Works, Inc., lessee.

SUBJECT – Application February 4, 2009 – Special Permit (§73-36) to allow a physical culture establishment on the second and third floors of an existing five-story building. The proposal is contrary to ZR §42-10. M1-5B district.

PREMISES AFFECTED – 459 Broadway, south west corner of Broadway and Grand Street, Block 231, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Joshua Trauner.

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 30, 2009, acting on Department of Buildings Application No. 110435967, reads in pertinent part:

“Physical culture establishment (yoga studio) is not permitted as of right in M1-5B district and is contrary to ZR § 42-10;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-5B zoning district within the SoHo-Cast Iron Historic District, the establishment of a physical culture establishment (“PCE”) on the second and third floors of a five-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on April 21, 2009 after due notice by publication in *The City Record*, and then to decision on May 12, 2009; and

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

WHEREAS, the subject site is located on the southwest corner of the intersection at Broadway and Grand Street, within an M1-5B zoning district; and

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

WHEREAS, the PCE will occupy approximately 8,511 sq. ft. of floor area on the second and third floors of the existing building; and

WHEREAS, the PCE will be operated as “YogaWorks;” and

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

WHEREAS, the site is located within the SoHo-Cast Iron Historic District and the applicant represents that measures have been taken to preserve the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission, issued February 23, 2009; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 6:00 a.m. to 9:00 p.m.; and Saturday and Sunday, from 7:00 a.m. to 8:00 p.m.; and

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

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

WHEREAS, the 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. 09BSA065M, dated January 12, 2009; 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 an M1-5B zoning district within the SoHo-Cast Iron Historic District, the establishment of a physical culture establishment on the second and third floors of an existing five-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received April 27, 2009"-(3) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 12, 2019;

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 all signage shall comply with M1 zoning 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 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;

THAT substantial construction be completed in accordance with ZR § 73-70; 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 12, 2009.

26-09-BZ & 48-09-A

APPLICANT – Sheldon Lobel, P.C., for CAMBA Housing Ventures, Inc., owner.

SUBJECT – Application February 17, 2009 – Variance (§72-21) to permit the construction of a nine-story community facility building. The proposal is contrary to ZR section 24-36. R7-1 district. Waiver of Section 36 of the General City Law to permit the construction of a building without the 30-foot turnaround frontage space.

PREMISES AFFECTED – 97 Croke Avenue, north side of Croke Avenue, 164' west of Ocean Avenue, Block 5059, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

MINUTES

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 Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 3, 2009, acting on Department of Buildings Application No. 310246061, reads in pertinent part:

“Proposed rear yard on Croke Avenue for a community facility in an R7-1 district is contrary to ZR 24-36. Required rear yard = 30’. Proposed rear yard = 24’”; and

WHEREAS, this is an application under ZR §72-21, to permit, within an R7-1 zoning district, the proposed construction of a nine-story community facility building with sleeping accommodations (UG 3), contrary to ZR §24-36; and

WHEREAS, the applicant filed a companion case under BSA Calendar No. 48-09-A pursuant to General City Law § 36, to allow the proposed building to be erected without a 30-foot turnaround frontage space; this application was granted the date hereof; and

WHEREAS, a public hearing was held on this application on March 31, 2009 after due notice by publication in *The City Record*, and then to decision on May 12, 2009; and

WHEREAS, this application is brought on behalf of CAMBA Housing Ventures, Inc. (“CAMBA”), a not-for-profit entity; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, Borough President Marty Markowitz submitted a letter supporting the proposal; and

WHEREAS, a number of local residents submitted letters and oral testimony in support of the proposal; and

WHEREAS, several local residents testified at hearing in opposition to the proposal; and

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

WHEREAS, the site is located on the north side of Croke Avenue, 164 feet west of Ocean Avenue within an R7-1 zoning district and has a lot area of approximately 8,227 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes a nine-story 53-unit community facility building (UG 3) with a floor area of 28,290 sq. ft. (3.4 FAR); and

WHEREAS, the building will provide a rear yard of 24’-0” (a rear yard of 30’-0” is the minimum required); and

WHEREAS, the applicant states that CAMBA has a mission to provide supportive housing and social services to low-income tenants; and

WHEREAS, the applicant represents that the requested variance is necessitated by unique conditions of the site that

create a hardship, specifically: (1) the site’s triangular shape; (2) an adjacent below-grade subway line; and (3) the site’s limited frontage; and

WHEREAS, the applicant states that the triangular shape of the site creates substantial difficulty in designing an efficient residential building without encroaching into the rear yard; and

WHEREAS, the applicant further states that the unique configuration of the subject site sharply reduces the number of units possible in a complying building; plans submitted by the applicant indicate that such a building could produce no more than 39 units; and

WHEREAS, the applicant represents that a 60-unit building could be built on a site with the same lot area as the subject site but which instead had a more standard rectangular configuration; and

WHEREAS, as to the adjacent subway line, the subject site abuts an 18-foot below-grade right-of-way for the B and Q subway lines; and

WHEREAS, the applicant states that a five-foot Metropolitan Transit Authority (“MTA”) retaining wall separates the right of way from the subject site and that MTA regulations mandate that eight feet of clearance be provided between the building and the wall to protect the existing railroad structure; and

WHEREAS, the applicant states that providing the required clearance further reduces the floor plates of a complying development; and

WHEREAS, the applicant states that the subject site has an effective frontage of only 12 feet, due to an existing easement held by the MTA for a bridge structure; and

WHEREAS; the applicant further states that building utilities must consequently be provided within the 12-foot street frontage, which is not feasible for a building of this type; and

WHEREAS, the applicant also states that a rear yard variance is requested based on CAMBA’s programmatic need to provide 53 permanent dwelling units for homeless and formerly homeless persons, and low-income individuals; and

WHEREAS, specifically, the applicant states that 60 percent of the units will be restricted to individuals with special needs living in City shelter and transitional facilities and that 40 percent of the units will be reserved for individuals with annual incomes at or below 60 percent of the adjusted median income established for the New York metropolitan area; and

WHEREAS, the applicant further states that the building program includes access to onsite accessory social service programming, which includes job training, counseling, and case management; and

WHEREAS, the applicant provided documentation of preliminary funding commitments from the NYC Department of Health and Human Services, the NYC Department of Homeless Services, the NYC Department of Housing Preservation and Development, and the Office of the Brooklyn Borough President; and

WHEREAS, the applicant represents that the building program is determined in part by the requirements of the government funding sources concerning building design and unit count; and

MINUTES

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

WHEREAS, the community facility use is permitted as-of-right in the subject R7-1 zoning district; and

WHEREAS, the applicant states that the proposed development is consistent with that of the surrounding area, which is characterized by multi-family residential buildings; and

WHEREAS, the applicant further states that the requested rear yard waiver of 6'-0" would have a limited affect on surrounding properties because the 15'-9" rear yard of the adjoining property provides a combined rear yard distance of 39'-9" between buildings; and

WHEREAS, additionally, the applicant represents that the MTA subway right-of-way with a width of 60 feet adjoining the subject site further ensures access to light and air; and

WHEREAS, several neighborhood residents testified in opposition to the proposed building, citing concerns with its bulk and height; and

WHEREAS, the Board notes that the proposed bulk is well below the limit for an as-of-right Use Group 3 community facility building in the subject R7-1 zoning district; and

WHEREAS, specifically, a community facility with an FAR of 4.8 is permitted; the proposed building has an FAR of 3.44; and

WHEREAS, the Board further notes that the proposed floor area, building height and setback are well within the parameters of the subject zoning district; and

WHEREAS, the applicant submitted an impact review of projected noise levels caused by the adjacent subway lines indicating that double-glazed windows must be provided to achieve 35 dBA window-wall attenuation and a resulting interior level of 45 dBA; and

WHEREAS, the applicant agrees to provide the recommended noise attenuation measures; and

WHEREAS, the applicant additionally proposes to provide landscaping and an outdoor recreation area at the rear of the site; 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, CAMBA requires a

minimum number of housing units in order to achieve its programmatic needs and to be eligible for certain funding; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief and allow CAMBA to carry out the stated needs; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09BSA073K, dated April 20, 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, 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 R7-1 zoning district, the proposed construction of a nine-story community facility building, contrary to ZR § 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 11, 2009"- (6) sheets; and "Received May 12, 2009"- (1) sheet 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 rear yard of 24'-0";

THAT double-glazed windows with a 35 dBA shall be provided to achieve a 45 dBA interior noise level, as shown 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;

MINUTES

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, May 12, 2009.

276-08-BZ

APPLICANT – Alfonso Duarte, for Kesyl LLC, owner; Beljanski Wellness Center Inc., lessee.

SUBJECT – Application November 12, 2008 – Special Permit (§73-36) to allow a physical culture establishment on the sixth floor in a seven-story office building. The proposal is contrary to ZR §32-10. C5-2 district.

PREMISES AFFECTED – 150 East 55th Street, south side, 155' east of Lexington Avenue, Block 1309, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Alfonso Duarte.

For Opposition: Alan Jaskowitz

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 9, 2009, at 1:30 P.M., for decision, hearing closed.

297-08-BZ

APPLICANT – Lewis E. Garfinkel, for Itzhak Bardror, owner.

SUBJECT – Application December 4, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141(a)); and less than the required rear yard (§23-47) in an R2 zoning district.

PREMISES AFFECTED – 3496 Bedford Avenue, between Avenue M and Avenue N, Block 7660, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik and Lewis E. Garfindel.

For Opposition: Stuart A. Klein, Sam Trencher, Lea Fuch and Marcus Fuchs.

ACTION OF THE BOARD – Laid over to June 23, 2009, at 1:30 P.M., for continued hearing.

308-08-BZ

APPLICANT – Davidoff Malito & Hutcher, LLP, for 201 East 67 LLC, owner; MonQi Fitness, lessee.

SUBJECT – Application October 17, 2008 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment located on the third through fifth floors in a five-story building. The proposal is contrary to ZR §32-00. C1-9 district.

PREMISES AFFECTED – 201 East 67th Street, northeast corner of the intersection of Third Avenue and East 67th Street, Block 1422, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to May 19, 2009, at 1:30 P.M., for deferred decision.

1-09-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 39-01 QB LLC c/o Rhodes Management, owner; TSI Sunnyside LLC dba New York Sports Club, lessee.

SUBJECT – Application January 2, 2009 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment on a portion of the ground floor in a three-story building. The proposal is contrary to ZR §42-00. M1-4 district.

PREMISES AFFECTED – 39-01 Queens Boulevard, northerly side of Queens Boulevard, easterly of 39th Street, Block 191, Lot 5, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to May 19, 2009, at 1:30 P.M., for deferred decision.

10-09-BZ

APPLICANT – Francis R. Angelino, Esq., for Religious Org. Tenseishinbikai USA, Inc., owner.

SUBJECT – Application January 23, 2009 – Variance pursuant to § 72-21 to allow a community facility use (house of worship), contrary to front yard regulations, §24-34. R3-2 District.

PREMISES AFFECTED – 2307 Farragut Road/583 East 23rd Street, north east corner of Farragut Road and East 23rd Street, Block 5223, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Francis R. Angelino, Esq., Omar Walrond, Michiyo Ishikawa, Joseph Tarella, Andy Choi, Fank Fortino and David Leffler.

For Opposition: Richard Silverman, ? Warren Dingott, Russell Bracher, Kyle Christopher, Cecil Riley and Julianne Hirsh.

ACTION OF THE BOARD – Laid over to June 9, 2009, at 1:30 P.M., for continued hearing.

MINUTES

17-09-BZ

APPLICANT – MetroPCS New York, LLC, for Pearl Beverly, LLC, owner; MetroPCS New York, LLC, lessee.
SUBJECT – Application February 4, 2009 – Special Permit (§73-03 & §73-30) to allow a non-accessory radio facility and all accessory equipment.

PREMISES AFFECTED – 5421 Beverly Road, northside of Beverly Road, between East 54th and East 55th Street, Block 4739, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #17BK

APPEARANCES –

For Applicant: Steven Mark.

For Opposition: Angel Stewart.

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 16, 2009, at 1:30 P.M., for decision, hearing closed.

21-09-BZ

APPLICANT – MetroPCS New York, LLC, for Braddock Avenue Owners, Inc., owner; MetroPCS New York, LLC, lessee.

SUBJECT – Application February 10, 2009 – Special Permit (§73-03 & §73-30) to allow a non-accessory radio facility on the rooftop of the existing building.

PREMISES AFFECTED – 222-89 Braddock Avenue, north west corner of Braddock Avenue and Ransom Street, Block 7968, Lot 31, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Steven Mark.

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 16, 2009, at 1:30 P.M., for decision, hearing closed.

35-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for East 103rd Street Realty LLC c/o Glenwood Management Corporation, owner.

SUBJECT – Application March 2, 2009 – Special Permit filed pursuant to §11-411 & §11-412 of the New York City Zoning Resolution to renew for an additional ten (10) years and to extend a use district exception previously granted pursuant to Section 7(e) of the pre-1961 Zoning Resolution, allowing the use of the ground floor of a two-story building located in an R7A zoning district as a contractors' establishment (Use Group 16).

PREMISES AFFECTED – 345-347 East 103rd Street, for

North side of East 103rd Street between First and York Avenues, Block 1675, Lot 21, 22, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: James P. Powel and Gary 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 June 9, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: 3:30P.M.

BULLETIN

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New Case Filed Up to May 19, 2009

171-09-BZ

325 Fifth Avenue, Beginning on the easterly side of 5th Avenue, 64.3 ft. from the corner of East 32nd and 5th., Block 862, Lot(s) 7503, Borough of **Manhattan, Community Board: 5.** Special Permit (73-36) to allow the legalization of a physical culture establishment on a portion of the first floor in an existing 42-story mixed-use building. The proposal is contrary to section 32-10. C5-2 district.

172-09-A

10 Gotham Walk, West side of Gotham Walk 105.46' south of mapped Oceanside Avenue., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14.** Reconstruction and enlargement of an existing single family dwelling not fronting on a legally mapped street contrary to General City Law Section 36 The proposed upgrade of the existing non complying private disposal located partly in the bed of the service road is contrary to Department of Building Policy. R4 zoning district.

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

CALENDAR

JUNE 16, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 16, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

8-96-BZ

APPLICANT – Walter T. Gorman, P.E., for Motiva Enterprises LLC, owner; Shell Service Station, lessee.
SUBJECT – Application April 20, 2009 – Extension of Term for a Gasoline Service Station (Shell), located in an C2-2/R3-2 zoning district, which expired on July 16, 2006; Extension of Time/waiver to obtain a Certificate of Occupancy which expired on July 16, 2000 and an Amendment to legalize modification to the building which does not comply with previously approved plans.

PREMISES AFFECTED – 175-22 Horace Harding Expressway, southwest corner of Utopia Parkway, Block 6891, Lot 32, Borough of Queens.

COMMUNITY BOARD #8Q

174-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Phillip Pollicina, owner.

SUBJECT – Application June 19, 2008 – Extension of term and Waiver for a previously granted variance pursuant to §72-21. The application seeks the authorization to continue operation of an existing food products manufacturing establishment (Use Group 17B) within a R4 zoning district. The most recent term expired on July 1, 2007.

PREMISES AFFECTED – 1108/10 Allerton Avenue, South side of Allerton Avenue between Laconia Avenue and Yates Avenue. Block 4456, Lot 47, Borough of the Bronx.

COMMUNITY BOARD #11BX

55-97-BZ

APPLICANT – Sheldon Lobel, P.C. for Baker Tripi Realty, owner.

SUBJECT – Application March 18, 2009 – Extension of term filed pursuant to §11-411 of the Zoning Resolution requesting an extension of the term of a variance perviously granted by the Board of Standards and Appeals and an extension of time to obtain a certificate of occupancy allowing the continued operation of an automotive repair shop (Use Group 16) located in a C2-2/R3-2 zoning district. The previous term expired on September 23, 2007.

PREMISES AFFECTED – 76-36 164th Street, southwest corner of the intersection formed by 164th Street and 76th Road. Block 6848, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEALS CALENDAR

83-08-A

APPLICANT – NYC Department of Buildings, for H. Patel, P.M. – Purvi Enterprises, LLC, owner.

SUBJECT – Application April 9, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 301279319 issued on January 17, 2007 as it was issued in error due to failure to comply with ZR §62-711 requiring waterfront certification and the failure to comply with ZR §12-10(d) in the formation of the zoning lot R5 SP Sheepshead Bay District.

PREMISES AFFECTED – 3218 Emmons Avenue, Emmons Avenue between Bringham Street, and Bragg Street, Block 8815, Lot 590, Borough of Brooklyn.

COMMUNITY BOARD #15BK

4-09-A

APPLICANT – NYC Department of Buildings
OWNER OF RECORD – 27-00 Queens Plaza South, LLC.

SUBJECT – Application January 13, 2009 – An appeal filed by the Department of Buildings seeking to amend the Certificate of Occupancy No. 400872631 issued on June 17, 1999 to remove the reference to "Adult " Establishment use on the second floor. M1-6/R-10 Special Mixed Use.

PREMISES AFFECTED – 27-02 Queens Plaza South, southeast corner of Queens Plaza South and 27th Street, Block 422, Lot 9, Borough of Queens.

COMMUNITY BOARD #1Q

163-09-A

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Joseph Lind, lessee.

SUBJECT – Application April 27, 2009 – Proposed reconstruction and enlargement of an existing single family home not fronting on a official mapped street contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 115 Beach 220th Street, east side of Beach 220th Street (unmapped street) south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

JUNE 16, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 16, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

288-08-BZ

APPLICANT – Jeffrey Geary, for Vincent Passarelli, owner; Roland Costanzo, lessee.
SUBJECT – Application November 21, 2008 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (Costanzo's Martial Arts Studio) on the second floor of a two-story commercial building. The proposal is contrary to ZR §42-10. M1-1 district.
PREMISES AFFECTED – 2955 Veterans Road West, Cross Streets, Tyrellian Avenue and West Shore Parkway, Block 7511, Lot 1, Borough of Staten Island.
COMMUNITY BOARD #1SI

13-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for 5621 21st Avenue LLC, for Congregation Tehilos Yitzchok, owner.
SUBJECT – Application January 26, 2009 – Variance (§72-21) to permit a synagogue contrary to bulk regulations ZR §24-34, §24-35, §24-11. R5 District.
PREMISES AFFECTED – 5611 21st Avenue, east side 95'-8" north of intersection of 21st Avenue and 57th Street, Block 5495, Lot 430, Borough of Brooklyn.
COMMUNITY BOARD #12BK

15-09-BZ

APPLICANT – Francis R. Angelino, Esq., for Lafayette Astor Associates, LLC, owner; David Barton Gym, lessee.
SUBJECT – Application February 3, 2009 – Special Permit (§73-36) to allow a physical culture establishment on portions of the sub-cellar, cellar and ground floors and the entire second floor in an existing seven-story commercial building. The proposal is contrary to ZR §42-10. M1-5B district.
PREMISES AFFECTED – 8-10 Astor Place, south side between Broadway and Lafayette Street, Block 545, Lot 3, Borough of Manhattan.
COMMUNITY BOARD #2M

36-09-BZ

APPLICANT – MetroPCS New York, LLC, for Milford House, LLC, owner; MetroPCS New York, lessee.
SUBJECT – Application March 3, 2009 – Special Permit (§§73-03, 73-30) to allow a non-accessory radio tower on the rooftop of an existing building with all accessory equipment.
PREMISES AFFECTED – 53-01 32nd Avenue, north side of 32nd Avenue between 51st Street and 54th Street, Block 1131, Lot 1, Borough of Queens.
COMMUNITY BOARD #1Q

52-09-BZ

APPLICANT – Dennis Dell'Angelo, for Yehuda A. Lieberman, owner.
SUBJECT – Application April 6, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141) and less than the required rear yard (§23-47) in an R-2 zoning district.
PREMISES AFFECTED – 1438 East 26th Street, west side of East 26th Street, between Avenue H and Avenue O, Block 7679, Lot 66, Borough of Brooklyn.
COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, MAY 19, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

727-86-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Suco Selimaj, owner.

SUBJECT – Application January 24, 2009 – Extension of Term of a previously granted Variance (§72-21) to allow an eating and drinking establishment (UG6) at the cellar, basement and first floor of a three story building in an R8B zoning district which expired on January 17, 2009.

PREMISES AFFECTED – 240 East 58th Street, south side of East 58th Street, 140’ west of Second Avenue, Block 1331, Lot 30, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, 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 permitting the operation of an eating and drinking establishment (Use Group 6) at the cellar, basement and first floor of a three-story mixed-use commercial/residential building, which expired on January 17, 2009; and

WHEREAS, a public hearing was held on this application on April 28, 2009 after due notice by publication in *The City Record*, and then to decision on May 19, 2009; 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 site is located on the south side of East 58th Street, between Second Avenue and Third Avenue, within an R8B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 17, 1989 when, under the subject calendar number, the Board granted a variance to permit an eating and drinking establishment at the cellar, basement and first floor of a three-story mixed-use commercial/residential

building, to expire on January 17, 1999; and

WHEREAS, on August 7, 2001, the grant was extended for a term of ten years from the expiration of the prior grant, to expire on January 17, 2009; and

WHEREAS, the applicant now requests an additional ten-year 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 January 17, 1999, so that as amended this portion of the resolution shall read: “to extend the term for ten years from January 17, 2009, to expire on January 17, 2019, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received January 27, 2009”-(2) sheets; and *on further condition*:

THAT the term of this grant shall expire on January 17, 2019;

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

THAT a new certificate of occupancy shall be obtained by November 19, 2009;

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.” (Alt. No. 1284/85)

Adopted by the Board of Standards and Appeals, May 19, 2009.

185-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Raymond Chakkalo, owner.

SUBJECT – Application March 23, 2009 – Extension of Time/waiver to complete construction of a previously granted Special Permit (§73-622) for the enlargement of an existing home in an R4 (Special Ocean Parkway) district which expired on January 11, 2009.

PREMISES AFFECTED – 2275 East 2nd Street, east side of 2nd Street, between Avenue W and Gravesend Neck Road, Block 7154, Lot 64, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Josh Rinesmtih.

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 waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction of an enlargement of an existing two-family home, which expired on January 11, 2009; and

WHEREAS, a public hearing was held on this application on April 28, 2009, after due notice by publication in *The City Record*, and then to decision on May 19, 2009; and

WHEREAS, the subject site is located on the east side of East 2nd Street, between Avenue W and Gravesend Neck Road, in an R4 zoning district within the Special Ocean Parkway District; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 11, 2005 when, under the subject calendar number, the Board granted a special permit to permit the enlargement of an existing two-family home, which resulted in non-compliances as to floor area, lot coverage, rear and side yards; and

WHEREAS, substantial construction was to be completed by January 11, 2009, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that construction was delayed at the site due to litigation that has since been settled; 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 *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated January 11, 2005, 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 three years from the expiration of the previous grant, to expire on January 11, 2012; *on condition*:

THAT substantial construction shall be completed by January 11, 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. 301664982)

Adopted by the Board of Standards and Appeals, May 19, 2009.

5-98-BZ

APPLICANT – Maxfield Blaubeux & Heywood Balaubeux, for Priority Landscaping Incorporated, owner.

SUBJECT – Application March 13, 2009 – Extension of Term of a previously granted Variance (§72-21) for a garden supply sales and nursery establishment (UG17) with accessory parking and storage in an R5 zoning district which expired on February 23, 2009.

PREMISES AFFECTED – 1861 McDonald Avenue, east side 200’ north of Quentin Road, Block 6633, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Heywood Blaubeux.

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 9, 2009, at 10 A.M., for decision, hearing closed.

336-98-BZ & 337-98-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP for 312 Flatbush Avenue LLC, owner; AGT Crunch, lessee.

SUBJECT – Application December 31, 2008 – Application filed pursuant to §73-11to Extend the term of a special permit granted pursuant to §73-36 authorizing a physical culture establishment (PCE) (Crunch Fitness), extend the PCE to include additional area in the cellar and on the first floor, permit a change in operator and extend the time to obtain a certificate of occupancy. The subject site is located in a C2-4 zoning district.

PREMISES AFFECTED – 312/18 and 324/34 Flatbush Avenue, 157’ west of the northwest corner of the intersection of Flatbush Avenue and Sterling Place, Block 1057, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 10 A.M., for an adjourned hearing.

165-93-BZ

APPLICANT – Francis R. Angelino, Esq., for Claudia Stone & Goran Sare, owners.

SUBJECT – Application April 3, 2009 – Extension of Term of a previously granted Variance (§72-21) for a UG6 art gallery on the first floor of an existing three story and cellar mixed use front building in an R8B zoning district which expired on April 12, 2009.

PREMISES AFFECTED – 113 East 90th Street, between Park and Lexington Avenues, Block 1519, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Francis R. Angelino and Claudia Stone.

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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 16, 2009, at 10 A.M., for decision, hearing closed.

68-94-BZ

APPLICANT – Cozen O’Connor for Bay Plaza Community Center LLC, owner; Jack Lalanne Fitness Centers, Incorporated, lessee.

SUBJECT – Application August 14, 2008 – Extension of Time to obtain a Certificate of Occupancy for a previously granted special for the operation of a PCE (Bally's Total Fitness) on the first and second floors of the Co-Op City Bay Plaza Shopping Center, located in an C4-3 zoning district, which expired on April 7, 2009.

PREMISES AFFECTED – 2100 Bartow Avenue, south side of Baychester Avenue, Block 5141, Lot 810, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Barbara Hair.

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 16, 2009, at 10 A.M., for decision, hearing closed.

7-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for HKAL 34th Street Limited Partnership, owner; TSI East 34 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application February 9, 2009 – Extension of Term of a previously granted Special Permit for the operation of Physical Culture Establishment (New York Sports Club (NYSC)), located in a C1-9 (TA) zoning district, which expired on January 11, 2009.

PREMISES AFFECTED – 300 East 34th Street, southeast corner of East 34th Street, and Second Avenue, Block 939, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to June 9, 2009, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

267-08-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Robert & Mary Baldrian, owners. SUBJECT – Application October 31, 2008 – Proposed reconstruction and enlargement of an existing single family home located within the bed of a mapped street (Oceanside Avenue) contrary to General City Law Section 35 and does not front a mapped street contrary to General City Law Section 36 with a private disposal system located within the bed of the service road contrary to Department of Buildings policy. R4 zoning district

PREMISES AFFECTED – 2 Devon Walk, east side of Devon Walk, 24’ south of paved Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO 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, 2008, and acting on Department of Buildings Application No. 410159634 reads, in pertinent part:

“A1- 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, Sect. 35 of the General City Law.

A2- The site and building is not fronting on an official mapped street, therefore no permit or certificate of occupancy can be issued as per Art 3, Sect. 36 of the General City Law; also no permit can be issued since 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;” and

A3- The private disposal system is in the bed of a proposed mapped street and in the bed of a private service road which is contrary to Department of Buildings’ policy;” and

WHEREAS, a public hearing was held on this application on April 28, 2009, after due notice by publication in the *City Record*, with a continued hearing on May 19, 2009, then to closure and decision on the same date; and

WHEREAS, by letter dated December 19, 2008, the Fire Department states that it has reviewed the subject proposal and

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has no objections; and

WHEREAS, by letter dated March 2, 2009, the Department of Environmental Protection (“DEP”) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated April 28, 2009, 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 December 22, 2008, acting on Department of Buildings Application No. 410159634, is modified by the power vested in the Board by Sections 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 October 30, 2008” – 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, May 19, 2009.

277-08-BZY thru 287-08-BZY

APPLICANT – Eric Palatnik, P.C., for Opal Builders, LLC, owner.

SUBJECT – Application November 19, 2008 – Extension of time to complete construction (§11-332) and obtain a Certificate of Occupancy of a minor development commenced prior to the text amendment of the zoning district regulations. R3-X SSRDD (Area LL).

PREMISES AFFECTED – 23, 26, 27, 35, 39, 43, 47, 55, 59, and 63 Opal Lane, bounded Idaho Avenue, Bloomingdale Road and Amboy Road, Block 6993, Lot 20, 4,19,18,17,16,15,14,12,11,10, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES – None.

ACTION OF THE BOARD – Application granted.

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 of a minor development and obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on March 31, 2009, after due notice by publication in *The City Record*, with a continued hearing on April 28, 2009, and then to decision on May 19, 2009; 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, with conditions; and

WHEREAS, the subject premises are located on Opal Lane, between Idaho Avenue and Bloomingdale Road, within an R3X zoning district; and

WHEREAS, the instant project consists of a 22-unit development of two-family homes (the “development”); and

WHEREAS, the instant application concerns 11 units respectively located at 23 Opal Lane (Lot 20), 26 Opal Lane (Lot 4), 27 Opal Lane (Lot 19), 31 Opal Lane (Lot 18), 35 Opal Lane (Lot 17), 39 Opal Lane (Lot 16), 43 Opal Lane (Lot 15), 47 Opal Lane (Lot 14), 55 Opal Lane (Lot 12), 59 Opal Lane (Lot 11) and 63 Opal Lane (Lot 10); and

WHEREAS, the Board notes that the development includes an additional 11 completed units, respectively located at 14 Opal Lane (Lot 1), 15 Opal Lane (Lot 22), 18 Opal Lane (Lot 2), 19 Opal Lane (Lot 21), 22 Opal Lane (Lot 3), 30 Opal Lane (Lot 5), 34 Opal Lane (Lot 6), 38 Opal Lane (Lot 7), 42 Opal Lane (Lot 8), 51 Opal Lane (Lot 13), and 67 Opal Lane (Lot 9) (the “11 completed units”); and

WHEREAS, on November 15, 2006 (hereinafter, the “Enactment Date”), the City Council voted to adopt additional amendments associated with the Special South Richmond Development District (“SSRDD”) text amendments, including the creation of “Special Area LL,” which modified the SSRDD regulations; and

WHEREAS, before the enactment date, the development complied with all relevant zoning district regulations, specifically a 40’-0” minimum lot width; and

WHEREAS, the new Special Area LL text increases the required minimum lot width to 50’-0”; as a result, the subject development does not comply with the required lot width; and

WHEREAS, as of the Enactment Date, the applicant had obtained permits for the entire development and had completed 100 percent of the foundations, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (“DOB”) to determine that construction may continue under such circumstances; and

WHEREAS, however, ZR § 11-331 imposes a two-year deadline to complete construction and obtain a certificate of occupancy; and

WHEREAS, accordingly, because the two-year time limit has expired and construction is not completed, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets

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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 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: “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; the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes “complete plans and specifications” as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permits for the proposed development were lawfully issued to the owner by DOB prior to the Enactment Date: Permit Nos. 500319470-01-NB and 500319318-01-NB, 500319461-01-NB, 500319452-01-NB, 500319443-01-NB, 500319434-01-NB, 500319425-01-NB, 500319416-01-NB, 500319390-01-NB, 500319381-01-NB, and 500319372-01-NB, (hereinafter, the “New Building Permits”); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permits were lawfully issued to the owner of the subject premises prior to the Enactment Date and were 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, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permits, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the Board notes that the total development budget for this project includes the expense of construction of the 11 completed homes, and that the instant application concerns only the remaining 11 homes of the 22-unit development, which are at various levels of completion; thus, the amount of construction that has been completed and the amount of expenditures incurred by the applicant is evaluated in the context of the entire development; and

WHEREAS, the applicant states that, in addition to the work on the 11 completed homes, the owner has completed all of the foundation work, framing, windows, exterior doors, plumbing, electric, HVAC, roofing and gutters of the units located at 23 Opal Lane (Lot 20) and 26 Opal Lane (Lot 4); and

WHEREAS, the applicant further states that all the foundation work and roof framing, and approximately 80 percent of the exterior and interior wall framing has been completed on the units located at 27 Opal Lane (Lot 19) and 39 Opal Lane (Lot 16); and

WHEREAS, the applicant further states that foundation work has been completed on the seven remaining units respectively located at 31 Opal Lane (Lot 18), 35 Opal Lane (Lot 17), 43 Opal Lane (Lot 15), 47 Opal Lane (Lot 14), 55 Opal Lane (Lot 12), 59 Opal Lane (Lot 11), and 63 Opal Lane (Lot 10); and

WHEREAS, in support of the amount of work completed the applicant has submitted the following: photographs of the site, an affidavit from the developer, and financial records; and

WHEREAS, the Board has reviewed all the documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits and prior to November 15, 2008, when the permits lapsed by operation of law; and

WHEREAS, as to costs, the applicant represents that

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the construction expenditures attributable to the entire 22-unit development total approximately \$3,817,772, or 72 percent, of the \$5,280,000 cost to complete; and

WHEREAS, as noted, the applicant has submitted financial records in support of the stated expenditures; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the required finding of ZR § 11-332; and

WHEREAS, in response to concerns raised by the community board, the applicant has secured all open foundations with fencing and taken measures to prevent mosquito infestation; and

WHEREAS, based upon its review of all the submitted evidence and its observations made during its site visits, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the sites a two-year extension of time to complete construction and obtain a certificate of occupancy, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Permit Nos. 500319470-01-NB and 500319318-01-NB, 500319461-01-NB, 500319452-01-NB, 500319443-01-NB, 500319434-01-NB, 500319425-01-NB, 500319416-01-NB, 500319390-01-NB, 500319381-01-NB, and 500319372-01-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 19, 2011.

Adopted by the Board of Standards and Appeals, May 19, 2009.

311-08-BZY

APPLICANT – Slater & Beckerman, LLP, for D.A.B. Group LLC, owner.

SUBJECT – Application December 18, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the Zoning district regulations. C4-4A.

PREMISES AFFECTED – 77, 79 & 81 Rivington Street, Block 415, Lots 61, 62, 63, 66, 67, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Neil Weisbard and Daniel Bossa.

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 16, 2009, at 10 A.M., for decision, hearing closed.

32-09-BZY thru 34-09-BZY

APPLICANT – William Alicea for Treadwell LLC, owner.
SUBJECT – Application February 27, 2009 – Extension of time to complete construction (§11-332) and obtain a Certificate of Occupancy of a major development commenced prior to the text amendment of the zoning district regulations. R3A.

PREMISES AFFECTED – 122, 124 & 126 Treadwell Avenue, southwest corner of Treadwell Avenue and Harrison Avenue, Block 1088, Lot 49, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: William Alicea.

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 9, 2009, at 10 A.M., for decision, hearing closed.

313-08-A

APPLICANT – Howard Goldman , LLC & Berger & Kramer , LLP for Chuck Close, for Proprietary Lessee of Studio and Basement Cooperative at 20 Bond Street , lessee.
SUBJECT – Application December 22, 2008 – Appeal seeking to revoke permits and approvals for a six story commercial building that violates the Building Code and Zoning Resolution. M1-5B zoning district.

PREMISES AFFECTED – 363-371 Lafayette Street, east side of Lafayette Street between Great Jones and Bond Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Caroline Harris, Gustavo Luchsinger, Chuck Close, Zella Jones and Peter Voledsky.

For Opposition: Lisa Orrantia and Judy Gallent.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 10 A.M., for continued hearing.

317-08-A

APPLICANT – Margaret R. Garcia, AIA, for Block 17 Lot 112 LLC, owner.

SUBJECT – Application December 23, 2009 – Proposed construction of a four story dwelling located within the bed of a mapped street contrary to General City Law Section 35. R5 Zoning District.

PREMISES AFFECTED – 124 Montgomery Avenue, west side of Montgomery Avenue, 140’ north of Victory Boulevard, Block 17, Lot 112, Borough of Staten Island.

COMMUNITY BOARD #1SI

MINUTES

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 10 A.M., for postponed hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

**REGULAR MEETING
TUESDAY AFTERNOON, MAY 19, 2009
1:30 P.M.**

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

ZONING CALENDAR

45-08-BZ

APPLICANT – Rampulla Associates Architects, for 65 Androvette Street, LLC, owner.

SUBJECT – Application February 29, 2008 – Variance (§72-21) to construct a four-story, 108 unit age restricted residential building contrary to use regulations (§42-00, §107-49). M1-1 District / Special South Richmond Development District.

PREMISES AFFECTED – 55 Androvette Street, north side Androvette Street, corner of Manley Street, Block 7407, Lots 1, 80, 82, (Tent. 1), Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Phil L. 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 decision of the Staten Island Borough Commissioner, dated February 1, 2008, acting on Department of Buildings Application No. 510006814, reads in pertinent part:

“A mixed use three story building is proposed with community facility located at cellar and residential use at first, second and third floor. Community facility with zoning use group 3 only permitted in M1-1 district while no residential use is permitted within the zoning district. ZR 41-11, 42-00.” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-1 zoning district in Special Area M of the Special South Richmond Development District, a three-story residential building restricted to persons aged 55 and older

(U.G. 2), with 81 dwelling units, cellar-level community facility use, and 81 accessory parking spaces, which is contrary to ZR §§ 41-11 and 42-00; and

WHEREAS, a public hearing was held on this application on December 9, 2008, after due notice by publication in the *City Record*, with continued hearings on February 3, 2009, March 3, 2009, and April 7, 2009, and then to decision on May 19, 2009; and

WHEREAS, the hearing was reopened on May 19, 2009 to allow a submission by the applicant, and then to decision; 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, Staten Island, recommends approval of the application; and

WHEREAS, State Senator Andrew J. Lanza provided a letter recommending approval of the application; and

WHEREAS, a representative of the Tides of Charleston Homeowners Association testified in support of the application; and

WHEREAS, State Senator Andrew J. Lanza provided a letter recommending approval of the application; and

WHEREAS, City Council Member Vincent M. Ignizio provided a letter recommending disapproval of the application; and

WHEREAS, representatives from the Staten Island Taxpayers’ Association (the “Opposition”) and other members of the public testified at hearing and made submissions to the record in opposition to the application; the arguments made by the Opposition related to the required findings for a variance, and are addressed below; and

WHEREAS, the subject premises is located on the north side of Androvette Street at the corner of Manley Street, and has 124,896 sq. ft. of lot area; and

WHEREAS, the site is located within an M1-1 zoning district within Special Area M of the Special South Richmond Development District and is occupied by three single-family homes that will be demolished; and

WHEREAS, the M1-1 zoning district does not allow residential development as-of-right; and

WHEREAS, pursuant to ZR Sec 107-69, residential use is allowed pursuant to an authorization from the City Planning Commission and the regulations of an R3X district;

WHEREAS, the applicant initially proposed a four-story, 108-unit age-restricted residential building (U.G.2) with accessory parking for 76 vehicles, a floor area of 101,036 sq. ft. (0.80 FAR), a street wall height of 48’-0” and a total building height of 48’-0”; and

WHEREAS, during the hearing process, the building height, floor area and number of units were reduced and the number of parking spaces were increased; and

WHEREAS, the applicant now proposes a three-story, 81-unit residential building with accessory parking for 81 vehicles, a floor area of 75,952 sq. ft. (0.61 FAR), a street wall height of 39’-0”, and a total building height of 39’-0”, and

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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 lack of sanitary sewers; (2) the narrowness and substandard character of the adjoining roadways; and (3) the site's sloping topography; and

WHEREAS, as to the first argument, the applicant claims that due to a lack of sanitary sewers, the development of the site with a large conforming commercial or manufacturing use would require construction of pump station and a force main within the bed of Arthur Kill Road, Androvette Street and Kreisler Street and a storm sewer in the bed of Androvette Street; and

WHEREAS, an engineering plan submitted by the applicant states that construction of a pump station capable of lifting sewage over 50 feet and transporting it through a pressurized force main is necessary because the nearest NYC interceptor sewer is located in Arthur Kill Road, approximately 2,185 linear feet from the site; and

WHEREAS, engineering plans submitted by the applicant establish the cost of construction of the pump system and force main at between \$726,000 and \$727,500, and the cost of a storm sewer in the bed of Androvette Street at \$2.3 million; and

WHEREAS, the applicant states that the proposed change in use to accommodate an 81-unit residential development is needed to overcome such premium costs; and

WHEREAS, in addition to the expense attributable to the required sanitary system, the applicant states that the site's proximity to a tidal wetland complicates the provision of such a system; and

WHEREAS, a submission by the applicant states that the final 800 feet of the sanitary system will traverse a NYS Department of Environmental Conservation ("DEC") Regulated Tidal Wetland Area which is also regulated by a DEC Storm Water Pollution Prevention Plan; and

WHEREAS, the applicant further states that the DEC must therefore approve a Freshwater Wetlands Adjacent Area Permit to excavate Kreisler Street to install the force main because portions of the street are in the Freshwater Wetland Adjacent Area; and

WHEREAS, the applicant represents that the issuance of the DEC permit will require significant dewatering and treatment of effluent so it can be discharged with minimal disturbance to the tidal wetland, and the worksite and adjacent areas are likely to require protection of a cofferdam; and

WHEREAS, the applicant states that the NYC Department of Environmental Protection ("DEP") and the NYC Department of Health ("DOH") must also approve the installation of the sewer pump station and force main, and that DEP must additionally approve a storm water discharge plan; and

WHEREAS, however, the Board asked the applicant to provide more detailed testimony about this condition; and

WHEREAS, in response, during the course of the hearing process, the applicant provided additional support for the argument that the construction of the proposed sanitary system would have to be undertaken by the owner of the site

and that cost and the burden of constructing such a system is both unusual and extraordinary; and

WHEREAS, to document the necessity of such a system, the applicant submitted a copy of the New York City Storm Water and Sanitary Drainage Management Plan for South Richmond, Staten Island approved by DEP on May 2, 2003 and by DOH on August 11, 2004, indicating a force main and pumping station in the area of the subject site; and

WHEREAS, the applicant notes that a letter dated December 3, 2008 from the District Manager of Staten Island Community Board 3 states that DEP told Board members that there were no plans by the City of New York to build a pump station or sanitary sewer in the area of the subject site "for decades;" and

WHEREAS, the applicant states that the proposed development requires construction of a sanitary force main in city streets because the nearest sanitary sewer is an interceptor sewer located approximately 2,185 linear feet from the subject site and that only a street sewer may be connected to an interceptor sewer; and

WHEREAS, the applicant further states that the construction of a sanitary force main in a city street is highly unusual and that the length of the main from the subject site to the interceptor is extraordinary; and

WHEREAS, to buttress the claimed rarity of such construction, the applicant submitted a July 24, 2006 letter from an engineer originally submitted in connection with BSA Cal. No. 369-05-BZ noting that, out of 152 projects designed by his firm in the previous year, only six projects involved sanitary sewer extension projects in city streets, as compared to 146 internal drainage projects; and

WHEREAS, the applicant additionally provided a September 4, 2007 letter from another engineer, originally submitted in connection with BSA Cal. No. 227-06-BZ, that identified seven developments which involved installations of sanitary sewers; the longest distance by which such a sewer was extended was 950 linear feet and the average distance was 379 linear feet; and

WHEREAS, the applicant concludes that the extension of a sanitary force main for a distance of 2,185 linear feet, in conjunction with the installation of a sanitary pumping station is an extraordinary circumstance that uniquely burdens the subject site; and

WHEREAS, at hearing the Board asked the applicant to establish that the cost of the subject sewer connection is more burdensome than those for similar sites, such as the nearby Tides of Charleston development; and

WHEREAS, in response, a submission by the applicant states that the cost to connect a housing unit to a city sewer generally averages between \$5,000 and \$9,000 per unit; and

WHEREAS, because the cost of the sewer pumping station and force main are estimated at \$727,500, a 22-unit development (as permitted by City Planning Commission authorization) would cost \$33,068 per unit; and

WHEREAS, the applicant represents that 125 units of the nearby Tides of Charleston development are serviced by a sanitary pumping station and a shorter force main, installed at a cost of \$575,000, for a per unit cost of \$4,600; and

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WHEREAS, the applicant further represents that the unit cost for the Tides development was significantly below that of the proposed development because the Tides' site fronts an interceptor sewer and the distance to the force main is half that of the instant proposal, as well as of the economies of scale that result from a larger development; and

WHEREAS, the Board has reviewed the applicant's submissions and agrees that they establish that sewer connection costs for development on the site are unusual due to: (1) the distance to the nearest access point to an existing sewer connection within Arthur Kill Road; (2) the need to install a sanitary pumping station; and (3) the adjacency of Kreisler Street to a Tidal Wetland Area and the consequential need for dewatering and a cofferdam; and

WHEREAS, accordingly, the Board finds that the increased sewer costs contribute to the need for a change from the permitted manufacturing use to the proposed residential use; and

WHEREAS, as to the second claimed basis of uniqueness, the applicant states the site is not suitable for a conforming commercial or industrial development due to its frontage on two substandard streets that are too narrow to accommodate tractor-trailer truck traffic; and

WHEREAS, the subject site has a frontage of 438 feet on Androvette Street and a frontage of approximately 316 feet on Manley Street; and

WHEREAS the applicant states that Androvette Street is recognized in a Corporation Counsel Opinion dated May 21, 1985 as having a width of between 30 and 50 feet and a paved portion with a width of less than 32 feet; and

WHEREAS, the applicant further states that Manley Street is a record street with a width of less than 20 feet which consequently fails to meet New York City Fire Department standards and lacks a final mapped, title vested status; and

WHEREAS, the applicant further states that this condition is unique in that most streets in Staten Island are improved with wider road beds; and

WHEREAS, the applicant represents that the narrow width of both Androvette and Manley Streets precludes access by tractor-trailer trucks, thereby rendering the site infeasible for a conforming use; and

WHEREAS, the applicant further represents that development of the subject site would necessitate the widening and paving of Androvette and Manley Streets to their full mapped width, including the relocation of fire hydrants and telephone poles; and

WHEREAS, at the Board's request, the applicant provided revised drawings indicating the existing edge of pavement and the proposed improvements on Androvette Street and Manley Street; and

WHEREAS, the applicant states that the NYC Department of Transportation must further approve a Builders Pavement Plan for improvements and widening of Manley Street and Androvette Street; and

WHEREAS, the Board has reviewed this testimony, and agrees that the narrowness and substandard condition of Androvette and Manley Streets compromises its conforming commercial and industrial development; and

WHEREAS, as to the third claimed basis of uniqueness, the applicant states that the site has a 34-foot elevation grade change ranging from a low of 30 feet at the southwest corner of the site to a high of 64 feet at the northwest portion of the site; and

WHEREAS, the applicant further states that a portion of the site has a slope of 11 percent and that the center of the site has a slope in excess of 25 percent; and

WHEREAS, the applicant states that construction of a conforming development would require leveling the site to enable trucks to maneuver within it and to be able to provide ADA-compliant parking, necessitating significant excavation and the installation of large costly retaining walls; and

WHEREAS, the Opposition contends that the applicant has failed to establish the uniqueness of the subject site arguing that many sites in the South Shore of Staten Island similarly front unimproved roadways and lack access to sewers; and

WHEREAS, the Board notes that the Opposition failed to provide concrete evidence or data to support its argument concerning the alleged lack of uniqueness of the subject site; and

WHEREAS, the Board further notes that a finding of uniqueness does not require that a given parcel be the only property so burdened by the condition(s) giving rise to the hardship, only that the condition is not so generally applicable as to dictate that the grant of a variance to all similarly situated properties would effect a material change in the district's zoning (see Douglaston Civ. Assn. v. Klein, 51 N.Y.2d 963, 965 (1980)); and

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

WHEREAS, the applicant initially submitted a feasibility study analyzing four scenarios: (1) three commercial buildings with septic systems; (2) three warehouse buildings with septic systems; (3) seven detached one-family residences, utilizing a septic system (which would avoid infrastructure construction costs) (4) 22 single-family detached residences using a sewerage pumping station; and the proposed four-story, 108-unit age restricted multiple dwelling with 81 parking spaces and a floor area of 101,036 sq. ft.; and

WHEREAS, the applicant notes that both of the residential scenarios evaluated would require authorizations by the Department of City Planning and that only the first and second scenarios could be built as-of-right; and

WHEREAS, at hearing, the Board asked the applicant to evaluate a three-story residential development with fewer units and additional parking, and to compare the financial returns generated by both a rental development and a condominium development; and

WHEREAS, the applicant subsequently submitted a revised feasibility study which analyzed the four initial scenarios as well as a fifth scenario for a three-story, 81-unit age-restricted multiple dwelling with 76 parking spaces and a floor area of 99,658 sq. ft.; and

WHEREAS, the applicant found that, because of the

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unique site conditions necessitating the construction of retaining walls, the lack of nearby sanitary sewers, necessitating the construction of a septic system and dry wells or, alternatively, construction of a pump station and force main, and the cost of improvements to Androvette Street and Manley Street, neither the as-of-right nor the lesser residential scenarios realize a reasonable financial return, and that marginal positive returns are generated by the proposed four-story 108-unit residential development and the three-story 81-unit residential alternative; and

WHEREAS, the applicant further stated there was no rental market for the 22-home scenario because the home size is larger than could be supported by the rental market in the area; and

WHEREAS, the Board additionally questioned the calculation of site value, the bases for the adjustments made and the projected financing rates; and

WHEREAS, in response, the applicant explained the bases for its adjustments, revised its analysis to eliminate the subject site and to include comparable sales with lower sales prices, and adopted financing costs confirmed with lending institutions; and

WHEREAS, the applicant additionally provided an analysis of 175 transactions in Staten Island manufacturing zones between 2006 and 2008; and

WHEREAS, the analysis identified 12 sales for properties in manufacturing zones with lot areas exceeding 80,000 sq. ft., of which only one was determined to be comparable to the subject site and to constitute the basis for an estimated market value of \$26.00 per square foot; and

WHEREAS, the Board asked the applicant to evaluate the feasibility of a three-story 81-unit age-restricted development with 76 parking spaces with a site value of \$22 per square foot, which was considered to better reflect the fair market value of the site; and

WHEREAS, the applicant provided a revised financial analysis that found that the revised proposal for a three-story, 81-unit age-restricted residential rental development with 81 parking spaces could realize a modest financial return while the conforming scenarios and the smaller residential projects could not; and

WHEREAS, the Opposition contends that the feasibility analysis did not demonstrate that the site is burdened by a hardship because it failed to demonstrate the infeasibility of the use currently existing on the site and of all alternative permissible uses; and

WHEREAS, the Opposition further argued that a reasonable return could be obtained from a conforming warehouse development or from the development of seven single-family homes using a septic system, and submitted listings of properties for sale in support of the contention; and

WHEREAS, the applicant pointed out that property sales listings cannot establish the value of another property or validate comparable sales because asking prices may not be reflective of the market and submitted an analysis that found that the average selling price of a detached single-family home in 2008 with a list price in excess of \$900,000 was 90 percent below the list price; and

WHEREAS, the applicant further states that the comparables used in the financial feasibility analysis fell within a comparable range to those of Staten Island as a whole – with selling prices that ranged from 82 percent to 85 percent of their list prices before adjustments reflecting the lack of access to a sewer and other physical hardships burdening the subject site; and

WHEREAS, the applicant estimates the cost to construct seven detached single-family homes to be \$9,880,000; and

WHEREAS; the applicant represents that the owner would be unlikely to recoup the development cost of seven single-family detached homes at the subject site because there is a limited market for homes with sales prices greater than \$900,000 in southern Staten Island, as evidenced by annual sales averaging 34 such homes, and that homes selling at higher prices were located in residential areas not characterized by the degree of industrial uses of the subject site; and

WHEREAS, with respect to the sales listings of conforming properties submitted by the Opposition said to be comparable to the subject property, the Applicant states that the property at 4878 Arthur Kill Road is readily distinguishable from the subject site by its location on an arterial street, the 6,657 sq. ft. building occupying the site and the lot area of 12,784 sq. ft., nearly one-tenth the size of the subject site; and

WHEREAS, the applicant further states that the listing of warehouses for sale offers no basis to dispute the analysis of return on equity, particularly because the sales prices of commercial and industrial properties are based on their potential income, while the applicant's feasibility analysis evaluates return on equity as well as income; 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 initially provided a 400-foot radius diagram indicating that the surrounding area is characterized by residential development, as well as a significant amount of open and outdoor space; and

WHEREAS, the applicant states that the subject site adjoins one-family and two-family homes and that the age-restricted Tides of Charleston residential development, consisting of 190 single-family attached homes, is located to the south of the subject site on a 58-acre parcel; and

WHEREAS, the applicant further states that a 113-unit development of senior citizen housing is proposed for a site across Arthur Kill Road; and

WHEREAS, the applicant represents that Clay Pit Pond Park is located immediately to the north and east of the subject site to the south of the site and that the Arthur Kill is located to the west of the site; and

WHEREAS, the applicant states that the proposed

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residential use will not adversely affect existing commercial or residential uses because it is located in close proximity to residential uses and will be set back by 45 feet to 55 feet from its various lot lines; and

WHEREAS, the applicant further states that an FAR of 0.60 is permitted in the adjacent R3-X zoning district; and

WHEREAS, at hearing and in submissions to the Board, the Opposition contended that the proposed residential use is inconsistent with the predominantly commercial and industrial context of the surrounding area; and

WHEREAS, the Opposition additionally contended that the character of the surrounding area was misrepresented by the applicant, because although half the lots are occupied with residential uses, the lot area typically occupied by conforming uses is substantially larger than that of the one-story and two-story homes that constitute the characteristic residential uses in the area; and

WHEREAS, in response to a request by the Board, the applicant submitted a revised map of the land uses surrounding the subject site which specifically identifies automotive repair facilities, community facilities and commercial uses, and distinguishes between uses that are permissible in residential zoning districts and those that are restricted to manufacturing districts; and

WHEREAS, the applicant further states that the immediate area surrounding the subject site has no Use Group 18 industrial uses and the block on which the site is located is occupied by ten existing homes; and

WHEREAS, the applicant initially proposed a four-story building with a total height of 48'-0"; and

WHEREAS, at hearing, the Opposition raised concerns that the height of the proposed building would be incompatible with the context of the surrounding area which is largely characterized by one-story and two-story buildings; and

WHEREAS, during the hearing process, the Board asked the applicant to explore the feasibility of reducing the building height to make the height of the building more compatible with the context of the surrounding area; and

WHEREAS, at hearing, the Board also questioned whether the 76 parking spaces initially proposed would be sufficient to satisfy the parking demand for proposed development; and

WHEREAS, in response, the applicant reduced the number of stories from four to three, thereby resulting in a nine-foot reduction in the building height, reduced the number of units from 108 to 81, and increased the number of parking spaces to 81, thereby providing a parking space for each unit in the development; and

WHEREAS, to reduce the amount of pervious area and increase the amount of landscaped area, the applicant relocated 24 parking spaces to a portion of the cellar; and

WHEREAS, the applicant states that visual impact of the building height and the pumping station would be moderated by the variance in grade of the subject site at Manley Street, and that the pumping station would be screened, and

WHEREAS, the applicant represents that the

construction of a pump station with excess capacity will be asset for the surrounding area; and

WHEREAS, at hearing the Opposition testified that the Oakwood Beach Sewer Sewage Treatment Plan was at capacity and could not accommodate sewage generated by the proposed development; and

WHEREAS, the applicant represents that the proposed development is projected to generate 14,560 gallons of waste water daily and a letter submitted by an engineering consultant states that the dry weather rated capacity of the Oakwood Beach Sewage Treatment Plant is 39.6 million gallons per day and that the plant is operating at 60 percent of its rated capacity; and

WHEREAS, the applicant concludes that the sewage generated by the proposed development would represent approximately 0.00036 percent of the permitted flow rate of the Oakwood Beach Water Pollution Control Plant; therefore, the plant has sufficient excess capacity to handle the sewage generated by the proposed development; and

WHEREAS, based upon its review of submitted maps and photographs and its inspection, the Board agrees that the proposed building's use, height, bulk and design are compatible with that of other buildings in the neighborhood; and

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

WHEREAS, the applicant states that the hardship herein was not created by the owner or a predecessor in title, but is due to the unique conditions of the lot; and

WHEREAS, the Opposition contends that the applicant's hardship is instead created by its purchase of the subject site with knowledge of the restrictions on its development; and

WHEREAS, the Board notes that the purchase of a zoning lot subject to the restriction sought be varied is specifically not a self-created hardship under ZR § 72-21(d); 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 subject site; and

WHEREAS, during the hearing process, the applicant reduced the building height and number of units, and increased the number of parking spaces and relocated 24 spaces to the cellar level; and

WHEREAS, the applicant asserts, and the Board agrees, that the waiver associated with the proposed building represents the minimum variance; and

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; 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, CEQR No. 09BSA103R, dated March 16, 2009; 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, the New York City Landmarks Preservation Commission (“LPC”) review of archaeological sensitivity models and historic maps indicates a potential for the recovery of remains from 19th Century and Native American occupation on the subject site; and

WHEREAS, accordingly, the applicant has agreed to conduct an archaeological documentary study to clarify these initial findings and to adhere to all requirements for archaeological identification, investigation and mitigation, pursuant to a Restrictive Declaration (“RD”) executed on March 11, 2009 and recorded against the subject property on March 16, 2009; and

WHEREAS, the New York City Department of Environmental Protection (“DEP”) Office of Environmental Planning and Assessment has evaluated the following submissions from the Applicant: (1) a June 2008 EAS; (2) a June 2008 Phase I Environmental Site Assessment Report; (3) an October 2008 Phase II Workplan; and (4) the December 2008 Health and Safety Plan; and

WHEREAS, the June 2008 EAS and a June 2008 Phase I Environmental Site Assessment Report specifically examined the proposed action for Hazardous Materials; and

WHEREAS, the applicant has agreed to implement hazardous materials remediation pursuant to a Restrictive Declaration (“RD”) executed on March 11, 2009 and recorded against the subject property on March 16, 2009; and

WHEREAS, DEP has approved the Phase II Workplan and the Health and Safety Plan; and

WHEREAS, upon completion of the subsurface investigation activities, the applicant must submit a detailed Phase II investigation report to DEP 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, 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 M1-1 zoning district within Special Area M of the Special South Richmond Development District, a three-story residential building (UG 2) restricted to adults aged 55 and over, with 81 dwelling units, cellar-level community facility use, and 81 accessory parking spaces, contrary to ZR §§ 41-11 and 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 18, 2009”–seven (7) sheets; and *on further condition*:

THAT the following shall be the parameters of the proposed building: a floor area of 75,952 sq. ft. (0.61 FAR), a street wall height of 39’-0”, and a total building height of 39’-0”;

THAT the occupancy of the building shall be limited to persons 55 years of age or older, in accordance with applicable provisions of the Housing for Older Persons Act requirements;

THAT all other Housing for Older Persons Act requirements shall be complied with for the life of the proposed building;

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

THAT a Builder’s Pavement Plan shall be filed and approved by DOT prior to the issuance of a building permit;

THAT administrative certifications shall be obtained from the City Planning Commission as required by ZR §§ 107-64 (removal of trees), 107-65 (modification of topography) and 107-23 (school seats) prior to the issuance of a building permit;

THAT the issuance of a building permit shall be conditioned on securing approval by DOH of a sewer pump station and force main and by DEP of the latter as well as of a storm water discharge plan;

THAT issuance of a building permit shall be conditioned on the issuance by DEC of a Freshwater Wetlands Adjacent Area Permit for the exaction of Kreisler Street;

THAT 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 Project, the applicant or its successor shall be conditioned on the issuance of Notices to Proceed from the LPC and DEP;

THAT the issuance of any building permit for further construction on the subject site shall be conditioned on the securing of a Notice of Objection or a Notice of Satisfaction from DEP, as applicable, and either a Notice of No Objection after field Work, or a Notice of No Objection, as applicable, from the LPC;

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

THAT the issuance of a temporary Certificate of Occupancy shall be conditioned on the issuance of a Final Notice of Satisfaction by the LPC and a Notice of Satisfaction from DEP;

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

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accordance with the requirements of 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; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant 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 19, 2009.

246-08-BZ

CEQR #09-BSA-031X

APPLICANT – Slater & Beckerman, LLP, for St. Barnabas Hospital, owner.

SUBJECT – Application October 3, 2008 – Special Permits pursuant to §73-481 and §73-49 to allow for the construction of a five story parking garage and rooftop parking and Variance pursuant to §72-21 to allow for an accessory sign contrary to §22-331 and §22-342. R7-1 District.

PREMISES AFFECTED – 4400 Third Avenue, block bounded by Third Avenue and East 184th Street, Quarry Road, and East 181st Street, Block 3064, Lot 1, 20 tent 100, Borough of The Bronx.

COMMUNITY BOARD #6BX

APPEARANCES –

For Applicant: Neil Weisband.

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 Bronx Borough Commissioner, dated September 29, 2008, acting on Department of Buildings Application No. 210058042 reads, in pertinent part:

“Proposed rooftop parking is not permitted as per ZR section 25-11.

Proposed total number of accessory parking spaces exceeds that permitted for accessory group parking spaces in this R7-1 zoning district (ZR section 25-141).

Proposed illuminated non-flashing accessory sign in an R7-1 zoning district exceeds permitted area and height from curb level (ZR sections 22-331 and 22-342);” and

WHEREAS, this is an application for a special permit under ZR §§ 73-481, 73-49 and 73-03 to permit construction of a 605-space parking garage with rooftop parking, contrary to ZR §§ 25-11 and 25-141, and for a variance under ZR § 72-21 to allow an accessory sign, contrary to ZR §§ 22-331 and 22-342; and

WHEREAS, the application is brought on behalf of St. Barnabas Hospital (the “Hospital”), a non-profit institution; and

WHEREAS, a public hearing was held on this application on March 31, 2009, after due notice by publication in the *City Record*, with a continued hearing on April 28, 2009, and then to decision on May 19, 2009; and

WHEREAS, Community Board 6, Bronx, recommends approval of this application; and

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

WHEREAS, the subject site comprises the entire block bounded by Third Avenue to the west, East 184th Street to the north, Quarry Road to the east, and East 181st Street to the south, within an R7-1 zoning district; and

WHEREAS, the subject site has a lot area of 415,518 sq. ft.; and

WHEREAS, the site is occupied by the Hospital, the St. Barnabas Nursing Home, and an attended 247-space accessory parking lot (the “existing parking lot”); and

WHEREAS, the applicant proposes to replace the existing parking lot with a five-story, 605-space, 132,561 sq. ft. accessory parking garage with rooftop parking; and

WHEREAS, the applicant proposes to subdivide Lot 1 to create (Tentative) Lot 100 at the southwestern corner of the premises; the remainder of existing Lot 1 will continue to be denominated as Lot 1; and

WHEREAS, the proposed parking facility will be located on Lot 100; and

WHEREAS, in order to meet its needs, the applicant seeks a special permit pursuant to ZR §§ 73-481 and 73-49 to permit an accessory parking facility with more than 150 spaces and rooftop parking; and

WHEREAS, pursuant to ZR § 73-481, the Board may permit accessory group parking facilities with more than 150 spaces for hospitals and related facilities in a residential district, provided that the facility is so located to draw a minimum of vehicular traffic to and through local streets, has adequate reservoir space at the vehicular entrance, and the streets providing access to such use are adequate to handle the traffic generated thereby; and

WHEREAS, the applicant represents that the proposed parking facility will have a minimal impact on existing vehicular traffic because, at its completion, the overall parking supply for the Hospital will be 716 spaces, representing a net increase of 146 spaces over the current number of spaces; and

WHEREAS, in support of this representation, the applicant submitted a traffic analysis indicating that the parking demand during the midday peak period totals 570 spaces; and

WHEREAS, the applicant states that, in addition to the existing 247-space parking lot, accessory parking is currently provided on three lots in the vicinity of the subject site: (1) the “Main Hospital Lot,” consisting of three open parking lots with a total of 127 spaces located on the north side of the premises and accessed via a driveway on the east side of Third Avenue at East 183rd Street; (2) the “Bathgate Lot,” an open parking lot with 100 spaces for Hospital employee vehicles located one block west of the premises on Bathgate Avenue and accessed

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via a driveway on the east side of Bathgate Avenue between East 182nd Street and East 183rd Street; and (3) the “Third Avenue Lot,” an open parking lot with 96 spaces located on the west side of Third Avenue, directly across from the premises, and accessed via a driveway on the west side of Third Avenue between East 181st Street and East 182nd Street; and

WHEREAS, the applicant represents that the Hospital will close the Bathgate Avenue Lot and the Main Hospital Lot after the proposed parking facility is constructed, thereby eliminating 227 spaces; and

WHEREAS, the applicant notes that an additional as-of-right open parking lot with 15 spaces will be provided at the east side of the proposed parking facility; and

WHEREAS, the applicant states that the Hospital will therefore realize a net increase of 146 spaces as a result of the addition of the proposed parking facility; and

WHEREAS, the applicant further states that the proposed parking facility will draw a minimum of vehicular traffic to and through local streets by providing a second ingress and egress point for the facility; and

WHEREAS, the applicant notes that the existing parking lot has a single ingress and egress point located on Quarry Road and that the proposed parking facility will provide a second ingress and egress point via the existing curb cut on Third Avenue, opposite East 182nd Street; and

WHEREAS, the applicant states that the additional ingress and egress point will draw traffic away from Quarry Road, further reducing the volume of traffic on local streets; and

WHEREAS, the applicant represents that the proposed parking facility has adequate reservoir space at the vehicular entrance; and

WHEREAS, the Board notes that the applicant is required to provide 20 reservoir spaces to accommodate the proposed 605-space parking facility and that the plans submitted by the applicant indicate that the proposed parking facility provides 20 reservoir spaces at the vehicular entrance; and

WHEREAS, the applicant represents that the streets providing access to the proposed facility are adequate to handle the traffic generated thereby; and

WHEREAS, in support of this representation, the applicant submitted a traffic analysis indicating that the proposed parking facility would have no significant impact on traffic conditions in the surrounding neighborhood; and

WHEREAS, based upon the above, the Board concludes that the findings required under ZR § 73-481 have been met; and

WHEREAS, pursuant to ZR § 73-49, the Board may permit accessory off-street parking spaces to be located on the roof of a building if the parking is located so as not to impair the essential character or the future use or development of adjacent areas; and

WHEREAS, the applicant represents that the proposed rooftop parking will not impair the essential character or future use or development of adjacent areas; and

WHEREAS, the applicant submitted a 200-foot radius diagram indicating that the areas surrounding the proposed

parking facility include the Hospital to the north, several commercial and mixed-use commercial/residential buildings to the west, a commercial building to the south, and a five-acre city-owned public park to the east; and

WHEREAS, the applicant represents that the impact of the proposed facility on residential uses in the surrounding area will be limited because the roof of the proposed parking facility is approximately 30 feet higher than the residential uses; and

WHEREAS, the applicant states that rooftop lighting will be confined to the immediate roof area and be designed to minimize glare to neighboring buildings; and

WHEREAS, the applicant states that to further minimize residential impacts, the Hospital will close the rooftop parking area during evening hours and will provide a six-foot high, fire resistant spandrel with aluminum opaque panels around the perimeter of the roof; and

WHEREAS, based upon the above, the Board concludes that the findings required under ZR § 73-49 have been met; 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, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 73-03; and

WHEREAS, the applicant states that the variance request under ZR § 72-21 is necessitated by the programmatic needs of the Hospital; and

WHEREAS, the applicant proposes to install an accessory non-flashing illuminated sign with a total surface area of 54 sq. ft. (18 sq. ft. is the maximum permitted) on the East 181st Street frontage of the proposed parking facility at a height of 47’0” above curb level (20’-0” is the maximum height permitted); and

WHEREAS, because the proposed sign exceeds the maximum surface area and the maximum height permitted, the instant variance application was filed; and

WHEREAS, the applicant represents that the variance request is necessitated by the Hospital’s programmatic need to be easily identified by patrons; and

WHEREAS, the applicant states that the current lack of signage on the premises makes it difficult for visitors, patients, doctors, nurses and ambulance services to locate the Hospital; and

WHEREAS, the applicant represents that an as-of-right sign with a surface area of 18 sq. ft. is too small to readily identify the Hospital; and

WHEREAS, because Third Avenue is angled south of East 180th Street, the applicant represents that a complying sign at a height of 20 feet would not be visible to patrons traveling north on Third Avenue, south of East 180th Street; and

WHEREAS, the applicant states that the Hospital found that banners are inadequate to identify the Hospital because they are often vandalized and are easily damaged by

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the elements; and

WHEREAS, the applicant further states that a large sign is necessary to direct private visitor vehicles to the parking facility entrance at Third Avenue so that such vehicles do not instead create congestion and crowd ambulances at the entrance on the north end of the Hospital; and

WHEREAS, at hearing, the Board questioned whether signage is a legitimate programmatic need and whether other Hospitals in New York City provide large identification signs high above the street; and

WHEREAS, in response, the applicant submitted photographs of Queens Hospital Center, New York Hospital Queens, NYU Medical Center, Rockefeller University Hospital, and the Hospital for Special Surgery, indicating the use of similar-sized signs high above-grade; and

WHEREAS, the applicant states that the Hospital is an affiliated primary teaching hospital of the New York College of Osteopathic Medicine, training more than 250 physicians annually; and

WHEREAS, in analyzing the applicant's waiver requests, the Board notes at the outset that the Hospital, as a non-profit educational institution, may use its programmatic need 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, accordingly, the Board finds it appropriate to give deference to the Hospital's programmatic need; and

WHEREAS, the Board concludes that the need for a waiver of ZR §§ 22-331 and 22-342 to accommodate the Hospital's programmatic need has been fully explained and documented by the applicant; and

WHEREAS, based upon the above, the Board finds that the programmatic need of the Hospital to be easily identified by patrons creates unnecessary hardship and practical difficulty in complying with the applicable zoning regulations; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Hospital is a not-for-profit organization and the proposed development will be in furtherance of its mission; and

WHEREAS, the applicant represents that the proposed 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 represents that the surrounding neighborhood is primarily occupied by the Hospital, commercial and mixed-use commercial/residential buildings, a school, and a five-acre public park; and

WHEREAS, the applicant states that the property closest to the proposed sign which is not part of the Hospital is a two-story commercial building located approximately 200 feet

south of the subject site; and

WHEREAS, the applicant further states that the proposed sign will front on East 181st Street and will be internally illuminated and non-flashing; 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 need of the Hospital and the constraints of the subject site; and

WHEREAS, the applicant initially proposed to install a 90 sq. ft. sign at a height of 57 feet, but reduced its request to a 54 sq. ft. sign at a height of 47 feet 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; 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-031X, dated March 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, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 72-21, 73-481, 73-49, and 73-03 for a special permit to permit the construction of a 605-space parking garage and rooftop parking, contrary to ZR §§ 25-11 and 25-141, and for a variance to permit an accessory sign contrary to ZR §§ 22-331 and 22-342, in an R7-1 zoning

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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 April 14, 2009”- (14) sheets; and *on further condition*:

THAT the parking facility shall be limited to 605 parking spaces and 20 reservoir spaces;

THAT the hours of operation for the rooftop parking shall be from 5:00 a.m. to 11:00 p.m., daily;

THAT screening and lighting shall be provided for the rooftop parking as per the BSA-approved plans;

THAT the proposed sign shall be back lit;

THAT this approval 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 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 plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 19, 2009.

304-08-BZ

CEQR #09-BSA-050M

APPLICANT – Bryan Cave LLP, for TDS Acquisition LLC d/b/a Trevor Day School, owner.

SUBJECT – Application December 11, 2008 – Variance (§72-21) and Special Permit (§73-19) to allow a school in a C8-4 district contrary to bulk regulations (§33-123, §33-451, §33-453, §33-454, §33-26). C8-4 District.

PREMISES AFFECTED – 312-318 East 95th Street, south side of 95th Street, 215 east of Second Avenue, 350’ feet west of First Avenue, Block 1557, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Judy Gallent.

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 November 19, 2008, acting on Department of Buildings Application No. 110347250, reads, in pertinent part:

“Proposed FAR does not comply with ZR Section 33-123 (Maximum Floor Area –Community Facility Buildings). Maximum Community

Facility FAR permitted in C8-4 is 6.5. Proposed FAR is 8.57.

Proposed tower lot coverage does not comply with ZR Section 33-454 (Towers on Small Lots). Maximum tower lot coverage permitted is 50% for a lot less than 10,500 sq. ft. in area. Proposed tower lot coverage is 59.4%.

Proposed aggregate tower area within 50 feet of a narrow street does not comply with ZR Sections 33-451 and 33-453. Maximum aggregate tower area permitted within 50 feet of a narrow street is 1,875 sq. ft. Proposed tower occupies an aggregate area of 3,288.25 sq. ft. within 50 feet of a narrow street.

Proposed rear yard does not comply with ZR Section 33-26 at the first, second and third floors. A minimum 20 foot rear yard is required. Proposed rear yard at 1st, 2nd and 3rd floors is less than 20 feet.

School in a C8-4 zoning district requires a special permit from the Board of Standards and Appeals pursuant to ZR 73-19”; and

WHEREAS, this is an application for a special permit under ZR §§ 73-19 and 73-03, to permit a combined 12-story middle school and high school (Use Group 3) on a site within a C8-4 zoning district, and an application under ZR § 72-21 to permit the a school building contrary to ZR §§ 33-123 (maximum floor area ratio), 33-26 (required rear yard), 33-454 (tower lot coverage), 33-451 and 33-453 (maximum aggregate tower area); and

WHEREAS, the application is brought on behalf of Trevor Day School, a nonprofit corporation (“Trevor Day”); and

WHEREAS, a public hearing was held on this application February 24, 2009, after due notice by publication in the *City Record*, and then to decision on May 12, 2009; and

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

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

WHEREAS, a number of neighborhood residents testified in favor of the application; and

WHEREAS, an adjacent owner testified in opposition to the application, citing concerns with the impact of the proposed school on his property; and

WHEREAS, the site is located in the mid-block area of the south side of East 95th Street between First Avenue and Second Avenue; and

WHEREAS, the site is located in a C8-4 zoning district and has a lot area of 10,453 sq. ft.; and

WHEREAS, the subject site is occupied by a five-story furniture factory and an adjacent two-story building which are proposed to be demolished; and

WHEREAS, the proposed 12-story combined middle school/high school (U.G. 3) (the “School”) has a four-story 84-foot high base and an eight-story tower rising to a total height

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of 204 feet; each base floor has a floor plate of approximately 10,300 sq. ft. and each tower story has a floor plate of approximately 6,200 sq. ft.; and

WHEREAS, a cellar level houses a lower lobby, student lockers, administrative space and mechanical space; the first floor and first floor mezzanine are occupied by the auditorium; the second floor is occupied by music and band rooms; the third floor and third floor mezzanine are occupied by a double height gymnasium; the fourth floor is occupied by the cafeteria and kitchen; the fifth through eighth floors contain core classrooms and common rooms, with some offices on the sixth floor; the ninth and tenth floors contain science and fine arts classrooms and laboratories; the eleventh floor contains administrative offices and a dance studio; the twelfth floor contains a half-gymnasium; and an outdoor play area of approximately 4,839 sq. ft. is located on the roof; and

WHEREAS, the applicant seeks a variance to permit: a floor area of 101,243 sq. ft. (67,944 sq. ft. is the maximum community facility floor area permitted in a C8-4 district); an FAR of 8.57 (an FAR of 6.5 is the maximum permitted); a tower lot coverage of 59.4 percent (50 percent is the maximum permitted); an aggregate tower area within 50 feet of a narrow street of approximately 3,288 sq. ft. (1,875 sq. ft. is the maximum permitted; and a rear yard of 0'-8" (20'-0" is the minimum required); and

WHEREAS, the applicant additionally seeks a special permit because the subject site is located within a C8-4 zoning district, where Use Group 3 school use is not permitted as-of-right; and

WHEREAS, the applicant represents that the special permit and variance requests are necessitated by (i) the need to replace its existing elementary school; (ii) the need for additional space based on past and projected growth in the school's enrollment; and (iii) the need for classrooms, gymnasiums, auditorium and meeting spaces adequate in size to serve its student body; and

WHEREAS, the applicant further states that the student body is currently distributed among four buildings on the Upper East Side and Upper West Side of Manhattan: (a) a pre-school/ kindergarten located at East 89th Street; (b) an elementary school in space rented from the Church of the Heavenly Rest (the "Church"); and a middle school/ high school located at (c) 1 West 88th Street and (d) 279 Central Park West; and

WHEREAS, applicant further states that the Church has indicated an intention to recapture the space occupied by Trevor Day's elementary school in 2013 and the elementary school must therefore be relocated to an alternative space; and

WHEREAS, the applicant represents that its existing middle school/high school facilities are overcrowded and outdated with classrooms, studios, labs, physical education and common areas that are inadequate in size and oddly shaped and which are insufficient to accommodate projected enrollment growth; and

WHEREAS, the applicant further represents that its existing facility cannot accommodate its entire middle

school or high school student body for assemblies, concerts, or school-wide meetings; and

WHEREAS, the applicant represents that the impending loss of its pre-school/kindergarten and the overcrowded, antiquated and inadequate space of its middle school/ high school render it impossible for Trevor Day to meet its programmatic needs; and

WHEREAS, development of the School will allow Trevor Day to relocate its elementary school to its building at 1 West 88th Street and to provide an auditorium, and modern and adequately-sized classrooms, gymnasiums, studios and labs to its middle/high school students; and

WHEREAS, the applicant represents that the School meets the requirements of the special permit authorized by ZR § 73-19 for permitting a school in an C8-4 zoning district; and

WHEREAS, ZR § 73-19 (a) requires an applicant to demonstrate difficulty in obtaining land for the development of a school within the neighborhood to be served and with an adequate 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 a building with a floor area of least 100,000 sq. ft. is necessary to accommodate Trevor Day's program; and

WHEREAS, the applicant states that the majority of its students reside on the Upper West Side and Upper East Side neighborhoods of Manhattan; and

WHEREAS, the applicant further states that Trevor Day conducted a nearly four-year site search for existing buildings or development sites within those communities for a combined middle and high school facility of adequate size to serve the School's programmatic needs; and

WHEREAS, the applicant represents that nine potential sites, including the subject site, were seriously evaluated and that additional sites were investigated and determined to be inappropriate based on their location, size, limited access to public transportation and/or purchase price; and

WHEREAS, the applicant further represents that the sites evaluated include: (i) 165 West 86th Street (West-Park Presbyterian Church); (ii) 517-523 East 73rd Street and 512-522 East 74th Street; (iii) Amsterdam Avenue between West 99th and West 100th Streets (St. Michael's Episcopal Church); (iv) West 57 Street, mid-block between 12th Avenue and 11th Avenue; (v) Amsterdam Avenue at West 69th Street (Lincoln Square Synagogue); (vi) 23 East 91st Street (Our Lady of Good Counsel School); (vii) 515 West 57th Street; and (viii) Lexington Avenue between East 97th and East 98th Streets; and

WHEREAS; the applicant states that the potential floor area of sites at Amsterdam Avenue between West 99th and West 100th Streets, Amsterdam Avenue at West 69th Street (Lincoln Square Synagogue), 23 East 91st Street; and Lexington Avenue between East 97th and East 98th Streets was deemed inadequate to accommodate the School; and

WHEREAS, the applicant further states that the respective locations of a Con Edison substation and Department of Sanitation garage adjacent to and across from

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517-523 East 73rd Street/ 512-522 East 74th Street rendered that site unacceptable for the School; and

WHEREAS, the applicant additionally states that the owners of 515 West 57th Street and 165 West 86th Street were unwilling to transfer their properties to the School; and

WHEREAS, the applicant maintains that the results of the site search show that there is no practical possibility of obtaining a site of adequate size for the School in a district where it is permitted as of right; and

WHEREAS, therefore, 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 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, evidence in the record indicates that the front lot line of the site directly abuts an R8 district in which a school would be permitted as of right; and

WHEREAS, therefore, 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 the School fronts on East 95th Street, directly south of an R8 zoning district, and that only the sides and rear of the School will face the surrounding non-residential zoning district; and

WHEREAS, the applicant further states that adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district is provided through the use of sound-attenuating window and wall construction; and

WHEREAS, the applicant represents that the School's design would include double-glazed windows in the front and rear walls and an alternate means of ventilation, and that the side walls would have no windows and be constructed of sound-attenuating masonry; and

WHEREAS the applicant further represents that window/wall attenuation would provide 35 dBA for all facades of the building and would therefore result in interior noise levels of less than 45 dBA within the School; and

WHEREAS, the Board accepts that the use of sound attenuating window and wall construction will adequately separate the school from noise, traffic and other adverse effects of the surrounding non-residential 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 East 95th Street is a narrow one-way street characterized by light traffic, and that children traveling and from the School would be protected by the diversion of most east-west through traffic to East 96th Street, one block to the north, which is a major cross street having two travel lanes in both directions; and

WHEREAS, the Board finds that the movement of the

traffic through the street on which the School is located can be controlled so as to protect children traveling to and from the School; and

WHEREAS, therefore, 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 applicant states that the School is not anticipated to have a substantial adverse impact with respect to urban design and visual resources or neighborhood character; and

WHEREAS, the applicant further states that the proposed use of the building as a school is permitted as-of-right in the C1, C2 and residential zoning districts surrounding the subject site, and is consistent with the predominant residential character of the surrounding neighborhood; and

WHEREAS, the applicant additionally states that the Life Sciences High School is located on East 95th Street directly north of the subject site in an R8 zoning district within which schools are permitted as-of-right; and

WHEREAS, the applicant represents that the height of the School is permitted by the tower regulations of the underlying C8-4 zoning district and that a number of buildings in the surrounding area are taller than the School, including: a 28-story residential tower to its east at East 94th Street and First Avenue; a 31-story residential tower to its west at East 94th Street and Second Avenue; a 16-story residential building on East 96th Street directly north of the School; the 24-story and 25-story Isaacs Houses and Holmes Towers developments of the NYC Housing Authority on First Avenue to the east and southeast of the subject block; and the 32- and 30-story residential high rises on the west side of First Avenue between East 94th Street and East 92nd Street; and

WHEREAS, the applicant further represents that the School's streetfront is consistent with those of the buildings on East 95th Street on either side of the subject site; and

WHEREAS, the applicant states that the School will benefit the surrounding community by replacing a legally conforming industrial use with a school use that is more consistent with the predominant residential character of the area and which expands educational opportunities for neighborhood residents; 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 applicant states that preparation work is under way for the Second Avenue Subway in a portion of Second Avenue from East 91st Street to East 95th Street, and that its construction over the next eight years is expected to cause street closings and other impacts that could potentially affect the School; and

WHEREAS, the applicant states, however, that because the School is located 200 feet east of Second

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Avenue, the requested modifications of the applicable use and bulk regulations will not interfere with the Second Avenue subway project or with any other pending public improvement project; and

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under ZR §73-03; and

WHEREAS, the applicants states that the requested variance of the maximum allowable floor area (and FAR), maximum tower coverage, maximum aggregate tower coverage and minimum rear yard are necessary based on the programmatic needs of Trevor Day and the site's unique subsurface conditions including groundwater level, soil and bedrock conditions;

WHEREAS, as to the programmatic needs of the School, the applicant states that they are the following: (1) relieving overcrowded and suboptimal classroom conditions; (2) accommodating current enrollment while allowing for future growth; (3) offering a varied and expanded curriculum to its students; and (4) providing gymnasium and auditorium space; and

WHEREAS, as discussed above, the applicant states that its existing middle school/ high school facilities are overcrowded and outdated with classrooms, studios, labs, physical education and common areas that are inadequate in size and oddly shaped; and

WHEREAS, Trevor Day has determined that additional space is needed to better serve the 365 students currently enrolled in grades 7 through 12, and also to increase its Upper School enrollment by approximately 25 percent; and

WHEREAS, the applicant states that a planning study commissioned by Trevor Day found that the school provides an average classroom area of 115 sq. ft. per student, far less than the 162 sq. ft. per student average of comparable New York City independent schools; and

WHEREAS, the applicant represents that the paucity of adequate classroom space also limits the number of elective classes it can offer its middle and high school students as well as the extracurricular functions that are an integral part of a balanced high school program; and

WHEREAS, to accommodate the projected enrollment, the applicant states that the School must have a total of 20 core classrooms and 10 special classrooms, each with a minimum size of approximately 450 sq. ft., as well as three common rooms: one for the middle school and two for the high school, each with a minimum size of approximately 2,100 sq. ft.; and

WHEREAS, to comply with New York State Department of Health regulations which mandate three physical education classes per week, the applicant further states that the School also requires two gymnasiums – a full-size gymnasium and a 4,000 sq. ft. half-gymnasium; and

WHEREAS, the applicant further states that a minimum gymnasium ceiling height of 24 feet is required to host inter-scholastic basketball games and that the School must also have a double-height auditorium to present school-wide assemblies, as well as musical and theatrical

productions; and

WHEREAS, the applicant represents that, the tower coverage, aggregate tower area and rear yard waivers are necessary to provide the program space necessary to adequately serve its current student body and to prepare for a projected 25 percent increase in enrollment; and

WHEREAS, the applicant represents that without the waivers, the floor area of the School would be reduced by 21,633 sq. ft., and that the proposed auditorium, library/media center, half-gymnasium, and common room for science classrooms would consequently be eliminated and less space would be available for the cafeteria, kitchen and lobby, faculty and administrative office space, storage, and bathrooms; and

WHEREAS, the applicant represents that the tower floor plates of a complying development would be approximately 1,000 sq. ft. smaller than those in the School and, consequently, that core classrooms and common rooms would have to be moved from the tower to the base portion of the building and be enlarged beyond what is programmatic necessary, resulting in an inefficient waste of much-needed floor area; and

WHEREAS, the applicant further states that compliance with the 23-foot height restriction for rear yard obstructions in the subject zoning district would necessitate reduction of the height of the main gymnasium below regulation size, because the rear 20 feet could have a ceiling height of only 12'-4" – too low to accommodate a backboard and rim; and

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, the applicant represents, however, that its programmatic needs could be met on the subject site in an as-of-right building, were it not for the unique groundwater, soil and bedrock conditions that create practical difficulties and unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, a geotechnical engineering study submitted by the applicant found that: (a) subsurface water course traverses the subject site and groundwater is found at approximately nine feet below the existing sidewalk grade; and (b) the subject site is located in a former marsh area and subsurface soil consists of layers of sand, clay, peat and fine silt to depths beyond 170 feet; and

WHEREAS, the geotechnical study additionally found that, as a result of these conditions, below-grade construction would require dewatering approximately 25 to 30 feet below-grade and underpinning of adjacent buildings,

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and that such below-grade construction could cause damage to facades, interior finishes and structural elements and be costly; and

WHEREAS, the applicant states that three major construction firms estimated the cost of dewatering, underpinning and below-grade construction at between \$9 and \$17.4 million; and

WHEREAS, because of the site's soil, bedrock and groundwater conditions, the applicant states that Trevor Day is unable to locate essential educational spaces more than approximately six feet below-grade and therefore has instead located all required floor area above-grade, with the exception of one cellar floor; and

WHEREAS, because of the subject-site's unique below-grade conditions, the School must locate two of the three potential below grade levels, containing approximately 20,900 sq. ft., above grade, thereby exceeding the maximum allowable floor area; and

WHEREAS, the applicant represents that the need to construct almost all of the School's programmatically required floor area above-grade necessitates the requested variances of regulations relating to rear yard, tower lot coverage and aggregate tower area; and

WHEREAS, the applicant further represents that the requested floor area variance is required to recapture the as-of-right floor area that is lost due to the inability to construct below-grade space; and

WHEREAS, the applicant states that if the site were not burdened with its unique soil and groundwater conditions, the auditorium and gymnasium could have been located below-grade, rather than on the ground and third floors, respectively, and that a school building with a floor area virtually identical to that of the School could be built on the subject site as-of-right; and

WHEREAS, the proposed floor area of the School is 101,243 sq. ft.; and

WHEREAS, the applicant submitted plans indicating that approximately 31,360 sq. ft. of space could otherwise be developed in three additional below-grade levels, which would not be included in floor area, in addition to 67,944 sq. ft. of floor area that could be developed at the maximum allowable community facility FAR of 6.5, for a total floor area of 99,304 sq. ft.; and

WHEREAS, the applicant concludes that, as a result, Trevor Day is unable to fulfill its programmatic needs by developing the subject site with an as-of-right middle and high school building while complying with all underlying district regulations; and

WHEREAS, the Board finds that Trevor Day's programmatic needs are legitimate, and agrees that the proposed School is necessary to address its needs, given the current limitations; and

WHEREAS, accordingly, based upon the above, the Board finds that the unique conditions of the 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 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 represents that although the School is located on the site of a former industrial building, it is compatible with other residential and institutional uses in the surrounding neighborhood; and

WHEREAS, the applicant states that the land uses surrounding the site are characterized by a mix of residential, commercial, and institutional uses; and

WHEREAS, the applicant states that East 95th Street to the west and east of the subject site contains a variety of uses including residential uses, automotive related uses, retail and manufacturing uses and that a five-story office building is located immediately to the south of the subject site; and

WHEREAS, the applicant further states that north of the subject site on East 95th Street are several residential uses, including a 16-story residential building on East 96th Street in the mid-block portion of the block ; and

WHEREAS, the applicant further states that the proposed use of the building as a school is permitted as-of-right in the residential and C1 and C2 zoning districts surrounding the subject site, and is consistent with the predominant residential character of the surrounding neighborhood; and

WHEREAS, the applicant further states that the Life Sciences High School is located directly across East 95th Street from the subject site in an R8 zoning district within which schools are permitted as-of-right; and

WHEREAS, the applicant represents that the height and bulk of the School are compatible with the surrounding area, which is characterized by a number of additional large residential, commercial and mixed-use buildings; and

WHEREAS, the height of the School is permitted as-of-right by the tower regulations of the underlying C8-4 zoning district and a number of buildings in the surrounding area are taller than the School, including a 28-story residential tower to its east at East 94th Street and First Avenue, a 31-story residential tower to its west at East 94th Street and Second Avenue, a 16-story residential building on East 96th Street directly north of the School, the 24-story and 25-story Isaacs Houses and Holmes Towers developments of the NYC Housing Authority on First Avenue to the east and southeast of the subject block, and the 32-story and 30-story residential high rises occupying the block fronts on the west side of First Avenue between East 94th Street and East 92nd Street and the 38-story Normandy Court residential development located on the corner of Second Avenue and East 96th Street; and

WHEREAS, the applicant states that the requested

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variance of the tower lot coverage requirement allows for a tower with a slightly larger floor plate than would otherwise be permitted, thereby providing a somewhat shorter building than would be required absent the variance limiting the resulting shadows of the School on the surrounding area; and

WHEREAS, the applicant further states that a conforming community facility use could build at the subject site to a height of approximately 15 stories as-of-right under the tower bulk regulations of the subject zoning district; and

WHEREAS, the applicant states that the street wall of the School complies with the height restrictions of the C8-4 district and is consistent with the street walls of other mid-block buildings fronting on East 95th Street; and

WHEREAS, an environmental assessment indicates that the shadows cast by the School are only marginally greater than the shadows cast by a complying development, and that none of the incremental increase in shadows falls on any light sensitive elements; and

WHEREAS, a playground is located on the western half of the block directly north of the subject site between East 96th Street and East 97th Street, the shadow study demonstrates that the shadows cast by the School are blocked from falling on the playground by a 16-story building on East 96th Street located directly north of the School; and

WHEREAS, in a submission to the Board, an adjacent property owner argues that the School will block its light and air; and

WHEREAS, a submission by the applicant notes that during seven of 12 analysis periods studied, the School had no incremental shadow impacts on the adjacent property as compared to existing conditions; in two of the periods studied, the School cast the same amount of shadow as an as-of-right building; in two of the analysis periods, the School cast less shadow than an as-of-right building; and that during only one period was a small incremental shadow cast --on the northwest corner of the entrance of the adjacent building; and

WHEREAS, the adjacent owner additionally contends that as-of-right development of his property would block light from the School's classrooms; and

WHEREAS, in response, the applicant states that the School has been built without windows on its western façade abutting the lot line of the adjacent owner and that all classrooms are designed to receive light from windows located in the north and south facades of the building; 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, a submission by a neighboring owner

argues that the hardship is self-imposed and urges the Board to deny the subject application; and

WHEREAS, a response by the applicant points out that, pursuant to ZR § 72-21, the purchase of a property subject to the restrictions sought to be varied does not, in and of itself, constitute a self-created hardship and is not a ground to deny the application; and

WHEREAS, accordingly, the Board finds that the hardship herein was not created by the owner; and

WHEREAS, the applicant represents that the requested waivers for floor area, tower lot coverage, aggregate tower area and rear yard are the minimum necessary to accommodate the School's current and projected programmatic needs; and

WHEREAS, the applicant further represents that without the requested variances of the maximum tower lot coverage requirement from 50 percent to 59.4 percent and the maximum allowable aggregate tower area by approximately 1,413 sq. ft., an additional four stories would be required to accommodate the School's program, increasing the height of the building by approximately 53 feet to an as-of-right height of 279 feet; and

WHEREAS, the applicant states that development using sky exposure plane bulk regulations as an alternative to a tower would require a variance of the rear yard requirement for the full height of the building, as well as a variance to allow penetration of the sky exposure plane by four of the seven stories above the maximum street wall, in addition to a floor area variance; and

WHEREAS, the applicant states that a sky exposure plane development would be bulkier and would cast larger shadows than a more slender tower and that having atypical floors of varying depths as the building set back under the sky exposure plane would make it more difficult for Trevor Day to program the resulting space so as to meet its programmatic needs; and

WHEREAS, the applicant represents that the rear wall is angled inward instead of being extended straight up to the top of the fourth floor in order to minimize the variance requested; 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 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. 09BSA050M, dated March 2009; and

WHEREAS, the EAS documents that the School 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

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Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the New York City Department of Environmental Protection (“DEP”) Office of Environmental Planning and Assessment has evaluated the following submissions from the Applicant: (1) a January 2007 Phase I Environmental Site Assessment; (2) a January 2007 Phase II Investigation Report; (3) a March 2009 Environmental Assessment Statement (“EAS”); (4) a March 2009 Revised Remedial Action Plan (the “Revised RAP”) and Construction Health & Safety Plan (CHASP); and (5) Revised March 2009 Air Quality and Noise chapters; and

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials, Air Quality; and Noise; and

WHEREAS, to mitigate soil vapor intrusion pursuant to the Revised RAP, a Grace Florprufe 120 vapor barrier will be applied to the underside of the foundation slabs in accordance with manufacturer specifications; and

WHEREAS, a Remedial Closure Report certified by a professional engineer must be submitted to DEP at the completion of construction to confirm the effectiveness of the vapor barrier; and

WHEREAS, the proposed project is projected to generate fewer than 100 peak hour vehicle trips and therefore would not require a mobile source air quality analysis; and

WHEREAS, no nearby emission sources were identified which would have potential impacts to the School; and

WHEREAS, a screening analysis of the School’s emissions, assuming the use of No. 4 fuel oil, indicate that the proposed project would not significantly impact adjacent structures of equal or greater height; and

WHEREAS, the proposed project is not anticipated to result in significant adverse air quality impacts; and

WHEREAS, DEP has determined that sound-attenuating masonry and double-glazed windows achieving a composite window/wall noise attenuation of 35 dBA for all building facades are necessary to achieve an interior noise level of 45 dBA; and

WHEREAS, with the aforementioned measures, the proposed project would not result in a significant adverse noise impact; 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 grants a

special permit to allow, within a C8-4 zoning district, a combined middle school and high school (Use Group 3) and makes each and every one of the required findings under ZR §§ 73-19 and 72-21 and grants a variance to allow the school building, which does not comply with ZR §§ 33-123, 33-26, 33-454, 33-451 and 33-453; *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 14, 2009” – (26) sheets; and *on further condition*:

THAT the parameters shall be: a floor area of 101,243 sq. ft. (FAR of 8.57); a tower lot coverage of 59.4 percent; an aggregate tower area within 50 feet of a narrow street of approximately 3,288 sq. ft.; and a rear yard of 0’-8”;

THAT the premises shall comply with all applicable fire safety measures, as required and as illustrated on the BSA-approved plans;

THAT the certificate of occupancy shall state that the number of students shall be limited to 500;

THAT the issuance of building permits shall be conditioned on the issuance of a DEP Notice to Proceed;

THAT issuance of a permanent certificate of occupancy shall be conditioned on the issuance by DEP of a Notice of Satisfaction;

THAT sound-attenuating masonry and double-glazed windows achieving a composite window/wall noise attenuation of 35 dBA shall be installed on all exposed facades of 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 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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, May 19, 2009.

308-08-BZ
CEQR #09-BSA-052M

APPLICANT – Davidoff Malito & Hutcher, LLP, for 201 East 67 LLC, owner; MonQi Fitness, lessee.

SUBJECT – Application October 17, 2008 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment located on the third through fifth floors in a five-story building. The proposal is contrary to ZR §32-00. C1-9 district.

PREMISES AFFECTED – 201 East 67th Street, northeast corner of the intersection of Third Avenue and East 67th Street, Block 1422, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

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For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated December 4, 2008, acting on Department of Buildings Application No. 110365453, reads in pertinent part:

“Physical culture establishment at third, fourth and fifth floors is not permitted as-of-right in a C1-9 zoning district and is contrary to ZR § 32-00;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C1-9 zoning district, the legalization of a physical culture establishment (“PCE”) on the third, fourth and fifth floors of an existing six-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 7, 2009, after due notice by publication in *The City Record*; a decision was set for May 12, 2009 which was deferred to May 19, 2009; and

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

WHEREAS, the subject site is located on the northeast corner of the intersection at East 67th Street and Third Avenue, within a C1-9 zoning district; and

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

WHEREAS, the PCE will occupy a total of 5,877 sq. ft. of floor area on the third, fourth and fifth floors; and

WHEREAS, the PCE will be operated as “MonQi Fitness;” and

WHEREAS, the applicant represents that the services at the PCE will include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, from 6:45 a.m. to 9:00 p.m.; Friday, from 6:45 a.m. to 8:00 p.m.; and Saturday and Sunday, from 9:00 a.m. to 3:00 p.m.; and

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

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

WHEREAS, the 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 April 2004, 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, 2004 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. 09BSA052M, dated December 12, 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; 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 C1-9 zoning district, the establishment of a physical culture establishment on the third, fourth, and fifth floors of an existing 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 April 30, 2009”- (5) sheets; and *on further condition*:

THAT the term of this grant shall expire on April 1, 2014;

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

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

THAT all signage shall comply with C1 zoning regulations;

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

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

THAT fire safety 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 19, 2009.

1-09-BZ

CEQR #09-BSA-058Q

APPLICANT – The Law Office of Fredrick A. Becker, for 39-01 QB LLC c/o Rhodes Management, owner; TSI Sunnyside LLC dba New York Sports Club, lessee.

SUBJECT – Application January 2, 2009 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment on a portion of the ground floor in a three-story building. The proposal is contrary to ZR §42-00. M1-4 district.

PREMISES AFFECTED – 39-01 Queens Boulevard, northerly side of Queens Boulevard, easterly of 39th Street, Block 191, Lot 5, Borough of Queens.

COMMUNITY BOARD #2Q

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

Negative:.....5

THE RESOLUTION:.....0

WHEREAS, the decision of the Queens Borough Superintendent, dated April 16, 2009, acting on Department of Buildings Application No. 410189861, reads in pertinent part:

“Proposed physical culture establishment 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 within an M1-4 zoning district, the legalization of a physical culture establishment (“PCE”) on a portion of the first floor of an existing three-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on April 7, 2009, after due notice by publication in *The City Record*, and was then set for decision May 12,

2009, on which date the decision was deferred to May 19, 2009; and

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

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

WHEREAS, the subject site is located on the northeast corner of the intersection at Queens Boulevard and 39th Street, within an M1-4 zoning district; and

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

WHEREAS, the PCE will occupy a total of 13,640 sq. ft. of floor area on a portion of the first floor; and

WHEREAS, the PCE will be operated as “New York Sports Club;” and

WHEREAS, the applicant represents that the services at the PCE will include facilities for classes, instruction and programs for physical improvement, body building and aerobics; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, from 6:00 a.m. to 11:00 p.m.; Friday, from 6:00 a.m. to 10:00 p.m.; and Saturday and Sunday, from 8:00 a.m. to 6:00 p.m.; and

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

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

WHEREAS, the 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 between December 1, 2008 and the date of this grant, during which the PCE operated without the special permit; 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 documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA058Q, dated March 26, 2009; and

WHEREAS, the EAS documents that the operation of

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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 an M1-4 zoning district, the legalization of a physical culture establishment on a portion of the first floor of an existing three-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 7, 2009"- (1) sheet and "Received March 26, 2009"- (1) sheet and "Received January 2, 2009"- (1) sheet; 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 all signage shall comply with M1 zoning 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 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

19, 2009.

11-07-BZ

APPLICANT – Dominick Salvati and Son Architects, for Joseph Giahn, owner.

SUBJECT – Application January 9, 2007 – Variance (§72-21) to allow a five (5) story office building with ground floor retail, contrary to use regulations (§22-00). R6B district.

PREMISES AFFECTED – 41-06 Junction Boulevard, south west corner formed by Junction Boulevard and 41st Avenue, Block 1598, Lots 7 & 8, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Peter Hirshman and Joseph Giahn.

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 23, 2009, at 1:30 P.M., for decision, hearing closed.

178-07-BZ

APPLICANT – Dominick Salvati and Son Architects, for Bronx Jewish Boys, owners.

SUBJECT – Application July 12, 2007 – Variance (§72-21) to permit the proposed seven-story residential building above the existing three-story community facility building.

The proposal is contrary to residential floor area and FAR and lot coverage (§23-141(b)), number of dwelling units (§23-222), rear yard (§23-47 & §24-36), sky exposure plane and setback, (§23-631(d)), required residential and community facility parking (§25-23 & §25-31). R5 district.

PREMISES AFFECTED – 2261-2289 Bragg Street, 220' north from intersection of Bragg Street and Avenue W, Block 7392, Lot 57, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Peter Hirshman and Rabbi Schorsher.

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 9, 2009, at 1:30 P.M., for decision, hearing closed.

203-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gastar, Inc., owner.

SUBJECT – Application August 17, 2007 – Variance (§72-21) to allow a new thirteen (13) story mixed-use building containing twenty (20) dwelling units, ground floor retail and third and fourth floor community facility (medical) uses;

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contrary to bulk and parking regulations (§35-311 & §36-21). R6/C2-2 district.

PREMISES AFFECTED – 137-35 Elder Avenue (a/k/a 43-49 Main Street) located at the northwest corner of Main Street and Elder Avenue, Block 5140, Lot 40, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Jordan Most.

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 14, 2009, at 1:30 P.M., for continued hearing.

63-08-BZ

APPLICANT – Eric Palatnik for Royal Palace, lessee. Manton Holding, owner

SUBJECT – Application March 27, 2008 – Special Permit (§73-244) to legalize an eating and drinking establishment with entertainment and a capacity of more than 200 persons with dancing within a C4-2 zoning district.

PREMISES AFFECTED – 116-33 Queens Boulevard, Between 77th and 78th Avenues, Block 2268, Lot 23, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Eric Palatnik, Nancy Neumen, H. Ruthkrug, F. Estrella and Daria Kulyk.

For Opposition: Eric Goidel, Charlotte Picot, Carole Keit, James Messermer and Nancy Jorisch.

ACTION OF THE BOARD – Laid over to June 23, 2009, at 1:30 P.M., for continued hearing.

99-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) to construct a three story with cellar single family home on an irregular triangular lot what does not meet the rear yard requirement (§23-47) in an R3-2 (SRD) zoning district.

PREMISES AFFECTED – 102 Drumgoole Road, South side of Drumgoole Road, 144.62 ft. west of the intersection of Drumgoole Road and Wainwright Avenue, Block 5613, Lot 221, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam Rothkrug and Anthony S.

ACTION OF THE BOARD – Laid over to June 16, 2009, at 1:30 P.M., for continued hearing.

100-08-BZ & 101-08-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) for the construction of a two story with basement, single family residence on a irregularly shaped vacant lot that extends into a mapped, unbuilt street which is contrary to General City Law Section 35. This application seeks to vary front yard (§23-45) in an R3-2 zoning district.

PREMISES AFFECTED – 205 Wolverine Street, northwest of intersection of Wolverine Street and Thomas Street, Block 4421, Lot 167, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam Rothkrug and Anthony S.

For Opposition: Harold McGough, Marion Ciurcina, Marion O’Neil and Carol Donovan.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 1:30 P.M., for continued hearing.

188-08-BZ

APPLICANT – Rizzo Group, for Hotel Carlyle Owners Corp., owners; The Hotel Carlyle, lessee.

SUBJECT – Application July 14, 2008 – Special Permit (§73-36) and Variance (§72-21) to allow the legalization of a Physical Culture Establishment and to extend this use into an R8B district for the subject hotel which exists in the C5-1MP and R8B zoning districts. The proposal is contrary to ZR §32-10.

PREMISES AFFECTED – 35 East 76th Street, (975-983 Madison; 981 Madison; 35-53 East 76th Street) northeast corner of Madison Avenue and East 76th Street, Block 1391, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Kenneth Barbina.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 1:30 P.M., for continued hearing.

229-08-BZ

APPLICANT – Sheldon Lobel, P.C. for Edward Haddad, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) for the construction of a new single family home. This applications seeks to vary floor area (§23-141), less than the minimum side yards (§23-461) and the location of the required off street parking to the front yard (§25-62) in an R2X zoning district.

PREMISES AFFECTED – 866 East 8th Street, West side of East 8th Street, north of Avenue I, and adjacent to railroad, Block 6510, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Jordan Most.

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

MINUTES

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 16, 2009, at 1:30 P.M., for continued hearing.

235-08-BZ

APPLICANT – Eric Palatnik, P.C., for Agudath Taharath Mishpachan, owners.

SUBJECT – Application September 16, 2008 – Variance (§72-21) to permit the expansion of a Use Group 3 Mikvah.

The proposal is contrary to ZR §33-12 (Maximum floor area ratio) and §33-431 (Maximum height of walls and required setbacks). C2-3/R4 district.

PREMISES AFFECTED – 1508 Union Street, located at the southwest corner of Union Street and Albany Avenue, Block 1279, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Eric Palatnik and David Shteirman.

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 23, 2009, at 1:30 P.M., for decision, hearing closed.

241-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Devonshire Enterprises, Inc., owner.

SUBJECT – Application September 25, 2008 – Variance (§72-21) to permit a one-story commercial building (Use Group 6) on a vacant lot. The proposal is contrary to ZR Section 32-10. R3-1 district.

PREMISES AFFECTED – 546 Midland Avenue, a/k/a 287 Freeborn Street, southwest corner of the intersection of Freeborn Street and Midland Avenue, Block 3803, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to June 23, 2009, at 1:30 P.M., for continued hearing.

259-08-BZ

APPLICANT – Jeffrey A. Chester, Esq., for AAC Douglaston Plaza, LLC, owner.

SUBJECT – Application October 20, 2008 – Variance (§72-21) to permit the proposed expansion to an existing supermarket. The proposal is contrary to ZR §52-41 (increase in the degree of non-conforming use of the building). R4 district.

PREMISES AFFECTED – 242-02 61st Avenue, Douglaston Parkway at 61st Avenue, Block 8266, Lot 185, Borough of

Queens.

COMMUNITY BOARD #11Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to June 16, 2009, at 1:30 P.M., for continued hearing.

265-08-BZ

APPLICANT – Mark A. Levine for 70 Wyckoff Avenue LLC, owner.

SUBJECT – Application October 28, 2008 – Variance pursuant to §72-21 to allow for the legalization of residential units located in a manufacturing building, contrary to §42-00; M1-1 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 and Jack Freedman.

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 23, 2009, at 1:30 P.M., for decision, hearing closed.

266-08-BZ

APPLICANT – Lewis E. Garfinkel R.A., for Harold Willig, owner.

SUBJECT – Application October 28, 2008 – Special Permit (§73-621) for the enlargement of an existing single family home. This application seeks to vary §34-141(b) as the proposed floor area ratio (FAR) exceeds what is permitted in an R-4 zoning district.

PREMISES AFFECTED – 2007 New York Avenue, east side of New York Avenue between Avenue K and Avenue L, Block 7633, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Lewis E. Garfinkel.

ACTION OF THE BOARD – Laid over to June 16, 2009, at 1:30 P.M., for continued hearing.

268-08-BZ

APPLICANT – Sheldon Lobel, P.C., for 314 7th Avenue, LLC, owner.

SUBJECT – Application October 30, 2008 – Special Permit filed, pursuant to §73-621 of the New York City Zoning Resolution, to permit the enlargement of an as-of-right eating and drinking establishment (Use Group 6) into the footprint of an existing accessory parking garage of a mixed-use residential and commercial building. The subject site is located in a R6A/C1-4 zoning district.

PREMISES AFFECTED – 314 Seventh Avenue, southwest

MINUTES

corner of the intersection formed by Eight Street and Seventh Avenue, Block 1006, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #6BK

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 June 16, 2009, at 1:30 P.M., for decision, hearing closed.

275-08-BZ

APPLICANT – Eric Palatnik, P.C., for South Side House LLC, owner.

SUBJECT – Application November 20, 2008 – Special Permit (§73-36) to allow a physical culture establishment on the ground floor of an existing building. The proposal is contrary to ZR §42-10. M1-2/R6 (MX8) district.

PREMISES AFFECTED – 98 South 4th Street, south side of South 4th Street, between Bedford Avenue and Berry Street, Block 2443, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to June 16, 2009, at 1:30 P.M., for deferred decision.

295-08-BZ

APPLICANT – Akerman Senterfitt Stadtmauer Bailkin, for Ronald & Meryl Bratt, owners.

SUBJECT – Application November 25, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary lot coverage and floor area (§23-141), side yards (§23-461) and does not comply with the required perimeter wall height (§23-631) in an R3-2 zoning district.

PREMISES AFFECTED – 1934 East 26th Street, east side between Avenue S and T, Block 7304, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Jessica Loeser.

ACTION OF THE BOARD – Laid over to June 16, 2009, at 1:30 P.M., for continued hearing.

301-08-BZ

APPLICANT – Fridman Saks LLP, for 2717 Quentin Realty LLC, owner.

SUBJECT – Application December 10, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area and lot coverage (§23-141), side yard (§23-461), perimeter wall height (23-631(b)) and less than the minimum rear yard

(§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 2717 Quentin Road, between East 27th and East 28th Streets, Block 6790, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Borris Saks.

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 23, 2009, at 1:30 P.M., for decision, hearing closed.

25-09-BZ

APPLICANT – Law Offices of Howard Goldman LLC., for AJJ Canal LLC, owner and Champion Fitness LLC, lessee.

SUBJECT – Application February 13, 2009 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment on the third floor of a three-story commercial building. The proposal is contrary to ZR §42-10. M1-5B district.

PREMISES AFFECTED – 277 Canal Street, Northwest corner of Canal and Broadway. Block 209, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

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 June 23, 2009, at 1:30 P.M., for decision, hearing closed.

30-09-BZ

APPLICANT – Sheldon Lobel, P.C., for 136-33 37th Avenue Realty, LLC, owner.

SUBJECT – Application February 23, 2009 – Special Permit pursuant to §73-44 to reduce the amount of required parking spaces for commercial and medical offices uses from 153 to 97 spaces. C4-3 zoning district.

PREMISES AFFECTED – 136-33 37th Avenue, north side of 37th Avenue, between Main Street and Union Street, Block 4977, Lot 95, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Jordan Most, Shian Shin Lu and Josh Rinesmith.

ACTION OF THE BOARD – Laid over to June 23, 2009, at 1:30 P.M., for continued hearing.

MINUTES

42-09-BZ

APPLICANT – Francis R. Angelino, Esq., for Arrow Linen Supply Company, Inc., owner.

SUBJECT – Application March 6, 2009 – Special Permit filed pursuant to §11-411 & §11-412 to permit a reinstatement of a variance which expired on July 12, 1992 which allowed the extension of a legal non conforming use within a residential zoning district. The application seeks an amendment to allow for a one-story enlargement of approximately 770 sq. ft. in the rear of the lot for additional storage for the commercial laundry. The subject site is located in a R5B zoning district.

PREMISES AFFECTED – 441-477 Prospect Avenue, between Eight Avenue and Prospect Park West, Block 1113, Lot 73, Borough of Brooklyn.

COMMUNITY BOARD #7BK

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 June 16, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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June 19, 2009

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173-09-BZ

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174-09-BZY

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175-09-A

25-50 Francis Lewis Boulevard, South west corner of Francis Lewis Boulevard and 168th Street., Block 4915, Lot(s) 16, Borough of **Queens, Community Board: 7**. Appeal seeking a determination that the owner has acquired common law vested right to continue development commenced under the prior C1-2/ R4 zoning district . C1-2 R4/R2A zoning district

176-09-BZ

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177-09-BZ

40-22 College Point Boulevard, West side of College Point Boulevard, between Roosevelt Avenue and 40th Road., Block 5066, Lot(s) 1,100 (tent.9001, Borough of **Queens, Community Board: 7**. Special Permit (73-66) for six mid-rise residential towers.

178-09-A

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179-09-A

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180-09-BZ

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181-09-A

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182-09-BZ

612 West 180th Street, 180th Street, between Wadworth and Saint Nicholas Avenues., Block 2162, Lot(s) 33, Borough of **Manhattan, Community Board: 12**. Variance (72-21) to legalize the existing Use Group 3 novitiate and Use Group 4 house of worship. The proposal is contrary to sections 24-35 (side yard) and 24-36 (rear yard). R7-2 district.

183-09-BZ

1400 5th Avenue, Northeast corner of 5th Avenue and West 115th Street., Block 1599, Lot(s) 7501, Borough of **Manhattan, Community Board: 10**. Special Permit (73-36) to allow the legalization of a physical culture establishment on a portion of the ground floor and cellar in an eight-story mixed-use building. The proposal is contrary to section 32-10. C4-5X district.

184-09-BZ

4072 Bedford Avenue, West side of Bedford Avenue between Avenue S and Avenue T., Block 7303, Lot(s) 37, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the enlargement of an existing single family home. This application seeks to vary open space, lot coverage and floor area (23-141); side yards (23-461) and rear yard (23-47) in an R3-2 zoning district.

DOCKET

185-09-A

67 Elder Avenue, Elder Avenue prolongation 102.04' north of Kenneth Place., Block 6789, Lot(s) 142, Borough of **Staten Island, Community Board: 3**. Construction not fronting on a mapped street, contrary to section 36 of the General City Law.

186-09-A

61 Elder Avenue prolongation 102.04' north of Kenneth Place., Block 6789, Lot(s) 144, Borough of **Staten Island, Community Board: 3**. Construction not fronting on a mapped street, contrary to section 36 of the General City Law.

187-09-BZ

94 Amherst Street, West side of Amherst Street between Shore Boulevard and Hampton Avenues, Block 8726, Lot(s) 43, Borough of **Brooklyn, Community Board: 15**. Variance to allow the construction of a community facility use, contrary to bulk regulations.

188-09-A

214 Noel Road, South side of Noel Road and East side of 103rd Avenue., Block 15459, Lot(s) 9, Borough of **Queens, Community Board: 14**. Construction within a bed of a mapped street, contrary to Section 35 of the General City Law.

189-09-BZ

3067 Richmond Terrace, North side of Richmond Terrace west of Harbor Road., Block 1208, Lot(s) 1, Borough of **Staten Island, Community Board: 1**. Variance to allow the legalization of the existing community facility use, contrary to use regulations.

190-09-A

3075 Richmond Terrace, North side of Richmond Terrace west of Harbor Road., Block 1208, Lot(s) 1, Borough of **Staten Island, Community Board: 1**. Construction within a bed of a mapped street, contrary to Section 35 of the General City Law.

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 23, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 23, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

441-31-BZ

APPLICANT – Ian Peter Barnes, IPB Associates, for Gurdev Singh Kang, owner.

SUBJECT – Application April 24, 2009 – Extension of Term/waiver for a Gasoline Service Station with accessory convenience store in a C2-2/R5 zoning district which expired on April 26, 2007.

PREMISES AFFECTED – 7702 Flatlands Avenue, southeast corner of Flatlands Avenue and East 77th Street, Block 8014, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

826-86-BZ, 827-86-BZ and 828-86-BZ

APPLICANT – Eric Palatnik, P.C. for North Shore Tower Apartments, Incorporated, owner; Continental Communications, lessee.

SUBJECT – Application April 3, 2009 – Extension of Term for a Special Permit (73-11), in an R3-2 zoning district, to permit the non-accessory radio towers and transmitting equipment on the roof of an existing thirty-three story multiple dwelling (North Shore Towers) which expired on March 28, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on March 6, 2003; waiver of the rules and an Amendment to eliminate the condition that a new Certificate of Occupancy be obtained.

PREMISES AFFECTED – 269-10, 270-10, 271-10 Grand Central Parkway, Northeast corner of 26th Street. Block 8489, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

149-01-BZ

APPLICANT – Eric Palatnik, P.C. for Jane Street Realty LLC, owner.

SUBJECT – Application March 26, 2009 – Amendment to a previously issued resolution that conditions the occupancy of one subsidized unit to a qualified senior citizen at a subsidized rate for a term of ten years, from the date of the issuance of the Certificate of Occupancy be removed.

PREMISES AFFECTED – 88 Jane Street, between Washington and Greenwich Streets, Block 641, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

246-01-BZ

APPLICANT – Eric Palatnik, P.C., for Bodhi Fitness Center, Inc., owner.

SUBJECT – Application January 29, 2009 – Extension of Term for a previously granted special permit (§73-36) which permitted the operation of Physical Culture Establishment (Bodhi Fitness Center) within a M1-1/C2-2 zoning district.

The application seeks to reflect the new owner/operator of the site. The term of the previous grant expired on June 1, 2008.

PREMISES AFFECTED – 35-11 Prince Street, between 35th Avenue and Northern Boulevard, Block 4958, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

29-05-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for R & F 350 West Broadway LLC c/o RFR Holding LLC, owner.

SUBJECT – Application May 29, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the development of an 10 story mixed-use building to be occupied by retail use on the first and second floors and residential use on floors three through ten, in an M1-5A zoning district, which expires on October 18, 2009.

PREMISES AFFECTED – 350 West Broadway, west side of West Broadway, 60 feet north of the corner formed by the intersection of Grand Street and West Broadway. Block 476, Lot 75, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEALS CALENDAR

62-08-A

APPLICANT – Eric Palatnik, P.C. for Benny Ulloa, owner
SUBJECT – Application March 27, 2009 – Proposed construction not fronting on a legally mapped street contrary to General City Law Section 36. R1-2 Zoning District.

PREMISES AFFECTED – 398 Nugent Street, Nugent Street, North of Saint George Road, Block 2284, Lot 25, Borough of Staten Island.

COMMUNITY BOARD #2SI

22-09-A

APPLICANT – Gary D. Lenhart for The Breezy Point Cooperative, Incorporated, owner; Maura Roche, lessee.

SUBJECT – Application February 10, 2009 – Reconstruction and enlargement of an existing single family home located partially in the bed of a mapped street and the upgrade of an existing non complying private disposal system contrary to General City Law Section 35 and contrary to Department of Buildings Policy. R4 Zoning.

PREMISES AFFECTED – 663 Highland Place, East side of Highland Place partially in the bed of mapped Beach 202nd

CALENDAR

Street, Block 16350, Lot 300, Borough of Queens
COMMUNITY BOARD #14Q

JUNE 23, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 23, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

256-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP for Hayden Rester, owner.

SUBJECT – Application November 5, 2007 – Variance (72-21) to permit a Use Group 4 community youth center within a portion of a proposed mixed-use building. The proposal is contrary to section 24-35 (side yard). R5 district.

PREMISES AFFECTED – 1978 Atlantic Avenue, Southern side of Atlantic Avenue, 180 feet west of the intersection of Atlantic and Ralph. Block 1339, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD # 8BK

254-08-BZ

APPLICANT – Eric Palatnik, P.C., for Yeshiva Ohr Yitzchok, owner.

SUBJECT – Application October 15, 2008 – Variance to legalize the use and enlargement of a Yeshiva, contrary to use regulations.

PREMISES AFFECTED – 1214 East 15th Street, Western side of East 15th Street between Avenue L and Locust Avenue. Block 6734, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD # 14BK

9-09-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Gerry Kaplan/Marlene Realty Co., for Force Fitness LLC, lessee.

SUBJECT – Application January 22, 2009 – Special Permit (§73-36) to allow a physical culture establishment in an existing one-story building. The proposal is contrary to ZR Section 42-10. M1-1 district.

PREMISES AFFECTED – 63-03 Fresh Pond Road, east side of Fresh Pond Road, 269.8' south of Metropolitan Avenue and Fresh Pond Road, Block 3608, Lot 14, Borough of Queens.

COMMUNITY BOARD #5Q

18-09-BZ

APPLICANT – Stuart A. Klein, for Ascot Properties, Ltd., owner; Gold's Gym, lessee.

SUBJECT – Application February 6, 2008 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment on the first, second and third floors in an existing twelve-story building. The proposal is contrary to ZR Section 32-10. C6-5, C6-7 and Special Midtown Districts.

PREMISES AFFECTED – 250 West 54th Street, between Broadway and 8th Avenue, Block 1025, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

23-09-BZ

APPLICANT – Eric Palatnik, P.C., for Alla Simirnov, owner.

SUBJECT – Application February 12, 2009 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a single family home. This application seeks to vary open space, lot coverage and floor area (23-141(b)) and rear yard (23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 114 Amherst Street, west side of Amherst Street between Hampton Avenue and Oriental Boulevard, Block 8732, Lot 71, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JUNE 9, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

5-98-BZ

APPLICANT – Maxfield Blaufeux & Heywood Balaufeux, for Priority Landscaping Incorporated, owner.

SUBJECT – Application March 13, 2009 – Extension of Term of a previously granted Variance (§72-21) for a garden supply sales and nursery establishment (UG17) with accessory parking and storage in an R5 zoning district which expired on February 23, 2009.

PREMISES AFFECTED – 1861 McDonald Avenue, east side 200’ north of Quentin Road, Block 6633, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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 and an extension of term of a previously granted variance for a garden supply sales and nursery establishment (UG 17) with accessory parking and storage in an R5 zoning district within the Special Ocean Parkway District, which expired on February 23, 2009; and

WHEREAS, a public hearing was held on this application on April 21, 2009, after due notice by publication in *The City Record*, with a continued hearing on May 19, 2009, and then to decision on June 9, 2009; and

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

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

WHEREAS, the subject site is located on the east side of McDonald Avenue, between Quentin Road and Avenue P, in an R5 zoning district within the Special Ocean Parkway District; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 5, 1981 when, under BSA Cal. No. 1046-80-BZ, the Board granted a variance to permit the construction of a one-story building for accessory parking and storage for an open garden supply sales and nursery establishment; and

WHEREAS, on June 29, 1982, under BSA Cal. No. 1046-80-BZ, the Board amended the resolution to permit changes to the building’s bulk parameters; and

WHEREAS, on February 23, 1999, under the subject calendar number, the Board permitted the re-establishment of the expired variance for a garden supply sales and nursery establishment (UG 17) with accessory parking and storage for a term of ten years, to expire on February 23, 2009; and

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

WHEREAS, at hearing, the Board raised concerns about the need for the barbed wire fencing located around the perimeter of the site and about the owner’s use of the vacant lot at 1873 McDonald Avenue (Lot 50), located three lots to the south of the subject site, for the storage of inventory; and

WHEREAS, in response, the applicant provided an affidavit from the owner indicating that the barbed wire fencing is necessary to secure the premises and that all materials related to the garden supply sales and nursery establishment will be removed from the vacant lot located at 1873 McDonald Avenue by July 5, 2009; and

WHEREAS, at hearing, the Board observed that an additional sign has been erected at the site since the Board’s previous grant, and questioned whether the current signage complies with district regulations; and

WHEREAS, in response, the applicant submitted a sign analysis indicating that the signage at the site complies with C1 zoning district regulations; and

WHEREAS, the applicant states that there is an additional sign located at the site since the Board’s previous approval; however, the Board notes that the signage at the site still complies with C1 zoning district regulations; 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 February 23, 1999, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from February 23, 2009, to expire on February 23, 2019, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received March 13, 2009”-(4) sheets, “May 7, 2009”-(1) sheet and “May 18, 2009”-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on February 23, 2019;

THAT signage shall comply with C1 zoning district regulations;

THAT a new certificate of occupancy be obtained by December 9, 2009;

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

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laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.”

(DOB Application No. 300695941)

Adopted by the Board of Standards and Appeals, June 9, 2009.

7-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for HKAL 34th Street Limited Partnership, owner; TSI East 34 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application February 9, 2009 – Extension of Term of a previously granted Special Permit for the operation of Physical Culture Establishment (New York Sports Club (NYSC)), located in a C1-9 (TA) zoning district, which expired on January 11, 2009.

PREMISES AFFECTED – 300 East 34th Street, southeast corner of East 34th Street, and Second Avenue, Block 939, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

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 January 11, 2009; and

WHEREAS, a public hearing was held on this application on March 24, 2009, after due notice by publication in *The City Record*, with continued hearings on April 21, 2009 and May 19, 2009, and then to decision on June 9, 2009; 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 PCE is located on the southeast corner of the intersection at East 34th Street and Second Avenue, in a C1-9 zoning district within the Special Transit Land Use District;

WHEREAS, the site is located in portions of the cellar, first floor mezzanine, first floor and second floor of a 36-story mixed-use commercial/residential building; and

WHEREAS, the PCE has a total floor area of 7,375 sq. ft., which includes 1,525 sq. ft. on the first floor, 250 sq. ft. on the first floor mezzanine, 5,600 sq. ft. on the second floor and 4,700 sq. ft. of space in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 16, 1999 when, under the subject calendar number, the Board granted a special permit to permit a

PCE in the subject building for a term of ten years, to expire on January 11, 2009; 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 November 16, 1999, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from January 11, 2009, to expire on January 11, 2019, *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 January 11, 2019;

THAT signage shall comply with C1 zoning 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. 101595037)

Adopted by the Board of Standards and Appeals, June 9, 2009.

951-55-BZ

APPLICANT – Eric Palatnik, P.C., for Deborah Luciano, owner; Gaseteria Oil Corporation, lessee.

SUBJECT – Application March 18, 2009 – Amendment (§11-411) to permit the installation of a canopy and minor modifications to the existing pump islands to a previously granted variance for a UG16 gasoline service station in a C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1098 Richmond Road, Targee Street and Richmond Road, Block 3181, Lot 1, 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 June 16, 2009, at 10 A.M., for decision, hearing closed.

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23-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Kehilat Sephardim of Ahavat Achim, owners.

SUBJECT – Application April 7, 2009 – Extension of Time/waiver to Complete Construction (which expired on July 2, 2008) and to obtain a Certificate of Occupancy (which expired on January 2, 2009) of a previously granted Variance (§72-21) for the expansion of an existing three story synagogue with accessory Rabbi's apartment in an R-4 zoning district.

PREMISES AFFECTED – 150-62 78th Road, southeast corner of the intersection formed by 78th Road and 153rd Street, Block 6711, Lot 84, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to June 23, 2009, at 10 A.M., for continued hearing.

1252-79-BZ

APPLICANT – Benjamin A. Leonardi/Miele Associates, for C.B.R. LLC (Dr. Harry Kent), owner.

SUBJECT – Application April 2, 2009 – Extension of Term/Amendment (§72-01 and §72-22) to reopen for a unlimited time limit.

PREMISES AFFECTED – 23-87-91 Bell Boulevard, aka 214-05-15 & 214-19 24th Avenue, northwest south of 24th Avenue 10' east of Bell Boulevard and 24th Avenue, Block 5958, Lot 52, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Joel A. Miele, Dr. Harry Kent, M.D. and Ben Leonardi.

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 23, 2009, at 10 A.M., for decision, hearing closed.

303-99-BZ

APPLICANT – Vito J. Fossella, P.E. (LPEC), for 2122 Richmond Avenue LLC, owner.

SUBJECT – Application March 26, 2009 – Extension of Time to obtain a Certificate of Occupancy which expired on September 12, 2004 and an Amendment to legalize the change in use from the previously granted Auto Sales Establishment (UG16) to Commercial/Retail (UG6) in an R3-2 zoning district.

PREMISES AFFECTED – 2122 Richmond Avenue, west side of Richmond Avenue, 111.72' north of corner formed by the intersection of Richmond Avenue and Draper Place, Block 2102, Lot 120, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

ACTION OF THE BOARD – Laid over to June 23, 2009, at 10 A.M., for continued hearing.

55-01-BZ

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for 568 Broadway Perty, LLC, owner; Blissworld LLC, lessee. SUBJECT – Application March 31, 2009 – Extension of Term/waiver of a previously granted Special Permit (§73-36) for the continued operation of a PCE (Bliss Spa) located on portions of the second and third floors of an eleven-story mixed use building in an M1-5B zoning district which expired on April 1, 2007.

PREMISES AFFECTED – 568 Broadway, north side of Prince Street, between Broadway and Crosby Street, Block 511, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Randall R and Jay Segal.

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 14, 2009, at 10 A.M., for decision, hearing closed.

26-09-BZ

APPLICANT – Board of Standards and Appeals/Sheldon Lobel, P.C.

OWNER: CAMBA Housing Ventures, Inc., owner.

SUBJECT – Review pursuant to Sec 1-10(f) of Board Rules and 666(8) of the Charter of a previously-granted Variance (§72-21) to permit the construction of a nine-story community facility building (CAMBA Housing). The proposal is contrary to §24-36. R7-1 district.

PREMISES AFFECTED – 97 Crooke Avenue, north side of Crooke Avenue, 164' west of Ocean Avenue, Block 5059, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Richard Lobel and Maria C. Rivan-Hazlewood.

For Opposition: Monique R. Derello, Barry Markman, Joshua Smalls and C.V. Whittington, MD.

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 26, 2009, at 10 A.M., for decision, hearing closed.

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APPEALS CALENDAR

19-09-A

APPLICANT – Elizabeth Safian of Sheldon Lobel Associates, for 34th and 35th Avenues Realty, LLC, owners.
SUBJECT – Application February 10, 2009 – Legalization of an existing building constructed within the bed of a mapped street contrary to General City Law Section 35. M2-1 Zoning District.

PREMISES AFFECTED – 132-55 34th Avenue, north side of 34th Avenue, 75’ east of the intersection formed by Collins Place and 34th Avenue, Block 4946, Lot 126, Borough of Queens.

COMMUNITY BOARD #7Q

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 Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated January 23, 2009, acting on Department of Buildings Application No. 410125350, reads in pertinent part:

“Building constructed in the bed of a mapped street is contrary to General City Law, Section 35 and must be referred to the BSA for approval;” and

WHEREAS, a public hearing was held on this application on May 12, 2009, after due notice by publication in the City Record, and then to decision on June 9, 2009; and

WHEREAS, by letter dated March 11, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated April 14, 2009, the Department of Environmental Protection (DEP) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated March 31, 2009, 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 Superintendent, dated January 23, 2009, acting on Department of Buildings Application No. 410125350 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 April 8, 2009” – 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 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 9, 2009.

32-09-BZY thru 34-09-BZY

APPLICANT – William Alicea for Treadwell LLC, owner.
SUBJECT – Application February 27, 2009 – Extension of time to complete construction (§11-332) and obtain a Certificate of Occupancy of a major development commenced prior to the text amendment of the zoning district regulations. R3A.

PREMISES AFFECTED – 122, 124 & 126 Treadwell Avenue, southwest corner of Treadwell Avenue and Harrison Avenue, Block 1088, Lot 49, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: William Alicia.

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 for the completion of construction of, and obtainment of a certificate of occupancy for, three semi-detached homes currently under construction at the subject site; and

WHEREAS, a public hearing was held on this application on April 21, 2009, after due notice by publication in *The City Record*, with a continued hearing on May 19, 2009, and then to decision on June 9, 2009; 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,

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recommends approval of this application; and

WHEREAS, the subject premises is located at the southwest corner of Treadwell Avenue and Harrison Avenue; and

WHEREAS, the subject site has a frontage of 100'-0" on Treadwell Avenue and a frontage of 50'-0" on Harrison Avenue, and a total lot area of 5,000 sq. ft.; and

WHEREAS, the site is proposed to be developed with three semi-detached, two-story, one-family and two-family residential buildings (the "Buildings"); and

WHEREAS, the premises is currently located within an R3A zoning district, but was formerly located within an R4 zoning district; and

WHEREAS, the development complies with the former R4 zoning district parameters; and

WHEREAS, however, on February 1, 2007 (hereinafter, the "Enactment Date"), the City Council voted to adopt a rezoning of the area, which rezoned the site to R3A; and

WHEREAS, as of that 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 the Department of Buildings ("DOB") to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain 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)(2) defines construction such as the proposed development, which involves the construction of two or more buildings on a single zoning lot, as a "major development"; and

WHEREAS, for "major development," an extension of time to complete construction, previously authorized by a DOB vesting determination, based on the criteria set forth in 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 substantial construction has been completed and substantial expenditures made 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 April 9, 2009, DOB states that the following permits for the proposed development were lawfully issued to the owner prior to the Enactment Date: Permit Nos. 500650066-01-NB, 500650057-01-NB and 500650048-01-NB, (hereinafter, the "New Building Permits"); and

WHEREAS, the Board acknowledges that during the 24-month period between November 3, 2003 and November 10, 2005, the New Building Permits lapsed for a total of approximately four months, during which time some work was performed at the site; and

WHEREAS, additionally, DOB confirmed and the Board notes that there were no permits in effect from November 10, 2005 to December 8, 2008, when DOB re-issued them; however, the applicant states that no work was performed during this time; and

WHEREAS, the Board further notes that work recommenced at the site after the New Building Permits were re-issued on December 8, 2008, and that work continued until the New Building Permits lapsed by operation of law on February 1, 2009; and

WHEREAS, the Board has considered these lapses of time in its analysis, but has determined that the New Building Permits were in effect for the vast majority of time work was performed, which allowed for significant work to be completed as noted above and below, pursuant to valid permits; 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

MINUTES

under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permits, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permits includes all of the foundation and superstructure work, all of the windows, the roofs and gutters, exterior doors, exterior finish work, interior stairs, insulation, plumbing work, approximately 95 percent of the electrical work, and approximately 85 percent of the HVAC work; and

WHEREAS, in support of this statement the applicant has submitted the following: photographs of the site, which reflect that the Buildings are almost entirely complete with regard to exterior and interior construction; financial records; and copies of cancelled checks; 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 expenditures paid for the development are approximately \$670,900, or 88 percent, of the \$761,000 cost to complete; and

WHEREAS, as noted, the applicant has submitted financial records 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 and its observations made at visits to the site, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the sites a two-year extension of time to complete construction and obtain a certificate of occupancy, pursuant to ZR § 11-332.

Therefore it is Resolved that this application made pursuant to ZR § 11-332 to renew Permit Nos. 500650066-01-NB, 500650057-01-NB and 500650048-01-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 9, 2011.

Adopted by the Board of Standards and Appeals, June 9, 2009.

140-08-BZY

APPLICANT – Eric Palatnik, P.C., for 1016 East 13th Realty, LLC, owner.

SUBJECT – Application April 5, 2008 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 district regulations. R5 zoning district.

PREMISES AFFECTED – 1016 East 13th Street, between Avenue J and K, Block 6714, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 10 A.M., for continued hearing.

293-08-A & 294-08-A

APPLICANT – Juan D. Reyes, III, Riker Danzig, et al., for Alexandra Hladky, owner; Leonessa Development Corporation/Frank Volpicello, lessees.

SUBJECT – Application November 25, 2008 – Proposed construction of two semi detached two family homes located within the bed of a mapped street contrary to General City Law Section 35. R4 zoning district.

PREMISES AFFECTED – 36-40 166th Street, northwest corner of Depot Road and 166th Street, Block 5288, Lot 39, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Juan D. Reyes, III.

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 23, 2009, at 10 A.M., for decision, hearing closed.

160-09-A

APPLICANT – Eric Palatnik, P.C., for HBC Corona, LLC, owner.

SUBJECT – Application April 22, 2009 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior C2-4 /R6 zoning district. C2-4 /R6A.

PREMISES AFFECTED – 112-15 Northern Boulevard, between 112th Street and 112th Place, Block 1706, Lot 25, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik, Jeff Lau and Chris Xu.

ACTION OF THE BOARD – Laid over to June 23, 2009, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

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Adjourned: P.M.

**REGULAR MEETING
TUESDAY AFTERNOON, JUNE 9, 2009
1:30 P.M.**

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

ZONING CALENDAR

269-06-BZ

CEQR #07-BSA-026R

APPLICANT – Joseph Margolis, for Bruno Salvo, owner.
SUBJECT – Application October 4, 2006 – Variance (§72-21) to permit the conversion of 11,000 sf of vacant space into retail/commercial space. The proposal is contrary to §22-00. R3-2 district (South Richmond Special District).
PREMISES AFFECTED – 125 Greaves Lane, between Timber Ridge drive on the east and Greaves Lane on the west, Block 4645, Lot 425, Borough of Staten Island.

COMMUNITY BOARD #3SI

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, June 9, 2009.

193-08-A

APPLICANT – Joseph Margolis, for Bruno Salvo, owner.
SUBJECT – Application July 15, 2008 – Proposed construction of retail/commercial space located in an existing shopping center not fronting on a mapped street contrary to General City Law Section 36. R3-2 Zoning District.

PREMISES AFFECTED – 125 Greaves Lane, between Timber Ridge drive on the east and Greaves Lane on the west, Block 4645, Lot 425, Borough of Staten Island.

COMMUNITY BOARD #3SI

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, June 9, 2009.

178-07-BZ

CEQR #08-BSA-001K

APPLICANT – Dominick Salvati and Son Architects, for Bronx Jewish Boys, owners.

SUBJECT – Application July 12, 2007 – Variance (§72-21) to permit the proposed seven-story residential building above the existing three-story community facility building. The proposal is contrary to residential floor area and FAR and lot coverage (§23-141(b)), number of dwelling units (§23-222), rear yard (§23-47 & §24-36), sky exposure plane and setback, (§23-631(d)), required residential and community facility parking (§25-23 & §25-31). R5 district.
PREMISES AFFECTED – 2261-2289 Bragg Street, 220’ north from intersection of Bragg Street and Avenue W, Block 7392, Lot 57, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

For Applicant: Peter Hirshman and Rabbi Schorsher.

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, June 9, 2009.

88-08-BZ

CEQR #08-BSA-078Q

APPLICANT – Alfonso Duarte, for Naresh M. Gehi, owner.
SUBJECT – Application April 11, 2008 – Variance pursuant to §72-21 to allow the commercial office conversion of an existing residential building; contrary to use regulations §22-00. R5 District.

PREMISES AFFECTED – 101-17 Lefferts Boulevard, East side, 150 ft. south of 101st Avenue, Block 9487, Lot 68, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Alfonso Duarte and Richard Lobel.

For Opposition: Lisa Gomes

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, the decision of the Deputy Borough Commissioner, dated April 8, 2008, acting on Department of Buildings Application No. 410010410, reads:

“Proposed offices UG 6 contrary to permitted use in residential zone as per ZR 22-00”; and

WHEREAS, a public hearing was held on this application on March 3, 2009, with a continued hearing on April 21, 2009, and then to decision on June 9, 2009; and

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

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot within an R5 zoning district, the conversion of a three-family home to a Use Group 6 office use, contrary to ZR § 22-00; and

WHEREAS, Community Board 9, Queens, recommended disapproval of this application; and

WHEREAS, City Council Member Joseph Addabbo, Jr. and District Leader Taj Rajkumar of the 31st Assembly District provided written testimony in support of the application; and

WHEREAS, the subject lot has a width of approximately 29 feet, a total lot area of 3,269 sq. ft., and is located on the east side of Lefferts Boulevard, between 101st Avenue and 103rd Avenue; and

WHEREAS, the site is occupied by a three-story, three-family home, with 2,623 sq. ft. of floor area (0.8 FAR) (hereinafter, the “House”); and

WHEREAS, the applicant asserts that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in using the House or otherwise developing the site in strict conformance with underlying district regulations: (1) the site is adjacent to the boundary line for a C2-2 zoning district overlay; (2) the site is located at the intersection of two heavily-trafficked thoroughfares; (3) the site has a narrow width; (4) the site is located across the street from three non-residential uses and is unmarketable for a residential use; and

WHEREAS, the applicant cites to case law and prior Board decisions, claiming it establishes precedent for the following issues: (1) the quantum of proof required for variance applications and (2) the standards required to establish the uniqueness finding pursuant to ZR § 72-21(a); and

WHEREAS, the case law and prior Board decisions will be discussed below; and

WHEREAS, as an initial matter, the Board notes that the mere existence of certain physical conditions on, or related to, a site is insufficient to support the uniqueness finding set forth at ZR § 72-21(a); and

WHEREAS, ZR § 72-21(a) provides that the physical conditions, once proven to be unique, must also result in practical difficulties or unnecessary hardship in strictly conforming to applicable zoning provisions such that there is a nexus between the uniqueness and a resulting hardship; and

WHEREAS, as to the location, the applicant asserts that the southern boundary line of the adjacent C2-2 zoning district overlay abuts the site and that this creates a condition that is not compatible with a conforming residential use at the site; and

WHEREAS, as to the uniqueness of this condition, the Board notes that within a 400-ft. radius of the site, there are six sites (on blocks 9488, 9487, and 9486), which abut the C2-2 overlay and, pursuant to the applicant’s map, at least four of those sites, including the subject site, are occupied

by two- or three-family homes; further, three of those four sites are actually partially within the C2-2 overlay; and

WHEREAS, the applicant submitted land use maps and color-coded Sanborn maps, which reflect that there are a multitude of conforming residential uses within the subject zoning district and even within the C2-2 overlay; and

WHEREAS, in fact, the Board notes that the majority of the sites within the 400-ft. radius within the C2-2 overlay are also occupied by residential uses, similar to the House; and

WHEREAS, the Board notes that the two sites directly to the north of the subject site are within the C2-2 zoning district and, pursuant to the applicant’s map, are occupied by residential use; and

WHEREAS, further, the Board notes that C2-2 zoning districts are among the ten variations of commercial overlays set forth in the Zoning Resolution, which are mapped throughout the city’s lower and medium density residential zoning districts; commercial overlays are, by definition, mapped within residential zoning districts and serve the local retail needs of the surrounding residential neighborhood; and

WHEREAS, the uses permitted within the C2-2 overlay are limited and deemed to be compatible with adjacent residential use; the description of C2 Local Service Districts in ZR § 31-12 provides “the permitted services create relatively few objectionable influences for nearby residential uses”; and

WHEREAS, except for the overlay, the Board notes that within a 400-ft. radius of the site, the area is all zoned residentially; and

WHEREAS, accordingly, the Board notes that the applicant has not produced any evidence to support a finding that residential use is not feasible at the site due to its adjacency to the C2-2 overlay; and

WHEREAS, the Board finds the applicant’s emphasis on the site’s location adjacent to a commercial overly to be misplaced; and

WHEREAS, as to the applicant’s assertion that the site is located at the intersection of two heavily-trafficked streets, the Board notes that this is factually incorrect as there are three lots between the subject site and the corner at Lefferts Boulevard and 101st Avenue; and

WHEREAS, further, the Board does not accept the applicant’s conclusory statements that because 101st Avenue has a C2-2 overlay and because a bus route runs along Lefferts Boulevard, it is heavily-trafficked; and

WHEREAS, the Board reiterates that commercial overlays are common throughout residential zoning districts in the city, as are bus routes; and

WHEREAS, the applicant claims that the subject site, with a width of 29 feet, is uniquely narrow; and

WHEREAS, the applicant limits its analysis to Lefferts Boulevard, where eight out of 24 lots have widths of 30 feet or less; and

WHEREAS, however, the Board notes that of the 92 lots located wholly within a 400-ft. radius of the site, there are approximately 55 lots, or 60 percent, with widths of 30

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feet or less; and

WHEREAS, additionally, the two sites directly to the north on Lefferts Boulevard and within the C2-2 zoning district have lot widths of 25 feet; the adjacent site to the south has a lot width of 21 feet; and

WHEREAS, further, in light of the fact that the narrower lots are occupied with one-, two-, and three-family homes, functioning in conformance with the underlying zoning, the Board notes that the applicant fails to articulate any connection between the subject lot's width and any purported hardship; and

WHEREAS, the Board notes that the site is currently occupied by a legal three-story three-family residence with a width of approximately 20'-4" and the applicant has failed to support any contention that such a home is not habitable for its intended purpose, nor that it is distinguished from the majority of similar-sized homes in the surrounding area; and

WHEREAS, the applicant asserts that the location of the site across from three non-residential uses – a medical office, an accessory parking lot, and a catering establishment - is unique and contributes to the hardship at the site; and

WHEREAS, in support of this assertion, the applicant submitted (1) statements from two real estate brokers and (2) an affidavit from the property owner; and

WHEREAS, the real estate brokers' statements include assertions that potential tenants have declined to rent because of the location across from the catering hall at a heavily-trafficked location at an intersection; and

WHEREAS, the owner's statement includes the contention that stated that commercial use is more consistent with the character of the area; and

WHEREAS, first, the Board notes that the proffered statements are overly broad and self-serving and speak to the viability of an alternate use as opposed to the infeasibility of occupying the site with a conforming use; and

WHEREAS, the Board notes that the location across the street from three non-residential uses is not a unique condition; and

WHEREAS, in fact, all three of the noted adjacent sites are occupied by residential use on lots which range from four to eight feet narrower than that of the subject lot and are similarly situated across the street from the noted non-residential uses; and

WHEREAS, the Board notes that it is difficult to glean from the applicant's maps, but it appears as though there are significantly more residential uses across the street from commercial uses, within a 400-ft. radius of the site, including at least four other lots which are also across the street from the exact same non-residential uses as the subject site; and

WHEREAS, as to the conditions the applicant cites as present at the catering hall, such as parking and noise concerns, the Board notes that it does not consider potential Building Code and zoning non-compliances on sites which are not before it, in its analysis of compatible uses; and

WHEREAS, additionally, the Board notes that the

medical office and its accessory parking are as of right uses in the subject R5 zoning district; and

WHEREAS, finally, visits to the site and photographic evidence reflect a strong residential character on Lefferts Boulevard and in the vicinity, in comparable buildings on similarly-sized, or smaller, lots; and

WHEREAS, the Board notes that the applicant cites to case law and prior Board cases in support of its application; and

WHEREAS, the Board observes as an initial matter that all of its decisions on variance applications are site-specific, and notwithstanding commonalities in the language used to describe the Board's findings, the decisions do not serve as binding precedent for other applications; and

WHEREAS, New York State case law supports the proposition that a zoning board may recognize and give weight to various factors when making its decision in variance cases and the fact that a zoning board granted a variance request to a property owner for a site which appears to be similarly-situated to another site which was denied a variance does not in itself show that the discretionary act was arbitrary (See Matter Cowan v. Kern, 41 NY2d 591 (1977)); and

WHEREAS, the applicant discusses the concept of quantum of proof as set forth in Matter of National Merritt v. Weist, 41 NY2d 438 (1977) for the proposition that the burden of proof required to satisfy the variance findings corresponds to the magnitude of the variance sought; and

WHEREAS, the Board notes that National Merritt actually undermines the applicant's argument that the quantum of proof required in the subject case should be minimized because of the nature of the relief sought; and

WHEREAS, specifically, the court in National Merritt, in the context of contemplating a variance for bulk, stated that "a use variance will have a greater impact on the community than an area variance which does not involve a use prohibited by the ordinance" (National Merritt at 442, citing Matter of Wilcox v. Zoning Board of Appeals of City of Yonkers 17 NY2d 249 (1966)); and

WHEREAS, accordingly, the Board does not find the applicant's assertion about the quantum of proof to be persuasive in light of the fact that the applicant seeks the kind of variance which the court has held to be subject to a more difficult standard; and

WHEREAS, additionally, the applicant cites to New York Court of Appeals decision in Douglaston Civic Ass'n v. Klein, 51 NY2d 963 (1980) for the proposition that a particular site seeking a variance need not be the only one to be affected by the purported unique conditions, but rather that the conditions not be so generally applicable as to result in a zoning change if other similarly-situated sites were also granted variances; and

WHEREAS, as discussed, the Board has reviewed each of the purportedly unique characteristics of the site and, as there are a significant number of sites with many or all of the same characteristics as the subject site, does not find that the characteristics meet the Douglaston standard; and

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WHEREAS, the applicant seeks to distinguish Colonna v. BSA, 166 A.D.2d 528 (2d Dep't 1990), a case in which the Board denied a variance because the applicant failed to establish the uniqueness finding; and

WHEREAS, the applicant asserts that Colonna is distinguishable from the subject case because the applicant in Colonna relied on a single site condition for its uniqueness claim; and

WHEREAS, the Board notes that when analyzing whether uniqueness has been established in the context of a variance application, the quantity of purported unique characteristics is not dispositive to establishing uniqueness; it is the merit to the uniqueness and the nexus between such condition or conditions and a hardship in developing a site with a use that complies with zoning district regulations; and

WHEREAS, the applicant in Colonna and in the subject case both failed to identify unique conditions or to establish a nexus between any such conditions and a purported hardship in using or developing the site in conformance with zoning district regulations; and

WHEREAS, the applicant also cites to several Board decisions and suggests that the facts and the Board's findings in these cases are similar to the facts and the applicant's proposed findings in the subject case; and

WHEREAS, the cited cases are significantly dissimilar to the subject matter and therefore are erroneously cited by the applicant as being indicative of how the Board should (or must) analyze and decide the subject application; and

WHEREAS, the applicant cites to BSA Cal. Nos. 267-06-BZ, 102-02-BZ, 216-01-BZ, 140-03-BZ, and 33-06-BZ in an effort to show that the Board granted variances to similarly-situated sites; and

WHEREAS, in BSA Cal. No. 267-06-BZ, the Board considered an application for a commercial building within a residential zoning district and found that uniqueness was established because (1) the lot was triangular-shaped due to a road widening and (2) the lot was situated at a heavily trafficked three-way intersection; and

WHEREAS, in BSA Cal. No. 102-02-BZ, the Board considered an application for a mixed-use building in a residential zoning district and found that uniqueness was established because the lot was irregularly-shaped, which made it infeasible to provide the required yards; and

WHEREAS, in BSA Cal. No. 216-01-BZ, the Board considered an application to legalize a commercial use in a residential zoning district and found that uniqueness was established because the site was occupied by a former public library building which had always served as a library or for commercial use and was not suitable for residential conversion; and

WHEREAS, in BSA Cal. No. 140-03-BZ, the Board considered an application for the construction of a commercial building within a residential zoning district and found that uniqueness was established because (1) the large lot could not be subdivided into separate lots due to street frontage requirements, (2) the lot was irregularly-shaped, and (3) the lot lacked sewer access; and

WHEREAS, in BSA Cal. No. 33-06-BZ, the Board

considered an application to permit the enlargement of a commercial use within a residential zoning district on a site in what had historically been mapped within a commercial zoning district which permitted a commercial use such as the existing and proposed, a pre-existing legal non-conforming commercial use; and

WHEREAS, a careful reading of these resolutions reveals that the applicant's reliance on them is misplaced, as each decision identifies specific unique physical conditions which have a nexus to a hardship claim; and

WHEREAS, the claimed unique features set forth by the applicant do not have such a nexus: houses located adjacent to commercial overlays, with comparable widths, and across the street from non-residential uses can be both habitable and marketable, and the applicant has not provided any compelling evidence that the House can not be occupied residentially because of these, or any other factors; and

WHEREAS, the Board also notes that the mere fact that commercial use of the House may be more profitable or desirable from the perspective of the owner or a real estate broker does not support a finding that use of the House for residential purposes imposes unnecessary hardship or practical difficulties; and

WHEREAS, moreover, the Board disagrees that proximity to community facility uses – which, under certain conditions, are permitted uses in residential districts because they are presumed to be compatible with residential uses – contributes to a finding of uniqueness; community facilities are often in proximity to residences; and

WHEREAS, in sum, based upon its review of the record, the Board finds that the applicant has not provided any evidence that the alleged unique physical conditions, when considered in the aggregate, compromise the habitability of the House for residential purposes to the degree where it could be said that practical difficulties or unnecessary hardship arise; and

WHEREAS, accordingly, the Board finds that the applicant has failed to provide substantial evidence in support of the finding set forth at ZR § 72-21(a); and

WHEREAS, because the applicant has failed to provide substantial evidence in support of the finding set forth at ZR §72-21(a), the application also fails to meet the finding set forth at ZR §72-21(b); and

WHEREAS, even assuming *arguendo* that the noted conditions should be considered unique such that the finding set forth at ZR § 72-21(a) is met, the applicant has failed to submit credible financial data in support of its claim that conforming residential development on the site will not realize a reasonable return.

Therefore it is Resolved that the decision of the Borough Commissioner, dated April 8, 2008, acting on Department of Buildings Application No. 410010410, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, June 9, 2009.

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237-08-BZ

CEQR #09-BSA-027M

APPLICANT – Sheldon Lobel, P.C., for Rocky Mount Baptist Church, owner; Rocky Mount Development, LLC., lessee.

SUBJECT – Application September 18, 2008 – Variance pursuant to §72-21 to allow for a 19 story community facility and residential building with 124 affordable units, contrary to bulk regulations (§23-145, §23-633, §24-552(b)) R7-2 District.

PREMISES AFFECTED – 37 Hillside Avenue, south side of Hillside Avenue, 450’ east of the intersection of Broadway and Hillside Avenue, Block 2170, Lot 118, Borough of Manhattan.

COMMUNITY BOARD #12M

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, June 9, 2009.

276-08-BZ

CEQR #09-BSA-044M

APPLICANT – Alfonso Duarte, for Kesey LLC, owner; Beljanski Wellness Center Inc., lessee.

SUBJECT – Application November 12, 2008 – Special Permit (§73-36) to allow a physical culture establishment on the sixth floor in a seven-story office building. The proposal is contrary to ZR §32-10. C5-2 district.

PREMISES AFFECTED – 150 East 55th Street, south side, 155’ east of Lexington Avenue, Block 1309, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #6M

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 Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Commissioner, dated February 10, 2009, acting on Department of Buildings Application No. 110316177, reads in pertinent part:

“Proposed ‘Physical Culture Establishment’ is not permitted as-of-right in C5-2 zoning district. This use is contrary to ZR Section 32-10. Requires a special permit from the Board of Standards and Appeals pursuant to ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36

and 73-03, to permit, on a site within a C5-2 zoning district, the establishment of a physical culture establishment (PCE) on a portion of the sixth floor of a seven-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on February 10, 2009 after due notice by publication in *The City Record*, with continued hearings on March 17, 2009, April 7, 2009 and May 12, 2009, and then to decision on June 9, 2009; and

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

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, a building condominium owner raised concerns that the applicant did not obtain an approval for the proposed PCE from the building’s Board of Managers; and

WHEREAS, in response, the applicant submitted a certificate of approval from the Board of Managers, dated April 29, 2009, approving the proposed use of the sixth floor as a PCE; and

WHEREAS, the subject site is located on the south side of East 55th Street, between Third Avenue and Lexington Avenue, in a C5-2 zoning district; and

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

WHEREAS, the PCE will occupy 1,498 sq. ft. of floor area on a portion of the sixth floor of the existing building; and

WHEREAS, the PCE will be operated by the Beljanski Wellness Center, Inc.; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 8:00 a.m. to 6:00 p.m.; and Saturday and Sunday, from 8:00 a.m. to 3:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE will include facilities for the practice of massage; 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. 09BSA044M, dated November 3, 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; 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 C5-2 zoning district, the establishment of a physical culture establishment on a portion of the sixth floor of an existing seven-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received February 18, 2009"- Two (2) sheets and "Received June 3, 2009"- One (1) sheet and *on further condition*:

THAT the term of this grant shall expire on June 9, 2019;

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;

THAT substantial construction be completed in accordance with ZR § 73-70; 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 9, 2009.

8-09-BZ

CEQR #09-BSA-062M

APPLICANT – Sheldon Lobel, P.C., for CMG Group, LLC, owner; Facial and Tanning Consulting, Inc., lessee.

SUBJECT – Application January 22, 2009 – Special Permit (§73-36) to allow the operation of a physical culture establishment on the second floor of an existing two-story commercial building. The proposal is contrary to ZR §32-10. C6-4 district.

PREMISES AFFECTED – 125 Fulton Street, north side of Fulton Street, between Nassau Street and William Street, Block 91, Lot 11, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Joshua 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 Manhattan Borough Commissioner, dated April 7, 2009, acting on Department of Buildings Application No. 110387947, reads in pertinent part:

"Proposed physical culture establishment 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 in a C6-4 zoning district within the Special Lower Manhattan District, the legalization of a physical culture establishment (PCE) on the second floor of an existing two-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 28, 2009 after due notice by publication in *The City Record*, and then to decision on June 9, 2009; and

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

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

WHEREAS, the subject site occupies a through lot located on the south side of Ann Street and the north side of Fulton Street between Nassau Street and William Street, in a C6-4 zoning district; and

WHEREAS, the site is occupied by a two-story

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commercial building; and

WHEREAS, the PCE will occupy 2,970 sq. ft. of floor area, comprising the entire second floor of the existing building; and

WHEREAS, the PCE will be operated as the Papaya Spa; and

WHEREAS, the proposed hours of operation are: 10:00 a.m. to 10:00 p.m. daily; and

WHEREAS, the applicant represents that the services at the PCE will include facilities for the practice of massage; 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 November 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 November 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. 09BSA062M, dated April 14, 2009; 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 in a C6-4 zoning district within the Special Lower Manhattan District, the establishment of a physical culture establishment on the 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 June 3, 2009"- Four (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on November 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 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 9, 2009.

20-09-BZ

APPLICANT – MetroPCS New York, LLC, for Valerie Arms Apt. Corp., owner; MetroPCS New York, LLC, lessee.

SUBJECT – Application February 10, 2009 – Special Permit (§§73-03, 73-30), to permit in an R3-2 within a C1-2 district, a non-accessory radio tower.

PREMISES AFFECTED – 54-44 Little Neck Parkway, north west of intersection of Little Neck Parkway and Nassau Boulevard, Block 8256, Lot 108, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

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For Applicant: Ben Weisel.

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 Deputy Borough Commissioner, dated January 26, 2009, acting on Department of Buildings Application No. 410098969, reads in pertinent part:

“Communication facility exceeds the 400 square feet allowed under TPPN # 5/98 and therefore will require a special permit from the Board of Standards and Appeals as per Section 73-30 ZR;”
and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within a C1-2 (R3-2) zoning district, the proposed construction of a telecommunications facility, which consists of seven panel antennas and related equipment for public utility wireless communications, which is contrary to ZR § 32-21; and

WHEREAS a public hearing was held on this application on April 28, 2009, after due notice by publication in *The City Record*, and then to decision on June 9, 2009; and

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

WHEREAS, Queens Borough President Helen Marshall provided testimony in support of this application; 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 currently occupied by two seven-story residential buildings; and

WHEREAS, the proposed telecommunications facility will be located on the roof of the seven-story residential building located on the southern end of the site, upon which existing antennas are already situated; and

WHEREAS, the applicant states that the proposed telecommunications facility consists of: (i) five panel antennas mounted to the interior of the building parapet and extending to a maximum height of six feet above the parapet; (ii) two panel antennas mounted to the existing penthouse and extending to a maximum height of six feet above the penthouse; (iii) two new equipment cabinets, two new battery cabinets and one new PPC cabinet, to be placed on a steel equipment platform located on the rooftop; (iv) two GPS units attached to the steel equipment platform; and (v) all accessory equipment, wires, cables, conduits and other necessary appurtenances; and

WHEREAS, the applicant represents that the telecommunications facility is necessary to remedy a significant gap in reliable service in the vicinity of the site caused by a lack of coverage and capacity; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications facility, provided it finds “that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood;” and

WHEREAS, the applicant represents that the facility has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the facility will comply with all applicable laws, that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant further represents that the size and profile of the facility is the minimum necessary to provide the required wireless coverage, and that the facility will not interfere with radio, television, telephone or other uses; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed facility and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

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

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

WHEREAS, therefore, the Board finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.09-BSA-069Q, dated February 10, 2009; and

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

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact

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Statement are foreseeable; and

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR § 73-03 and § 73-30, to permit, within a C1-2 (R3-2) zoning district, the proposed construction of a telecommunications facility (non-accessory radio facility) for public utility wireless communications, which is contrary to ZR § 32-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received February 10, 2009"- (9) 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;

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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 9, 2009.

35-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for East 103rd Street Realty LLC c/o Glenwood Management Corporation, owner.

SUBJECT – Application March 2, 2009 – Special Permit filed pursuant to §11-411 & §11-412 of the New York City Zoning Resolution to renew for an additional ten (10) years and to extend a use district exception previously granted pursuant to Section 7(e) of the pre-1961 Zoning Resolution, allowing the use of the ground floor of a two-story building located in an R7A zoning district as a contractors' establishment (Use Group 16).

PREMISES AFFECTED – 345-347 East 103rd Street, for North side of East 103rd Street between First and York Avenues, Block1675, Lot 21, 22, Borough of Manhattan.

COMMUNITY BOARD #11M

APPEARANCES –

For Applicant: James P. Power.

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 February 23, 2009, acting on Department of Buildings Application No. 110008688, reads in pertinent part:

"Use district exception granted by BSA under section 7(i) of Pre-1961 Zoning Resolution, BSA Cal. No. 958-38-BZ, has expired; seek renewal and extension from BSA;" and

WHEREAS, this is an application pursuant to ZR §§ 11-411 and 11-412 for a reinstatement of a prior Board approval to permit a contractor's establishment (UG 16) and for a legalization to permit the extension of the contractor's establishment to the second floor of the subject building; and

WHEREAS, a public hearing was held on this application on May 12, 2009, after due notice by publication in the *City Record*, and then to decision on June 9, 2009; 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, Manhattan, recommends approval of this application; and

WHEREAS, the premises is located on the north side of East 103rd Street, between First Avenue and York Avenue, within an R7A zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 20, 1938 when, under BSA Cal. No. 958-38-BZ, the Board granted a variance to permit the conversion of part of the first floor of the building, then located in a business use district, to a garage for more than five cars; and

WHEREAS, on June 20, 1950, under BSA Cal. No. 958-38-BZ Vol. II, the Board permitted a change in occupancy from a garage for more than five motor vehicles to a motor vehicle repair shop, for a term of five years; and

WHEREAS, subsequently, the grant was amended to include the entire first floor, and the term of the grant was extended; and

WHEREAS, on May 24, 1966, under BSA Cal. No. 958-38-BZ Vol. III, the Board amended the resolution to permit the use of the premises as a contractor's establishment (UG 16) and extended the term; and

WHEREAS, the term was subsequently extended; most recently, on March 1, 1977, the grant was amended and the term extended for five years, to expire on March 1, 1982; and

WHEREAS, although the term expired, the applicant represents that the use of the site as a contractor's establishment has been continuous; 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, the applicant also seeks to legalize the extension of the contractor's establishment (UG 16) onto the second floor of the subject building; and

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WHEREAS, pursuant to ZR § 11-412, the Board may, in appropriate cases, allow the extension of the use of a building on a premises subject to a pre-1961 variance, provided that the use of the building may not be extended in excess of 50 percent of the floor area of such building occupied or utilized by the use on December 15, 1961, and that no extensions shall be authorized for a new non-conforming use authorized under ZR § 11-413; and

WHEREAS, the applicant represents that the first floor of the subject building, comprised of 4,298 sq. ft. of floor area, was occupied prior to December 15, 1961 pursuant to the variance granted by the Board under BSA Cal. No. 958-38-BZ; and

WHEREAS, because the second floor of the subject building is comprised of 1,163 sq. ft. of floor area, which is less than 50 percent of the floor area occupied on December 15, 1961, the applicant asserts that ZR § 11-412 permits the extension of the use to the second floor of the subject building; and

WHEREAS, the Board notes that, as evidenced in the resolution granted under BSA Cal. No. 958-38-BZ Vol. III, the change in use from a motor vehicle repair shop to a contractor's establishment (UG 16) on May 24, 1966 was not authorized pursuant to ZR § 11-413 and predates a subsequent text amendment allowing a change of use under ZR § 11-413; 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 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 contractor's establishment (UG 16) and for a legalization to permit the extension of the contractor's establishment to the second floor of the subject building, within an R7A zoning district, *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, 2009"-(5) sheets; and *on further condition*:

THAT this permit shall be for a term of ten years, to expire on June 9, 2019;

THAT the use shall be limited to an electrical, glazing, heating, painting, paper hanging, plumbing, roofing or ventilating contractor's establishment;

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

THAT a certificate of occupancy be obtained by December 9, 2009;

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, June 9, 2009.

287-06-BZ

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

SUBJECT – Application October 27, 2006 – Variance (§72-21) to allow a residential/community facility building ontrary to yard regulations. R5 zoning district.

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

COMMUNITY BOARD #1Q

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 July 21, 2009, at 1:30 P.M., for decision, hearing closed.

177-07-BZ

APPLICANT – Manish S. Savani, for Maurice Dayan, owner.

SUBJECT – Application July 6, 2007 – Variance (§72-21) to construct a two story, two family residential building on a vacant corner lot. This application seeks to vary the front yard requirement on one street frontage (§23-45) in an R-5 zoning district.

PREMISES AFFECTED – 886 Glenmore Avenue, corner of Glenmore Avenue and Milford Street, Block 4208, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #7BK

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 June 23, 2009, at 1:30 P.M., for decision, hearing closed.

220-07-BZ

APPLICANT – Moshe M. Friedman, P.E., for Relly Bodansky, owner.

SUBJECT – Application September 25, 2007 – Variance (§72-21) to allow the erection of a new 4-story residential building containing 4 dwelling units on a site containing an

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existing legal, nonconforming 3-story multiple dwelling which is proposed to be razed; contrary to use regulations (§42-10). M1-1 district.

PREMISES AFFECTED – 847 Kent Avenue, east side of Kent Avenue, 300’ north of intersection of Kent Avenue and Myrtle Avenue, Block 1898, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 8, 2009 at 1:30 P.M., for deferred decision.

222-07-BZ

APPLICANT – Stuart A. Klein, Esq., for Century Realty Corp./Randall Co. LLC., owner.

SUBJECT – Application September 27, 2007 – Variance pursuant to §72-21 to legalize residential uses on the second and third floor of an existing building. M1-6 District.

PREMISES AFFECTED – 110 West 26th Street, between Sixth Avenue and Seventh Avenue, Block 801, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Robert Pauls and Abigail Patterson.

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 14, 2009, at 1:30 P.M., for decision, hearing closed.

97-08-BZ

APPLICANT – Eric Palatnik, P.C., for Chesky Berkowitz, owner; Central UTA, lessee.

SUBJECT – Application April 18, 2008 – Special Permit (§73-19) to allow the proposed legalization of the existing yeshiva (Use Group 3 school). M1-1 district.

PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 1:30 P.M., for continued hearing.

173-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Royal One Real Estate, LLC, owner.

SUBJECT – Application July 1, 2008 – Variance (§ 72-21) to allow a new twelve (12) story hotel building containing ninety nine (99) hotel rooms; contrary to bulk regulations (§ 117-522). M1-5/R7-3 Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area C.

PREMISES AFFECTED – 42-59 Crescent Street, northeast

corner of the intersection of Crescent Street and 43rd Avenue, Block 430, Lots 37, 38, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Adam Rothkrug and Robert Pauls.

ACTION OF THE BOARD – Laid over to July 21, 2009, at 1:30 P.M., for continued hearing.

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 warehouse/ commercial vehicle storage building (UG 16); contrary to use regulations (§22-00). R3X 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: Jerry Iannece, Tom Buscher, Eileen Ring and Kathleen Crumn.

ACTION OF THE BOARD – Laid over without date.

228-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sephardic Mikvah Israel by Isaac Hidary, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) to permit the construction of a one-story mikvah (ritual bath).The proposal is contrary to ZR §§24-34 (front yards) and 24-35 (side yards). R3-2 district.

PREMISES AFFECTED – 2802 Avenue R, a/k/a 1801-1811 East 28th Street, southeast corner of Avenue R and East 28th Street, Block 6834, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

For Opposition: Eric Palatnik, Stuart Klein and Martin Cohen.

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 21, 2009, at 1:30 P.M., for decision, hearing closed.

234-08-BZ

APPLICANT – Eric Palatnik, P.C., for 1702 Avenue Z, Inc., owner.

SUBJECT – Application September 9, 2008 – Special Permit (§73-36) to allow the proposed Physical Culture Establishment at the cellar and a portion of the first and

MINUTES

second floors in a seven-story mixed-use building. The proposal is contrary to ZR §32-10. C4-2 district.

PREMISES AFFECTED – 1702 Avenue Z, southeast of the corner formed by Avenue Z and East 17th Street, Block 7462, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 11, 2009, at 1:30 P.M., for continued hearing.

260-08-BZ

APPLICANT – Eric Palatnik, for Moisei Tomshinsky, owner.

SUBJECT – Application October 21, 2008 – Special Permit (§73-622) for the In-Part Legalization and enlargement of a single family home. This application seeks to vary floor area (§23-141) in an R3-1 zoning district.

PREMISES AFFECTED – 148 Oxford Street, between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Susan Klapper.

ACTION OF THE BOARD – Laid over to July 28, 2009, at 1:30 P.M., for continued hearing.

10-09-BZ

APPLICANT – Francis R. Angelino, Esq., for Religious Org. Tenseishinbikai USA, Inc., owner.

SUBJECT – Application January 23, 2009 – Variance pursuant to § 72-21 to allow a community facility use (house of worship), contrary to front yard regulations, §24-34. R3-2 District.

PREMISES AFFECTED – 2307 Farragut Road/583 East 23rd Street, north east corner of Farragut Road and East 23rd Street, Block 5223, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Francis R. Angelino, Esq., Omar Walrond, Michiyo Ishikawa, Joseph Tarella, Andy Choi and David Leffler.

For Opposition: Richard Silverman and Florence Valentino.

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 23, 2009, at 1:30 P.M., for decision, hearing closed.

139-07-BZ

APPLICANT – Agusta & Ross, for 328 Realty Holding, LLC, owner.

SUBJECT – Application May 25, 2007 – Variance (§72-21) to permit the development of a two-story and cellar, two-family residence on a vacant lot. The proposal is contrary to section 42-10. M1-2 district.

PREMISES AFFECTED – 328 Jackson Avenue, easterly side of Jackson Avenue, 80’ northerly of East 141st Street, Block 2573, Lot 5, Borough of Bronx.

COMMUNITY BOARD #1BX

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 1:30 P.M., for continued hearing.

210-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Samaritan Foundation, Inc., owner.

SUBJECT – Application August 15, 2009 – Variance (§72-21) to permit the two-story enlargement to the existing drug treatment facility which would result in a four-story drug treatment center with sleeping accommodations (Use Group 3). The proposal is contrary to use regulations (ZR §43-00) and bulk regulations (ZR §52-22) in an M1-1 district.

PREMISES AFFECTED – 130-15 89th Road, north side of 89th Road, approximately 125’ east of 130th Street, Block 9338, Lot 147, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Richard Lobel and Peter Gaito, R.A.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 1:30 P.M., for continued hearing.

7-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sandra Zagelbaum and Yechiel Zagelbaum, owners.

SUBJECT – Application January 20, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141), side yards (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1082 East 26th Street, East 26th Street, between Avenue J and Avenue K, Block 7607, Lot 85, Borough of Brooklyn.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: Lois S. Colin, Michael A. Colin and Sanford Goldhaber.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 1:30 P.M., for continued hearing.

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50-09-BZ

APPLICANT – Eric Palatnik, P.C., for Roni Mova, owner; Warrior Fitness, lessee.

SUBJECT – Application March 26, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment on the third floor in a twelve-story building. The proposal is contrary to ZR §42-10. M1-6 district.

PREMISES AFFECTED – 29 West 35th Street, West 35th Street and Fifth Avenue, Block 837, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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New Case Filed Up to June 16, 2009

191-09-A

1291 Carroll Street, North side, 60 ft. west of the intersection of Brooklyn Avenue and Carroll Street., Block 1284, Lot(s) 48, Borough of **Brooklyn, Community Board: 9**. Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced prior to the text amendment of April 30, 2008. R2 Zoning District

192-09-BZ

912 Broadway, Northeast corner of the intersection of Broadway and Stockton Street., Block 1584, Lot(s) 11, Borough of **Brooklyn, Community Board: 3**. Variance to allow the construction of department stores, contrary to use regulations.

193-09-A

78-46 78th Place, West side of 79th Place, between Myrtle Avenue to the south and 78th Avenue to the north., Block 3828, Lot(s) 73, Borough of **Queens, Community Board: 5**. Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior R5 Zoning district. R4-1 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

JULY 14, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 14, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

198-66-BZ

APPLICANT – Eric Palatnik, P.C., for 300 East 74 Owners Corporation, owner.

SUBJECT – Application June 8, 2009 – Extension of Time to complete substantial construction of an existing plaza for a residential high rise building which expires on July 28, 2009; located in a C1-9 zoning district.

PREMISES AFFECTED – 300 East 74th Street, between first and Second Avenues, Block 1448, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #8M

200-00-BZ

APPLICANT – Eric Palatnik, P.C., for Blans Development Corporation, owner.

SUBJECT – Application June 1, 2009 – Extension of Time to obtain a Certificate of Occupancy for a Physical Culture Establishment (Squash Total Fitness), in a C1-4(R6B) zoning district, which expired on February 19, 2009.

PREMISES AFFECTED – 107-24 37th Avenue, southwest corner of 37th Avenue and 108th Street, Block 1773, Lot 10, Borough of Queens.

COMMUNITY BOARD #3Q

26-02-BZ

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; A & A Automotive Corporation, lessee.

SUBJECT – Application June 8, 2009 – Extension of Time to obtain a Certificate of Occupancy for a UG16 Gasoline Service Station (Mobil), in a C1-2(R3X) zoning district, which expires on July 13, 2009.

PREMISES AFFECTED – 1680 Richmond Avenue, north west corner of Victory Boulevard, Block 2160, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

322-05-BZ

APPLICANT – Eric Palatnik, P.C., for Queens Jewish Community Council, owner.

SUBJECT – Application June 8, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for an enlargement of a single family home and the change in use from Residential to Community Use Facility (Queens Jewish community Council), located in an R4B

zoning district, which will expire on March 7, 2010.

PREMISES AFFECTED – 69-69 Main Street, Main Street and 70th Avenue, Block 6642, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEALS CALENDAR

317-08-A

APPLICANT – Margaret R. Garcia, AIA, for Block 17 Lot 112 LLC, owner.

SUBJECT – Application December 23, 2009 – Proposed construction of a four story dwelling located within the bed of a mapped street contrary to General City Law Section 35. R5 Zoning District.

PREMISES AFFECTED – 124 Montgomery Avenue, west side of Montgomery Avenue, 140' north of Victory Boulevard, Block 17, Lot 112, Borough of Staten Island.

COMMUNITY BOARD #1SI

172-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Susan & Brett Flynn, lessees.

SUBJECT – Application May 19, 2009 – Reconstruction and enlargement of an existing single family dwelling not fronting on a legally mapped street contrary to General City Law Section 36 The proposed upgrade of the existing non complying private disposal located partly in the bed of the service road is contrary to Department of Building Policy. R4 zoning district.

PREMISES AFFECTED – 10 Gotham Walk, west side of Gotham Walk, 105.46' south of mapped Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

165-09-A

APPLICANT – Law Office of Howard Goldman, for 13 Hendricks LLC, owner.

SUBJECT – Application April 30, 2009 – Appeal seeking a determination that the owner has acquired common law vested rights for a development commenced under the prior R4 district regulations. R3 Zoning district.

PREMISES AFFECTED – 150 Hendricks Avenue, between Jersey Street and Bismark Avenue, Block 44, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

191-09-A

APPLICANT – Michael T. Cetera, AIA, for Devorah Halberstam, owner.

SUBJECT – Application June 16, 2009 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced prior to the text amendment of April 30, 2008. R2 zoning district.

CALENDAR

PREMISES AFFECTED – 1291 Carroll Street, north side, 60' west of the intersection of Brooklyn Avenue and Carroll Street, Block 1284, Lot 48, Borough of Brooklyn.

COMMUNITY BOARD #9BK

JULY 14, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 16, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

46-09-BZ

APPLICANT – Eric Palatnik, P.C., for Igor Orak, owner.
SUBJECT – Application March 23, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area, lot coverage and open space (§23-141(b)); side yards (§23-461) and rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 122 Oxford Street, between Shore Boulevard and Oriental Avenue, Block 8757, Lot 92, Borough of Brooklyn.

COMMUNITY BOARD #15BK

56-09-BZ

APPLICANT – Omnipoint Communications, Inc., for The South Shore Swimming Club, Inc., owner.
SUBJECT – Application April 15, 2009 – Special Permit (§73-30) to allow a proposed non-accessory radio tower and related equipment.

PREMISES AFFECTED – 6736 Hylan Boulevard, south side of Hylan Boulevard between Culotta Lane and Page Avenue, Block 7734, Lot 50, Borough of Staten Island.

COMMUNITY BOARD #3SI

168-09-BZ

APPLICANT – Lewis E. Garfinkel R.A., for Yaakov Miller, owner.

SUBJECT – Application May 7, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to combine two semi-attached homes to create one single family home that varies in floor area and open space (ZR §23-141(a)) and less than the required rear yard (ZR §23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1435 & 1437 East 26th Street, east side of East 26th Street, 292' south of Avenue N, Block 7680, Lots 34 and 35, Borough of Brooklyn.

COMMUNITY BOARD #14BK

177-09-BZ

APPLICANT – Raymond H. Levin, Esquire Wachtel Masyr, LLP, for FTC Residential Company III, L.P., owner.

SUBJECT – Application May 29, 2009 – Special Permit (§73-66) for to seek a waiver of the height restrictions within the Flight Obstruction Area (ZR §61-21) for six mid-rise residential towers located above a three story commercial/retail/accessory parking base.

PREMISES AFFECTED – 40-22 College Point Boulevard, west side of College Point Boulevard, between Roosevelt Avenue and 40th Road, Block 5066, Lots 1 and 100 (tent. 9001, 9002 and 9100), Borough of Queens.

COMMUNITY BOARD #7Q

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JUNE 16, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

951-55-BZ

APPLICANT – Eric Palatnik, P.C., for Deborah Luciano, owner; Gaseteria Oil Corporation, lessee.

SUBJECT – Application March 18, 2009 – Amendment (§11-411) to permit the installation of a canopy and minor modifications to the existing pump islands to a previously granted variance for a UG16 gasoline service station in a C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1098 Richmond Road, Targee Street and Richmond Road, Block 3181, 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 Montanez5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment to a previously granted variance permitting a gasoline service station (Use Group 16) to permit certain modifications to the site pursuant to ZR § 11-412; and

WHEREAS, a public hearing was held on this application on May 12, 2009 after due notice by publication in *The City Record*, with a continued hearing on June 9, 2009, and then to decision on June 16, 2009; 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 2, Staten Island, recommends approval of this application; and

WHEREAS, the site is a triangular-shaped lot located at the intersection of Richmond Road, Targee Street and West Fingerboard Road, between Columbus Avenue and Tacoma Street, within a C2-1 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 24, 1956 when, under the subject calendar number, the Board granted a variance to permit a gasoline service station, including a one-story service station building, sales office, lubritorium, minor motor vehicle repairs, and new gasoline pump island on the subject site; and

WHEREAS, subsequently, the grant has been amended by the Board at various times, most recently on April 2, 1974, when the Board permitted alterations to the accessory building and pump islands; and

WHEREAS, the applicant now seeks an amendment to permit minor modifications of the existing pump islands and the installation of a canopy over the pump islands; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for changes to the site; and

WHEREAS, at hearing, the Board raised concerns regarding the applicant's compliance with signage regulations, the parking of cars on the sidewalk, and the condition of the retaining wall located at the base of the fence located along the Targee Street side of the premises; and

WHEREAS, in response, the applicant submitted revised signage calculations and a letter from the project engineer indicating that the proposed signage is compliant with C2 zoning regulations, and provided photographs establishing that cars are no longer being improperly parked on the sidewalk; and

WHEREAS, in addition, the applicant represents that the retaining wall will be repaired at the same time that the proposed canopy is installed; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR § 11-412.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated July 24, 1956, so that as amended this portion of the resolution shall read: "to permit minor modifications of the existing pump islands and the installation of a canopy over the pump islands; *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 28, 2009"– (4) sheets; and *on further condition:*

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

THAT the retaining wall located along the Targee Street side of the building shall be repaired;

THAT the site be maintained free of debris and graffiti;

THAT all signage shall comply with C2 zoning regulations;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 510062762)

Adopted by the Board of Standards and Appeals June 16, 2009.

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165-93-BZ

APPLICANT – Francis R. Angelino, Esq., for Claudia Stone & Goran Sare, owners.

SUBJECT – Application April 3, 2009 – Extension of Term of a previously granted Variance (§72-21) for a UG6 art gallery on the first floor of an existing three story and cellar mixed use front building in an R8B zoning district which expired on April 12, 2009.

PREMISES AFFECTED – 113 East 90th Street, between Park and Lexington Avenues, Block 1519, Lot 7, 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 permitting the operation of a commercial art gallery (Use Group 6) on the first floor of an existing three-story mixed-use commercial/community facility building, which expired on April 12, 2009; and

WHEREAS, a public hearing was held on this application on May 19, 2009 after due notice by publication in *The City Record*, and then to decision on June 16, 2009; 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 Hinkson and Commissioner Montanez; and

WHEREAS, the site is located on the north side of East 90th Street, between Park Avenue and Lexington Avenue, within an R8B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 12, 1994 when, under the subject calendar number, the Board granted a variance to permit a commercial art gallery on the first floor of a three-story mixed-use commercial/facility building located on the south side of a lot occupied by two buildings, to expire on April 12, 2009; and

WHEREAS, the applicant now requests an additional fifteen-year 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 April 12, 1994, so that as amended this portion of the resolution shall read: “to extend the term for fifteen years from April 12, 2009, to expire on April 12, 2024, *on condition* that any and all work shall substantially conform to drawings filed

with this application marked “Received April 3, 2009”-(6) sheets; and *on further condition*:

THAT the term of this grant shall expire on April 12, 2024;

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

THAT a new certificate of occupancy shall be obtained by December 16, 2009;

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. 110476486)

Adopted by the Board of Standards and Appeals, June 16, 2009.

68-94-BZ

APPLICANT – Cozen O’Connor for Bay Plaza Community Center LLC, owner; Jack Lalanne Fitness Centers, Incorporated, lessee.

SUBJECT – Application August 14, 2008 – Extension of Time to obtain a Certificate of Occupancy for a previously granted special for the operation of a PCE (Bally’s Total Fitness) on the first and second floors of the Co-Op City Bay Plaza Shopping Center, located in an C4-3 zoning district, which expired on April 7, 2009.

PREMISES AFFECTED – 2100 Bartow Avenue, south side of Baychester Avenue, Block 5141, Lot 810, Borough of Bronx.

COMMUNITY BOARD #10BX

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair 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 previously granted special permit for the operation of a physical culture establishment (PCE), which expired on April 7, 2009; and

WHEREAS, a public hearing was held on this application on May 19, 2009, after due notice by publication in *The City Record*, and then to decision on June 16, 2009; and

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

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WHEREAS, the site is located on the south side of Bartow Avenue, between Baychester Avenue and the Hutchinson River Parkway, within a C4-3 zoning district; and

WHEREAS, the PCE is located on a portion of the first and second floors of the Co-op City Bay Plaza shopping center and occupies 20,290 sq. ft. of floor area; and

WHEREAS, the PCE is operated as “Bally Total Fitness”; and

WHEREAS, on November 1, 1994, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit, in a C3-4 district, the operation of a PCE for a term of ten years; and

WHEREAS, on April 12, 2005, the grant was extended for a term of ten years, to expire on November 1, 2014; and

WHEREAS, a condition of the prior grant was that a certificate of occupancy be obtained by September 12, 2006; and

WHEREAS, on September 12, 2006 the Board granted an 18-month extension of time to obtain a certificate of occupancy, to expire March 12, 2008; and

WHEREAS, most recently, on October 7, 2008, the Board granted a six-month extension of time to obtain a certificate of occupancy, to expire on April 7, 2009; and

WHEREAS, the applicant represents that its application to DOB for a certificate of occupancy for the PCE is pending and that it is conditioned on approval by the Board of the instant application; and

WHEREAS, based upon its review of the record, the Board finds that an 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 November 1, 1994, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to December 16, 2009; *on condition* that all use and operations shall substantially conform to all BSA-approved drawings associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by June 16, 2010;

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.”

Adopted by the Board of Standards and Appeals, June 16, 2009.

26-09-BZ

APPLICANT – Board of Standards and Appeals/Sheldon Lobel, P.C.

OWNER: CAMBA Housing Ventures, Inc., owner.

SUBJECT –Review pursuant to Sec 1-10(f) of Board Rules and 666(8) of the Charter of a previously-granted Variance (§72-21) to permit the construction of a nine-story community facility building (*CAMBA Housing*). The proposal is contrary to §24-36. R7-1 district.

PREMISES AFFECTED – 97 Crooke Avenue, north side of Crooke Avenue, 164’ west of Ocean Avenue, Block 5059, Lot 51, 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 Montanez

Negative:.....5

THE RESOLUTION:.....0

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 3, 2009, acting on Department of Buildings Application No. 310246061, reads in pertinent part:

“Proposed rear yard on Crooke Avenue for a community facility in an R7-1 district is contrary to ZR 24-36. Required rear yard = 30’. Proposed rear yard = 24’”; and

WHEREAS, this is an application under ZR §72-21, to permit, within an R7-1 zoning district, the proposed construction of a nine-story community facility building with sleeping accommodations (UG 3), contrary to ZR § 24-36; and

WHEREAS, the applicant filed a companion case under BSA Calendar No. 48-09-A pursuant to General City Law § 36, to allow the proposed building to be constructed without a 30-foot turnaround frontage space; this application was granted on May 12, 2009; and

WHEREAS, a public hearing was held on this application on March 31, 2009 after due notice by publication in *The City Record*, and then to decision on May 12, 2009; and

WHEREAS, subsequent to the Board’s decision, certain community members raised concerns to the Board that the applicant had not performed the required notification to property owners within a 400-ft. radius of the site, pursuant to the Board’s Rules of Practice and Procedure § 1-06 (g); and

WHEREAS, in response, the Board agreed that the notification was not sufficient and in accordance with § 666(8) of the Charter and § 1-10(f) of the Rules of Practice and Procedure, the Board moved to review its May 12, 2009 decision by re-opening and re-hearing on June 9, 2009; and

WHEREAS, that Board informed the applicant that the hearing would be re-opened and directed the applicant to perform the full required notice; and

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WHEREAS, the Board notes that the applicant provided documentation, which reflects that proper notification of the re-hearing scheduled for June 9, 2009 had been effectuated; and

WHEREAS, the Board re-opened the hearing and a public hearing was held on this application on June 9, 2009 after due notice by publication in *The City Record*, and then to decision on June 16, 2009; and

WHEREAS, accordingly, this resolution supersedes the resolution dated May 12, 2009; and

WHEREAS, this application is brought on behalf of CAMBA Housing Ventures, Inc. ("CAMBA"), a not-for-profit entity; and

WHEREAS, Community Board 14, Brooklyn, recommends approval of this application; and

WHEREAS, Borough President Marty Markowitz submitted a letter supporting the proposal; and

WHEREAS, certain community members submitted written and oral testimony in support of the proposal at the initial hearing and the re-hearing; and

WHEREAS, certain community members submitted written and oral testimony in opposition to the proposal, citing concerns about neighborhood character and a potential negative impact that the building's residents and affiliated programs might have on quality of life issues such as crime and safety; and

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

WHEREAS, the site is located on the north side of Crooke Avenue, 164 feet west of Ocean Avenue within an R7-1 zoning district; and

WHEREAS, the site has an irregular triangular shape and a lot area of approximately 8,227 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a nine-story 53-unit community facility building (UG 3) with a floor area of 28,290 sq. ft. (3.4 FAR); and

WHEREAS, the building will provide a rear yard of 24'-0" (a rear yard of 30'-0" is the minimum required), but will comply with all other bulk parameters of the underlying zoning district; and

WHEREAS, the applicant represents that the requested variance is necessitated by unique conditions of the site that create a hardship, specifically: (1) the site's triangular shape; (2) an adjacent below-grade subway line; and (3) the site's limited frontage; and

WHEREAS, the applicant states that the triangular shape of the site creates substantial difficulty in designing an efficient residential building without encroaching into the rear yard; and

WHEREAS, as to the adjacent subway line, the subject site abuts an 18-foot below-grade right-of-way for the Metropolitan Transit Authority ("MTA") B and Q subway lines; and

WHEREAS, the applicant states that the presence of the subway line requires there to be an MTA retaining wall adjacent to the right-of-way, with a height of five feet, separating the right-of-way from the subject site and that MTA regulations mandate that eight feet of clearance be provided

between development on the subject site and the retaining wall to protect the existing railroad structure; and

WHEREAS, the applicant states that providing the required clearance further constrains the floor plates of a complying development; and

WHEREAS, the applicant notes that the rear lot line extends for a width of 118'-3" at the rear, but narrows to a width of 25 feet at the Crooke Avenue frontage; and

WHEREAS, additionally, the applicant notes that more than half of the 25-ft. frontage on Crooke Avenue is occupied by an MTA easement, leaving just 12 feet of frontage on Crooke Avenue; and

WHEREAS; the applicant further states that, in order to provide access, the building utilities must be located within the western portion of the site, in line with the 12-ft. street frontage; and

WHEREAS, the applicant states that the unique configuration of the subject site, when combined with the requirement to provide eight feet of clearance in the side yard between the subject site and the adjacent MTA site, and the limited street frontage results in a narrow and irregular floorplate and sharply reduces the number of units possible in a complying building; plans submitted by the applicant indicate that such a constrained building, without rear yard relief could accommodate no more than 39 units; and

WHEREAS, the applicant represents that a standard rectangular lot with the same lot area as the subject site could accommodate a 60-unit building; and

WHEREAS, the applicant notes that there are no other such irregularly-shaped sites with as little street frontage, and with limitations due to proximity to an MTA subway line such as the subject site within a 400-ft. radius of the site; and

WHEREAS, in addition to the noted physical constraints of the site, the applicant states that CAMBA's programmatic needs to provide supportive housing and social services to low-income tenants contributes to the waiver request; and

WHEREAS, the applicant states that its programmatic needs require more than the 39 units for homeless and formerly homeless persons, and low-income individuals which could be provided in an as of right building; and

WHEREAS, specifically, the applicant states that 53 units are required, 60 percent of which will be restricted to individuals with special needs living in City shelter and transitional facilities and 40 percent of which will be reserved for individuals with annual incomes at or below 60 percent of the adjusted median income established for the New York metropolitan area; and

WHEREAS, the applicant further states that the building program includes access to onsite accessory social service programming, which includes job training, counseling, and case management; and

WHEREAS, the applicant provided documentation of preliminary funding commitments from the NYC Department of Health and Human Services, the NYC Department of Homeless Services, the NYC Department of Housing Preservation and Development, and the Office of the Brooklyn Borough President; and

WHEREAS, the applicant represents that the building

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program is determined in part by the requirements of the government funding sources concerning building design and unit count; 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 compliance with the applicable zoning regulations; and

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

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

WHEREAS, the applicant states that the proposed development is consistent with that of the surrounding area, which is characterized by multi-family residential buildings, which includes buildings of comparable height and bulk; and

WHEREAS, the applicant further states that the requested rear yard waiver, which would result in a rear yard with a depth of 24'-0" is compatible with the adjacent property to the rear because both benefit from the adjacent MTA subway right-of-way with a width of 60 feet, which remains open and vacant and is an additional source of light and air; and

WHEREAS, the applicant asserts that a non-complying rear yard is not out of character with the surrounding area since three other nearby properties, including the adjacent property to the rear with a non-complying depth of 15'-9", have non-complying rear yards; and

WHEREAS, the applicant proposes to provide landscaping and an outdoor recreation area at the rear of the site; and

WHEREAS, the applicant notes that the proposed community facility use is permitted as-of-right in the subject R7-1 zoning district; and

WHEREAS, several neighborhood residents testified in opposition to the proposed building, citing concerns with its bulk, height, population density, and the potential negative impact that a community facility with CAMBA's program would have on the surrounding neighborhood; and

WHEREAS, as to bulk, the Board notes that the proposed FAR of 3.44 is within the limit for an as-of-right Use Group 3 community facility building with sleeping accommodations within the subject R7-1 zoning district; and

WHEREAS, the Board also notes that an FAR of 4.8 is permitted within the subject zoning district for other community facility uses; and

WHEREAS, accordingly, the Board notes that the applicant could build a taller building with more floor area within an as of right building envelope, but that such a design is inefficient due to the unique site conditions and would not satisfy CAMBA's programmatic needs; and

WHEREAS, the Board notes that the proposed floor area, building height and setback are within the parameters of the subject zoning district and that the applicant only seeks a

rear yard waiver due to the noted unique physical constraints of the site; and

WHEREAS, further, as to the density, the Board notes that the applicant could accommodate more than the proposed 53 units if the lot were of a regular shape or if the programmatic needs did not require a uniform floorplate and the applicant proposed additional smaller floors; and

WHEREAS, as to the proposed use, the Board has reviewed the opposition's concerns but notes that the proposed use is among the uses permitted as of right in the subject zoning district and that the waiver request is limited to bulk, rather than use; and

WHEREAS, the Board finds that assertions about potential illegal, or otherwise incompatible, activity associated with the building's future residents and programs are not appropriate within the context of this bulk variance and the analysis of whether the findings for a rear yard waiver are met; 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, CAMBA requires a minimum number of housing units in order to achieve its programmatic needs and to be eligible for certain funding; and

WHEREAS, additionally, the Board notes that the proposed building will maintain a rear yard with a depth of 24 feet, which allows for the design of an efficient floorplate, and is greater than the depths of two adjacent rear yards; and

WHEREAS, accordingly, the Board finds that this proposal is the minimum necessary to afford relief and allow CAMBA to carry out the stated needs; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09BSA073K, dated April 20, 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

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Statement are foreseeable; and

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

Therefore it is Resolved, that the Board of Standards and Appeals issues a Negative Declaration, 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 R7-1 zoning district, the proposed construction of a nine-story community facility building, contrary to ZR § 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 11, 2009"- (6) sheets; and "Received May 12, 2009"- (1) sheet 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 building shall provide rear yard of 24'-0";

THAT double-glazed windows with a 35 dBA shall be provided to achieve a 45 dBA interior noise level, as shown 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 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, June 16, 2009.

8-96-BZ

APPLICANT – Walter T. Gorman, P.E., for Motiva Enterprises LLC, owner; Shell Service Station, lessee.

SUBJECT – Application April 20, 2009 – Extension of Term for a Gasoline Service Station (Shell), located in an C2-2/R3-2 zoning district, which expired on July 16, 2006; Extension of Time/waiver to obtain a Certificate of Occupancy which expired on July 16, 2000 and an Amendment to legalize modification to the building which does not comply with previously approved plans.

PREMISES AFFECTED – 175-22 Horace Harding Expressway, southwest corner of Utopia Parkway, Block 6891, Lot 32, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Cindy Bachan.

ACTION OF THE BOARD – Laid over to August 23, 2009, at 10 A.M., for continued hearing.

174-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Phillip Pollicina, owner.

SUBJECT – Application June 19, 2008 – Extension of term and Waiver for a previously granted variance pursuant to §72-21. The application seeks the authorization to continue operation of an existing food products manufacturing establishment (Use Group 17B) within a R4 zoning district. The most recent term expired on July 1, 2007.

PREMISES AFFECTED – 1108/10 Allerton Avenue, South side of Allerton Avenue between Laconia Avenue and Yates Avenue. Block 4456, Lot 47, Borough of the Bronx.

COMMUNITY BOARD #11BX

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 July 21, 2009, at 10 A.M., for decision, hearing closed.

55-97-BZ

APPLICANT – Sheldon Lobel, P.C. for Baker Tripi Realty, owner.

SUBJECT – Application March 18, 2009 – Extension of term filed pursuant to §11-411 of the Zoning Resolution requesting an extension of the term of a variance previously granted by the Board of Standards and Appeals and an extension of time to obtain a certificate of occupancy allowing the continued operation of an automotive repair shop (Use Group 16) located in a C2-2/R3-2 zoning district. The previous term expired on September 23, 2007.

PREMISES AFFECTED – 76-36 164th Street, southwest corner of the intersection formed by 164th Street and 76th Road. Block 6848, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to July 21, 2009, at 10 A.M., for continued hearing.

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APPEALS CALENDAR

311-08-BZY

APPLICANT – Slater & Beckerman, LLP, for D.A.B. Group LLC, owner.

SUBJECT – Application December 18, 2008 – Extension of time to complete construction (§11-331) of a minor development commenced prior to the amendment of the Zoning district regulations. C4-4A.

PREMISES AFFECTED – 77, 79 & 81 Rivington Street, Block 415, Lots 61, 62, 63, 66, 67, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Neil Weisbard.

ACTION OF THE BOARD – Application granted.

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 §11-331 to renew building permits and extend the time for the completion of the foundation of a 16-story transient hotel (Use Group 5) building; and

WHEREAS, a public hearing was held on this application on March 24, 2009, after due notice by publication in *The City Record*, with continued hearings on April 21, 2009 and May 19, 2009, and then to decision on June 16, 2009; 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 disapproval of this application; and

WHEREAS, the owner of the adjacent building, 137 Orchard Street (hereinafter, the “Opposition”), testified in opposition to this application on the basis that their building was damaged in the process of the work performed on the subject building; and

WHEREAS, Council Member Alan Jay Gerson submitted written testimony requesting that the Board refrain from deciding whether to renew the subject building permits until the applicant resolves the damage to 137 Orchard Street; 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, the Board notes that the applicant provided documentation establishing that the New Building Permit was issued prior to the zoning amendment;¹ and

WHEREAS, the applicant represents that the Building complies with the former C6-1 zoning district parameters; specifically, the proposed 6.0 FAR and building height of 191’-0” were permitted; and

WHEREAS, because the site is now within a C4-4A zoning district, the Building would not comply with the maximum FAR of 4.0 or the maximum total building height of 80’-0”; and

WHEREAS, because the Building violated these provisions of the C4-4A zoning district and work on the foundation was not completed as of the Enactment Date, the Permits lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on November 28, 2008 halting work on the Building; and

WHEREAS, the applicant now applies to the Board to reinstate the Permits pursuant to ZR § 11-331, so that the proposed development may be fully constructed under the prior C6-1 zoning district; 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

¹ The official transcript of minutes for the November 19, 2008 New York City Council meeting indicates that the meeting began at 2:20 p.m. and recessed at 3:21 p.m. and that the vote to approve the East Village/Lower East Side Rezoning occurred towards the end of the meeting. The Board finds this to be sufficient evidence that the New Building Permit, which was issued at 2:21 p.m. on November 19, 2008, was issued prior to the zoning amendment.

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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 Permits are 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 permits were issued to the owner by DOB on (1) September 29, 2008 authorizing excavation of the premises and the construction of a foundation for the 16-story hotel (Use Group 5) building, and (2) on November 19, 2008, authorizing the construction of the 16-story hotel (Use Group 5) building; and

WHEREAS, by letter dated March 13, 2009, DOB stated that the Foundation Permit and the New Building Permit were lawfully issued on September 29, 2008 and November 19, 2008, respectively; and

WHEREAS, DOB initiated a special audit review of the New Building Permit on January 15, 2009, and certain zoning and Building Code objections were raised (the “Objections”); and

WHEREAS, on January 16, 2009, DOB issued a letter to the owner providing notice of its intent to revoke the New Building Permit based on the Objections (the “Notice of Intent”); and

WHEREAS, DOB approved revised plans on January 27, 2009 that addressed the objections identified by the audit and rescinded the letter of intent to revoke the New Building Permit on January 30, 2009; and

WHEREAS, thus, the Board finds that the Foundation Permit was lawfully issued by DOB on September 29, 2008, and that the New Building Permit was lawfully issued by DOB on November 19, 2008; 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 one building, it meets the

definition of minor development; and

WHEREAS, since the proposed development is a minor development, the Board must find that excavation was completed and substantial progress was made as to the required foundation; and

WHEREAS, the applicant states that excavation began on October 14, 2008 and was completed on November 17, 2008, and that substantial progress was made on the foundation as of the Enactment Date; and

WHEREAS, in support of this statement, the applicant has submitted construction logs documenting the amount and type of work performed each day of construction, and dated photographs of the site showing the progress of excavation; and

WHEREAS, at hearing, the Board raised concerns about a foundation chart submitted by the applicant on December 16, 2008, which indicated that a portion of the site was not excavated prior to the Enactment Date; and

WHEREAS, in response, the applicant submitted an affidavit of the contractor stating that the entire site was excavated as of the Enactment Date and that the foundation chart in question referred to a portion of the premises that was backfilled for use as a staging area for the storage of equipment, materials, and excess soil; and

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 approximately 63 percent of the foundation was complete as of the Enactment Date; and

WHEREAS, specifically, the applicant states that as of the Enactment Date, all shoring was complete, all of the required 28 H-beams and 100 timber lags were installed, all of the rebar was installed for the elevator pits, the forms for the elevator pits were constructed and installed and all of the concrete for the elevator pit floors and walls was poured, approximately 24.5 tons of the required 35 tons for the 4,300 sq. ft. rebar steel cage for the mat foundation were installed, and 83 percent of the total waterproofing for the premises was installed; and

WHEREAS, in support of this statement, the applicant has submitted construction logs documenting the amount and type of work performed each day of construction, affidavits from the contractor, and photographs of the foundation work as of the Enactment Date; and

WHEREAS, the applicant states that the work that has been completed as of the Enactment Date constitutes the most time-consuming and labor-intensive portions of the foundation work; and

WHEREAS, to attest to the complexity of the work performed as of the Enactment Date, the applicant provided an analysis of the hours of labor completed as of the Enactment Date as compared to the hours of labor remaining to complete the foundation; and

WHEREAS, specifically, the applicant states that 2,526 hours of labor, or approximately 63 percent, of the total estimated hours of labor required to complete construction of approximately 4,019 hours were complete as of the Enactment

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Date; and

WHEREAS, at hearing, the Board questioned why the shoring technique utilized on the premises differed from the technique referenced in the drawings submitted to the Board accompanying the subject application; and

WHEREAS, in response, the applicant stated that due to the soil conditions at the site, the project engineers determined that revised shoring drawings would be necessary, as a mat structure, consisting of a 39-inch thick concrete slab poured into a 4,300 sq. ft. steel cage and functioning as a single large footing, would be a more efficient approach than individual footings for each column and bearing wall; and

WHEREAS, the applicant subsequently submitted the revised shoring drawings, which reflect the noted mat structure and were approved by DOB on October 17, 2008; and

WHEREAS, the applicant has also submitted financial documents, including invoices, cancelled checks, contracts, and dated photographs which reflect significant expenditure associated with the excavation and foundation work incurred as of the Enactment Date; and

WHEREAS, specifically, the applicant states that \$390,190, or approximately 53 percent, of the total estimated foundation cost of approximately \$742,772 was spent as of the Enactment Date; and

WHEREAS, the Board finds all of the above-mentioned submitted evidence sufficient and credible; and

WHEREAS, the Opposition testified that their building sustained damage in the form of a large crack on the building facade during the applicant's demolition process, and in further cracks, wall separation, and other problems as a result of excessive vibrations during the excavation and pile driving process, and requests that the Board refrain from renewing the Permits until the applicant resolves the damage done to the adjacent building and reimburses the adjacent building owner for the expenses already incurred as a result of the damage; and

WHEREAS, in response, the applicant submitted a letter from its architect dated February 25, 2009, conceding that certain damage did occur during excavation and that the applicant is in negotiations with the adjacent building owner to resolve their concerns, but contends that cracks on the exterior façade of the adjacent building existed prior to any work being done on the subject site; and

WHEREAS, in addition, the applicant submitted a vibration analysis from an engineering firm, indicating that vibration readings were below the DOB peak particle velocity threshold; and

WHEREAS, the Board notes that disputes regarding property damage are not within the purview of the analysis for a vested rights application and the Opposition's claims may be resolved in a different forum; 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 Permits, and all other related permits necessary to complete construction.

WHEREAS, because the Board finds that excavation was complete and that substantial progress had been made on the foundation, it concludes that the applicant has adequately satisfied all the requirements of ZR § 11-331.

Therefore it is Resolved that this application to renew New Building Permit No. 104870392-01-NB and Alteration Type 2 Permit No. 110251361-EW-OT 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 December 16, 2009.

Adopted by the Board of Standards and Appeals, June 16, 2009.

163-09-A

APPLICANT – Valentino Pompeo, for Breezy Point Cooperative, Inc., owner; Joseph Lind, lessee.

SUBJECT – Application April 27, 2009 – Proposed reconstruction and enlargement of an existing single family home not fronting on a official mapped street contrary to General City Law Section 36. R4 zoning district.

PREMISES AFFECTED – 115 Beach 220th Street, east side of Beach 220th Street (unmapped street) south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD –

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 15, 2009, and acting on Department of Buildings Application No. 410235981, 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 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 June 16, 2009, after due notice by publication in

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the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated May 4, 2009, 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 April 15, 2009, acting on Department of Buildings Application No. 410235981, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received April 27, 2009"—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 16, 2009.

83-08-A

APPLICANT – NYC Department of Buildings, for H. Patel, P.M. – Purvi Enterprises, LLC, owner.

SUBJECT – Application April 9, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 301279319 issued on January 17, 2007 as it was issued in error due to failure to comply with ZR §62-711 requiring waterfront certification and the failure to comply with ZR §12-10(d) in the formation of the zoning lot R5 SP Sheepshead Bay District.

PREMISES AFFECTED – 3218 Emmons Avenue, Emmons Avenue between Bringham Street, and Bragg Street, Block 8815, Lot 590, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 28, 2009, at 10 A.M., for continued hearing.

147-08-BZY

APPLICANT – Hui-Li Xu, for Beachway Equities, Inc., owner.

SUBJECT – Application May 23, 2008 – Extension of time (§11-331) to complete construction of a minor development commenced prior to the amendment of the zoning district regulations on April 30, 2008. R5 zoning district.

PREMISES AFFECTED – 95-04 Allendale Street, between Atlantic Avenue and 97th Avenue, Block 10007, Lot 108, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Hui-Li-Xu and Richard J. Zimmerman.

For Administration: Lisa M. Orrantia, Department of Buildings.

ACTION OF THE BOARD – Laid over to August 25, 2009, at 10 A.M., for continued hearing.

4-09-A

APPLICANT – NYC Department of Buildings

OWNER OF RECORD – 27-00 Queens Plaza South, LLC.

SUBJECT – Application January 13, 2009 – An appeal filed by the Department of Buildings seeking to amend the Certificate of Occupancy No. 400872631 issued on June 17, 1999 to remove the reference to "Adult" Establishment use on the second floor. M1-6/R-10 Special Mixed Use.

PREMISES AFFECTED – 27-02 Queens Plaza South, southeast corner of Queens Plaza South and 27th Street, Block 422, Lot 9, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John Beene, Department of Buildings.

For Opposition: Kerry J. Katsorhis.

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 14, 2009, at 10 A.M., for decision, hearing closed.

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**REGULAR MEETING
TUESDAY AFTERNOON, JUNE 16, 2009
1:30 P.M.**

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

ZONING CALENDAR

268-08-BZ

APPLICANT – Sheldon Lobel, P.C., for 314 7th Avenue, LLC, owner.

SUBJECT – Application October 30, 2008 – Special Permit filed, pursuant to §73-621 of the New York City Zoning Resolution, to permit the enlargement of an as-of-right eating and drinking establishment (Use Group 6) into the footprint of an existing accessory parking garage of a mixed-use residential and commercial building. The subject site is located in a R6A/C1-4 zoning district.

PREMISES AFFECTED – 314 Seventh Avenue, southwest corner of the intersection formed by Eight Street and Seventh Avenue, Block 1006, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Elizabeth Satian.

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 October 24, 2008, acting on Department of Buildings Application No. 310279828, reads in pertinent part:

“Extension of commercial use is contrary to ZR Section 33-10. Applicant must be filed with the Board of Standards and Appeals pursuant to Section 73-621”; and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03, to permit, within a C1-4 (R6A) zoning district, the proposed enlargement of an eating and drinking establishment (Use Group 6), which does not comply with the zoning requirements for floor area, contrary to ZR § 33-10; and

WHEREAS, a public hearing was held on this application on April 21, 2009, after due notice by publication in *The City Record*, with a continued hearing on May 19, 2009, and then to decision on June 16, 2009; 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, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the southwest corner of the intersection at 8th Street and Seventh Avenue; within a C1-4 (R6A) zoning district; and

WHEREAS, the subject site has a total lot area of 1,760 sq. ft., and is occupied by an existing non-complying four-story mixed-use commercial/residential building with a floor area of 5,456 sq. ft. (3.1 FAR), and a 343 sq. ft. one-story accessory parking garage; and

WHEREAS, the applicant proposes to demolish the existing parking garage and construct a one-story enlargement to the first floor eating and drinking establishment (Use Group 6) in its place; and

WHEREAS, the applicant seeks an increase in the total floor area from 5,456 sq. ft. (3.1 FAR), to 5,806 sq. ft. (3.3 FAR); the maximum floor area permitted is 5,280 sq. ft. (3.0 FAR); and

WHEREAS, the applicant represents that the proposed floor area exceeds the maximum permitted floor area by 526 sq. ft., or ten percent; and

WHEREAS, the Board notes that ZR § 73-621 permits the enlargement of a building containing a residential use, such as the subject mixed-use commercial/residential building, if the following requirements are met: (1) the proposed FAR does not exceed the maximum permitted FAR by more than ten percent; (2) the proposed lot coverage does not exceed 110 percent of the maximum permitted; and (3) the proposed enlargement creates no new non-compliance nor increases the amount or degree of any existing non-compliance; and

WHEREAS, as to floor area ratio, the Board notes that the proposed 3.3 FAR reflects an increase of ten percent over the maximum permitted FAR of 3.0, which is within the amount permitted under the special permit; and

WHEREAS, the Board further notes that the proposed one-story enlargement is within the lot coverage requirement and does not create any new non-compliances or increase the degree of any existing non-compliance since it complies with all height and setback, lot coverage, and yard requirements; and

WHEREAS, accordingly, the Board has 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

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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 §§ 73-621 and 73-03, to permit, within a C1-4 (R6A) zoning district, the proposed enlargement of an eating and drinking establishment (Use Group 6), which does not comply with the zoning requirements for floor area, contrary to ZR § 33-10; *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 6, 2009" – (3) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area increase of 526 sq. ft. above the maximum permitted FAR, for a total floor area of 5,806 sq. ft. (3.3 FAR), as illustrated on the BSA-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objections(s) only; no approval has been given by the Board as to the use and layout of 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 substantial construction shall 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 plan(s)/configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, June 16, 2009.

275-08-BZ

CEQR #09-BSA-043K

APPLICANT – Eric Palatnik, P.C., for South Side House LLC, owner.

SUBJECT – Application November 20, 2008 – Special Permit (§73-36) to allow a physical culture establishment on the ground floor of an existing building. The proposal is contrary to ZR §42-10. M1-2/R6 (MX8) district.

PREMISES AFFECTED – 98 South 4th Street, south side of South 4th Street, between Bedford Avenue and Berry Street, Block 2443, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #1BK

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, June

16, 2009.

17-09-BZ

CEQR #09-BSA-067K

APPLICANT – MetroPCS New York, LLC, for Pearl Beverly, LLC, owner; MetroPCS New York, LLC, lessee. SUBJECT – Application February 4, 2009 – Special Permit (§73-03 & §73-30) to allow a non-accessory radio facility and all accessory equipment.

PREMISES AFFECTED – 5421 Beverly Road, northside of Beverly Road, between East 54th and East 55th Street, Block 4739, Lot 33, Borough of Brooklyn.

COMMUNITY BOARD #17BK

APPEARANCES –

For Applicant: Ben Weisel.

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 29, 2009, acting on Department of Buildings Application No. 310235037, reads in pertinent part:

“Communication facility exceeds the 400 square feet allowed under TPPN # 5/98 and therefore will require a special permit from the Board of Standards and Appeals as per Section 73-30 ZR;” and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R4 zoning district, the proposed construction of a telecommunications facility, which consists of six panel antennas and related equipment for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on May 12, 2009, after due notice by publication in *The City Record*, and then to decision on June 16, 2009; and

WHEREAS, Community Board 17, Brooklyn, recommends disapproval of this application; and

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

WHEREAS, a resident of the subject building provided testimony in opposition to this application; and

WHEREAS, the proposed telecommunications facility will be located on the roof of a seven-story residential building upon which existing antennas are already situated; and

WHEREAS, the applicant states that the proposed telecommunications facility consists of: (i) three panel antennas mounted to the face of the exterior wall of the building parapet and extending to a maximum height of six feet above the parapet; (ii) three panel antennas mounted to the existing penthouse and extending to a maximum height

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of six feet above the penthouse; (iii) two new equipment cabinets, two new battery cabinets and one new PPC cabinet, to be placed on a 10'-0" by 16'-0" equipment platform located on the rooftop; (iv) two GPS units mounted to the equipment platform; and (v) all accessory equipment, wires, cables, conduits and other necessary appurtenances; and

WHEREAS, the applicant represents that the telecommunications facility is necessary to remedy a significant gap in reliable service in the vicinity of the site caused by a lack of coverage and capacity; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications facility, provided it finds "that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood;" and

WHEREAS, the applicant represents that the facility has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the facility will comply with all applicable laws, that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant further represents that the size and profile of the facility is the minimum necessary to provide the required wireless coverage, and that the facility will not interfere with radio, television, telephone or other uses; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed facility and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

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

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

WHEREAS, therefore, the Board finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09-BSA-067K, dated February 4, 2009; and

WHEREAS, the EAS documents show that the project as

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR § 73-03 and § 73-30, to permit, within an R4 zoning district, the proposed construction of a telecommunications facility (non-accessory radio facility) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received February 4, 2009"- (7) 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;

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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 16, 2009.

21-09-BZ

CEQR #09-BSA-070Q

APPLICANT – MetroPCS New York, LLC, for Braddock Avenue Owners, Inc., owner; MetroPCS New York, LLC, lessee.

SUBJECT – Application February 10, 2009 – Special Permit (§73-03 & §73-30) to allow a non-accessory radio facility on the rooftop of the existing building.

PREMISES AFFECTED – 222-89 Braddock Avenue, north west corner of Braddock Avenue and Ransom Street, Block 7968, Lot 31, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Ben Weisel.

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, the decision of the Queens Deputy Borough Commissioner, dated January 26, 2009, acting on Department of Buildings Application No. 410118493, reads in pertinent part:

“Communication facility exceeds the 400 square feet allowed under TPPN # 5/98 and therefore will require a special permit from the Board of Standards and Appeals as per Section 73-30 ZR;”
and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R4 zoning district, the proposed construction of a telecommunications facility, which consists of seven panel antennas and related equipment for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on May 12, 2009, after due notice by publication in *The City Record*, and then to decision on June 16, 2009; and

WHEREAS, Community Board 13, Queens, does not object to this application, but requests that the applicant provide additional screening; and

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

WHEREAS, the Board has exercised jurisdiction over the subject site since July 15, 2008 when, under BSA Cal. No. 85-08-BZ, the Board approved a special permit for a prior non-accessory radio facility as part of the NYC Department of Information Technology and Telecommunications (DoITT) NYC Wireless Network (NYCWIn); and

WHEREAS, the proposed telecommunications facility will be located on the roof of a six-story residential building upon which existing antennas are already situated; and

WHEREAS, the applicant states that the proposed telecommunications facility consists of: (i) five panel antennas mounted to the interior of the building parapet and extending to a maximum height of six feet above the parapet; (ii) two panel antennas mounted to the existing stair penthouse and extending to a maximum height of six feet above the penthouse; (iii) two new equipment cabinets, two new battery cabinets and one new PPC cabinet, to be placed on a steel equipment platform located on the rooftop; (iv) two GPS units mounted to the steel equipment platform; and (v) all accessory equipment, wires, cables, conduits and other necessary appurtenances; and

WHEREAS, the applicant represents that the telecommunications facility is necessary to remedy a significant gap in reliable service in the vicinity of the site caused by a lack of coverage and capacity; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such

as the proposed telecommunications facility, provided it finds “that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood;” and

WHEREAS, the applicant represents that the facility has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the facility will comply with all applicable laws, that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant further represents that the size and profile of the facility is the minimum necessary to provide the required wireless coverage, and that the facility will not interfere with radio, television, telephone or other uses; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed facility and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant agreed to provide rooftop screening for the telecommunications facility; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

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

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

WHEREAS, therefore, the Board finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09-BSA-070Q, dated February 10, 2009; and

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

WHEREAS, no other significant effects upon the

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environment that would require an Environmental Impact Statement are foreseeable.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and grants a special permit under ZR § 73-03 and § 73-30, to permit, within an R4 zoning district, the proposed construction of a telecommunications facility (non-accessory radio facility) for public utility wireless communications, which is contrary to ZR § 22-21, on condition that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received March 17, 2009"-(8) sheets; and on further condition;

THAT rooftop screening shall be provided for the telecommunications facility as per the BSA-approved drawings;

THAT this approval 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 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 plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 16, 2009.

42-09-BZ

APPLICANT – Francis R. Angelino, Esq., for Arrow Linen Supply Company, Inc., owner.

SUBJECT – Application March 6, 2009 – Special Permit filed pursuant to §11-411 & §11-412 to permit a reinstatement of a variance which expired on July 12, 1992 which allowed the extension of a legal non conforming use within a residential zoning district. The application seeks an amendment to allow for a one-story enlargement of approximately 770 sq. ft. in the rear of the lot for additional storage for the commercial laundry. The subject site is located in a R5B zoning district.

PREMISES AFFECTED – 441-477 Prospect Avenue, between Eight Avenue and Prospect Park West, Block 1113, Lot 73, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Francis R. Angelino, Vincent Trocchia, Alvazo Bottaro and Frank Park.

For Opposition: Ricardo Franco and Arabella Hutter.

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 14, 2009, at 1:30 P.M., for continued hearing.

99-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) to construct a three story with cellar single family home on an irregular triangular lot that does not meet the rear yard requirement (§23-47) in an R3-2 (SRD) zoning district.

PREMISES AFFECTED – 102 Drumgoole Road, South side of Drumgoole Road, 144.62 ft. west of the intersection of Drumgoole Road and Wainwright Avenue, Block 5613, Lot 221, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Todd Dale.

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 14, 2009, at 1:30 P.M., for continued hearing.

169-08-BZ

APPLICANT – James Chin & Associates, LLC, for Jeffrey Bennett, owner.

SUBJECT – Application June 24, 2008 – Variance (§72-21) to allow the residential redevelopment of an existing five-story commercial building. Six residential floors and six (6) dwelling units are proposed; contrary to use regulations (§42-00 & §111-104 (e)). M1-5 (TMU- Area B-2) district. PREMISES AFFECTED – 46 Laight Street, north side of Laight Street, 25' of frontage on Laight Street, Block 220, Lot 35, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Ivan Khoury, Jeffrey Bennett and Ivy Hidalgo-Olberding.

ACTION OF THE BOARD – Laid over to July 28, 2009, at 1:30 P.M., for continued hearing.

229-08-BZ

APPLICANT – Sheldon Lobel, P.C. for Edward Haddad, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) for the construction of a new single family home. This applications seeks to vary floor area (§23-141), less than the minimum side yards (§23-461) and the location of the required off street parking to the front yard (§25-62) in an R2X zoning district.

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PREMISES AFFECTED – 866 East 8th Street, West side of East 8th Street, north of Avenue I, and adjacent to railroad, Block 6510, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 1:30 P.M., for adjourned hearing.

259-08-BZ

APPLICANT – Jeffrey A. Chester, Esq., for AAC Douglaston Plaza, LLC, owner.

SUBJECT – Application October 20, 2008 – Variance (§72-21) to permit the proposed expansion to an existing supermarket. The proposal is contrary to ZR §52-41 (increase in the degree of non-conforming use of the building. R4 district.

PREMISES AFFECTED – 242-02 61st Avenue, Douglaston Parkway at 61st Avenue, Block 8266, Lot 185, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Jeffrey Chester and Elliott Socci.

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 14, 2009, at 1:30 P.M., for decision, hearing closed.

266-08-BZ

APPLICANT – Lewis E. Garfinkel R.A., for Harold Willig, owner.

SUBJECT – Application October 28, 2008 – Special Permit (§73-621) for the enlargement of an existing single family home. This application seeks to vary §34-141(b) as the proposed floor area ratio (FAR) exceeds what is permitted in an R-4 zoning district.

PREMISES AFFECTED – 2007 New York Avenue, east side of New York Avenue between Avenue K and Avenue L, Block 7633, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 21, 2009, at 1:30 P.M., for adjourned hearing.

288-08-BZ

APPLICANT – Jeffrey Geary, for Vincent Passarelli, owner; Roland Costanzo, lessee.

SUBJECT – Application November 21, 2008 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (Costanzo's Martial Arts Studio) on the second floor of a two-story commercial building. The proposal is contrary to ZR §42-10. M1-1 district.

PREMISES AFFECTED – 2955 Veterans Road West, Cross Streets, Tyrellian Avenue and West Shore Parkway, Block 7511, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Jeffrey Geary.

ACTION OF THE BOARD – Laid over to July 21, 2009, at 1:30 P.M., for continued hearing.

295-08-BZ

APPLICANT – Akerman Senterfitt Stadtmauer Bailkin, for Ronald & Meryl Bratt, owners.

SUBJECT – Application November 25, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary lot coverage and floor area (§23-141), side yards (§23-461) and does not comply with the required perimeter wall height (§23-631) in an R3-2 zoning district.

PREMISES AFFECTED – 1934 East 26th Street, east side between Avenue S and T, Block 7304, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Jessica Loeser.

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 14, 2009, at 1:30 P.M., for decision, hearing closed.

314-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 437-51 West 13th Street, LLC, owner.

SUBJECT – Application December 22, 2008 – Variance pursuant to §72-21 to allow for the construction of a 12 story commercial building contrary to bulk regulations §§43-12, 43-43, 43-26 and use regulations §42-12. M1-5 District.

PREMISES AFFECTED – 437-447 West 13th Street, 862-868 Washington Street, southeast portion, block bounded by West 13th, West 14th and Washington Streets, Tenth Avenue, Block 646, Lots 19, 20, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 21, 2009, at 1:30 P.M., for adjourned hearing.

13-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for 5621 21st Avenue LLC, for Congregation Tehilos Yitzchok, owner.

SUBJECT – Application January 26, 2009 – Variance (§72-21) to permit a synagogue contrary to bulk regulations ZR §24-34, §24-35, §24-11. R5 District.

MINUTES

PREMISES AFFECTED – 5611 21st Avenue, 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: Moshe M. Friedman and Shlomo Gombo.

For Opposition: Stella Albano.

ACTION OF THE BOARD – Laid over to July 21, 2009, at 1:30 P.M., for continued hearing.

15-09-BZ

APPLICANT – Francis R. Angelino, Esq., for Lafayette Astor Associates, LLC, owner; David Barton Gym, lessee.
SUBJECT – Application February 3, 2009 – Special Permit (§73-36) to allow a physical culture establishment on portions of the sub-cellar, cellar and ground floors and the entire second floor in an existing seven-story commercial building. The proposal is contrary to ZR §42-10. M1-5B district.

PREMISES AFFECTED – 8-10 Astor Place, south side between Broadway and Lafayette Street, Block 545, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #2M

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 14, 2009, at 1:30 P.M., for decision, hearing closed.

36-09-BZ

APPLICANT – MetroPCS New York, LLC, for Milford House, LLC, owner; MetroPCS New York, lessee.

SUBJECT – Application March 3, 2009 – Special Permit (§§73-03, 73-30) to allow a non-accessory radio tower on the rooftop of an existing building with all accessory equipment.

PREMISES AFFECTED – 53-01 32nd Avenue, north side of 32nd Avenue between 51st Street and 54th Street, Block 1131, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Ben Weisel.

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 14, 2009, at 1:30 P.M., for decision, hearing closed.

52-09-BZ

APPLICANT – Dennis Dell’Angelo, for Yehuda A. Lieberman, owner.

SUBJECT – Application April 6, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1438 East 26th Street, west side of East 26th Street, between Avenue H and Avenue O, Block 7679, Lot 66, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Dennis Dell’Angelo.

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 14, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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July 2, 2009

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194-09-BZ

2113 Utica Avenue, East side of Utica Avenue between Avenue M and N., Block 7875, Lot(s) 27, Borough of **Brooklyn, Community Board: 18**. Variance to allow the construction of a four-story residential building, contrary to bulk regulations.

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

CALENDAR

JULY 21, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 21, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

853-53-BZ

APPLICANT – Walter T. Gorman, P.E., for Knapp LLC, owner; ExxonMobil Corporation, lessee.
SUBJECT – Application March 4, 2009 – Extension of Time/waiver to obtain a Certificate of Occupancy for a Gasoline Service Station (Mobil) in a C-2/R3-2 which expired on January 22, 2009.
PREMISES AFFECTED – 2402/16 Knapp Street, south west corner of Avenue Z, Block 7429, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

709-55-BZ

APPLICANT – Walter T. Gorman, P.E., for LMT Realty Company, owner; ExxonMobil Oaks Corporation, lessee.
SUBJECT – Application May 21, 2009 – Extension of Term to permit the continued operation of a gasoline service station (Mobil) which expires on February 2, 2010 in an R4/C1-2 zoning district.
PREMISES AFFECTED – 2000 Rockaway Parkway, northwest corner of Seaview Avenue, Block 8299, Lots 68 and 63, Borough of Brooklyn.

COMMUNITY BOARD #18BK

32-91-BZ

APPLICANT – Walter T. Gorman, P.E., for Fulvan Realty Corporation, owner; Fulton Auto Repair Incorporated, lessee.
SUBJECT – Application May 5, 2009 – Extension of Term and waiver of a Special Permit for a (UG16) Gasoline Service Station (Coastal) in a C2-4/R7A zoning district which expired on May 19, 2007.
PREMISES AFFECTED – 838/846 Fulton Street, south east corner of Vanderbilt Avenue, Block 2010, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #2BK

203-00-BZ

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for Sunset Warehouse Condominium, owners.
SUBJECT – Application April 29, 2009 – Application to amend the variance granted in 2001 for BSA Calendar No.

203-00-BZ. The Amendment is to permit the conversion of three additional condominium units (designated originally for commercial use) on the second floor to three residential units. The proposal is contrary to sections 42-10 (use) and 42-133 (no new dwelling units allowed). M1-5 district.

PREMISES AFFECTED – 603 Greenwich Street, aka 43 Clarkson Street, northeast intersection of Greenwich and Clarkson Streets.

COMMUNITY BOARD #2M

327-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Beth Gavriel Bukharian Congregation, owner.
SUBJECT – Application June 5, 2009 – Extension of Time to Complete Construction and Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (72-21) for the enlargement of an existing Synagogue and School (Beth Gavriel), in an R1-2 zoning district, which expired on June 7, 2009.

PREMISES AFFECTED – 66-35 108th Street, east side of 108th Street, east side of 108th Street, between 66th Road and 67th Avenue, Block 2175, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

APPEALS CALENDAR

296-08-A

APPLICANT – Gerald J. Caliendo, R.A., for Federico Camacho, owner.
SUBJECT – Application November 25, 2008 – Proposed four-story, six family dwelling with a community facility located within the bed of a mapped street contrary to General City Law Section 35. R6B Zoning District.
PREMISES AFFECTED – 45-02 111th Street, east side of 45th Avenue, 100' south of intersection of 111th Street and 45th Avenue, Block 2001, Lot 37, Borough of Queens.

COMMUNITY BOARD #4Q

179-09-A

APPLICANT – Eric Palatnik, P.C., for Zaki Turkieh, owner.
SUBJECT – Application June 1, 2009 – Proposed construction of a one story extension to an existing commercial building not fronting on a mapped street contrary to General City Law Section 36.
PREMISES AFFECTED – 252-02 Rockaway Boulevard, corner of First Street and Rockaway Boulevard, Block 1392, Lot 69, Borough of Queens.

COMMUNITY BOARD #13Q

CALENDAR

JULY 21, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, July 21, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

197-08-BZ

APPLICANT – Stuart A. Klein, for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application July 23, 2008 – Variance (§72-21) to permit a four-story and penthouse residential building. The proposal is contrary to ZR Sections 23-141 (Floor Area, FAR & Open Space Ratio), 23-22 (Number of Dwelling Units), 23-45 (Front Yard), 23-462 (Side Yard), and 23-631 (Wall Height). R4 district.

PREMISES AFFECTED – 341/349 Troy Avenue, aka 1515 Carroll Street, corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

49-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Beth Israel Medical Center, owner; Kollel Bnei Torah, lessee.

SUBJECT – Application March 26, 2009 – Variance pursuant to 72-21 to permit the enlargement of a synagogue contrary to side yard regulations ZR 24-35(a). R4 District.

PREMISES AFFECTED – 1323 East 32nd Street, east side of East 32nd Street, between Avenue M and Kings Highway, Block 7668, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #18M

164-09-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Palanker, owner.

SUBJECT – Application April 29, 2009 – Special Permit (§73-622) for the enlargement of an existing Two-Family home. This application seeks to vary floor area, lot coverage and open space (ZR 23-141) and less than the required rear yard (ZR 23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 124 Irwin Street, between Hampton Avenue and Oriental Boulevard, Block 8751, Lot 416, Borough of Brooklyn.

COMMUNITY BOARD #15BK

171-09-BZ

APPLICANT – James Chin & Associates, LLC, for Chong Duk Chung, owner.

SUBJECT – Application May 15, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment on a portion of the first floor in an existing 42-story mixed-use building. The proposal is contrary to section 32-10. C5-2 district.

PREMISES AFFECTED – 325 Fifth Avenue, east side of 5th Avenue, 64.3' from the corner of East 32nd and 5th Avenue, Block 862, Lot 7503, Borough of Manhattan.

COMMUNITY BOARD #5M

184-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Annie Daniel and Elliot Daniel, owners.

SUBJECT – Application June 4, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space, lot coverage and floor area (23-141); side yards (23-461) and rear yard (23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 4072 Bedford Avenue, west side of Bedford Avenue, between Avenue S and Avenue T, Block 7303, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JUNE 23, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

1252-79-BZ

APPLICANT – Benjamin A. Leonardi/Miele Associates, for C.B.R. LLC (Dr. Harry Kent), owner.

SUBJECT – Application April 2, 2009 – Extension of Term/Amendment (§72-01 and §72-22) to reopen for a unlimited time limit.

PREMISES AFFECTED – 23-87-91 Bell Boulevard, aka 214-05-15 & 214-19 24th Avenue, northwest south of 24th Avenue 10' east of Bell Boulevard and 24th Avenue, Block 5958, Lot 52, 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 Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an amendment of a previously granted variance permitting the construction of a second floor addition to an existing one-story medical center and the conversion of the use to a bank and office (Use Group 6), which will: (1) eliminate the term of fifteen years which expires on March 25, 2010; and (2) modify the on-site parking to allow 21 attended spaces; and

WHEREAS, a public hearing was held on this application on June 9, 2009 after due notice by publication in *The City Record*, and then to decision on June 23, 2009; and

WHEREAS, Community Board 7, Queens, recommends approval of this application, but further recommends that: (1) the term of the variance be limited to 15 years; (2) the proposed 21-car attended parking lot be provided for use by only the tenants and their clients and patients; and (3) that the gates for the parking area be locked after business hours; 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 northeast corner of Bell Boulevard and 24th Avenue, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 25, 1980 when, under the subject calendar number, the Board granted a variance to permit the construction of a second floor enlargement to an existing one-story medical center and the conversion of the use to a bank and office, to expire on March 25, 1995; and

WHEREAS, on December 12, 1995, the grant was extended for a term of 15 years from the expiration of the prior grant, to expire on March 25, 2010; and

WHEREAS, the applicant now seeks to eliminate the term of the grant; and

WHEREAS, the applicant represents that the elimination of the term is appropriate because the owner has maintained the building in accordance with the conditions of the grant for 30 years; and

WHEREAS, additionally, the applicant represents that the elimination of the term helps to ensure a stable, long-term tenant, which requires a long lease with the option to renew in order to make a commitment to the site; and

WHEREAS, the applicant also requests that the Board permit it to utilize the previously-approved eight-car parking lot located on the north side of the building as an attended parking lot for 21 cars; and

WHEREAS, the applicant represents that use of the parking area as an attended parking lot is necessary because there has been a significant reduction in available street parking near the site due to development in the surrounding area, which has increased the need for additional parking on-site; and

WHEREAS, the applicant further represents that use of the attended parking lot will occupy the same amount of lot area as the current parking lot; and

WHEREAS, in response to concerns about the hours of operation, the applicant states that the gates for the parking area will be locked after business hours, which are Monday through Saturday, from 7:00 a.m. to 10:00 p.m., and Sunday, from 9:00 a.m. to 1:00 p.m.; and

WHEREAS, at hearing, the Board requested the applicant to confirm that the signage at the site is in compliance with C1 zoning district regulations and that the landscaping is in compliance with the previously-approved plans; and

WHEREAS, in response, the applicant submitted a signage analysis indicating that the site complies with C1 regulations, and states that the owners will maintain the landscaping of the site in compliance with the pre-approved plans; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to eliminate the term and modify the on-site parking 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 March 25, 1980, so that as amended this portion of the resolution shall read: “to eliminate the term and permit the previously-approved parking lot to be utilized as an attended parking lot, *on condition* that any and all work shall substantially conform to drawings filed with this application

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marked "Received April 2, 2009"-(5) sheets; and *on further condition:*

THAT use of the parking area shall be limited to tenants and their clients and patients;

THAT the parking area shall be locked after business hours;

THAT the hours of operation shall be Monday through Saturday, from 7:00 a.m. to 10:00 p.m., and Sunday from 9:00 a.m. to 1:00 p.m.;

THAT signage shall comply with C1 zoning district regulations;

THAT all landscaping shall be provided and maintained in accordance with the previously-approved plans;

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

THAT a new certificate of occupancy shall be obtained by December 23, 2009;

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. 410233242)

Adopted by the Board of Standards and Appeals, June 23, 2009.

29-05-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for R & F 350 West Broadway LLC c/o RFR Holding LLC, owner.

SUBJECT – Application May 29, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the development of an 10 story mixed-use building to be occupied by retail use on the first and second floors and residential use on floors three through ten, in an M1-5A zoning district, which expires on October 18, 2009. PREMISES AFFECTED – 350 West Broadway, west side of West Broadway, 60 feet north of the corner formed by the intersection of Grand Street and West Broadway. Block 476, Lot 75, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jim Power.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

Adopted by the Board of Standards and Appeals, June

23, 2009.

395-60-BZ

APPLICANT – Sheldon Lobel, P.C., for Ali A. Swati, owner.

SUBJECT – Application December 22, 2006 – Pursuant to ZR §11-411 & §11-413 for an Extension of Term/Amendment/waiver for the change of use from a (UG16) gasoline service station to (UG16) automotive repair establishment; to remove a portion of the subject lot from the scope of the granted variance and to request a UG6 designation for the convenience store, in an R-5 zoning district, which expired on December 9, 2005 and an Extension of Time to obtain a Certificate of Occupancy which expired on January 19, 2000.

PREMISES AFFECTED – 2557-2577 Linden Boulevard, north side of Linden Boulevard between Euclid Avenue and Pine Street, Block 4461, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to August 11, 2009, at 10 A.M., for continued hearing.

303-99-BZ

APPLICANT – Vito J. Fossella, P.E. (LPEC), for 2122 Richmond Avenue LLC, owner.

SUBJECT – Application March 26, 2009 – Extension of Time to obtain a Certificate of Occupancy which expired on September 12, 2004 and an Amendment to legalize the change in use from the previously granted Auto Sales Establishment (UG16) to Commercial/Retail (UG6) in an R3-2 zoning district.

PREMISES AFFECTED – 2122 Richmond Avenue, west side of Richmond Avenue, 111.72' north of corner formed by the intersection of Richmond Avenue and Draper Place, Block 2102, Lot 120, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Sameh M. El-Meniawy.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

ACTION OF THE BOARD – Laid over to July 21, 2009, at 10 A.M., for decision, hearing closed.

23-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Kehilat Sephardim of Ahavat Achim, owners.

SUBJECT – Application April 7, 2009 – Extension of Time/waiver to Complete Construction (which expired on

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July 2, 2008) and to obtain a Certificate of Occupancy (which expired on January 2, 2009) of a previously granted Variance (§72-21) for the expansion of an existing three story synagogue with accessory Rabbi's apartment in an R-4 zoning district.

PREMISES AFFECTED – 150-62 78th Road, southeast corner of the intersection formed by 78th Road and 153rd Street, Block 6711, Lot 84, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Elizabeth Safian.

For Administration: Anthony Scaduto, Fire Department

ACTION OF THE BOARD – Laid over to July 28, 2009, at 10 A.M., for continued hearing.

441-31-BZ

APPLICANT – Ian Peter Barnes, IPB Associates, for Gurdev Singh Kang, owner.

SUBJECT – Application April 24, 2009 – Extension of Term/waiver for a Gasoline Service Station with accessory convenience store in a C2-2/R5 zoning district which expired on April 26, 2007.

PREMISES AFFECTED – 7702 Flatlands Avenue, southeast corner of Flatlands Avenue and East 77th Street, Block 8014, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 28, 2009, at 10 A.M., for postponed hearing.

826-86-BZ, 827-86-BZ and 828-86-BZ

APPLICANT – Eric Palatnik, P.C. for North Shore Tower Apartments, Incorporated, owner; Continental Communications, lessee.

SUBJECT – Application April 3, 2009 – Extension of Term for a Special Permit (73-11), in an R3-2 zoning district, to permit the non-accessory radio towers and transmitting equipment on the roof of an existing thirty-three story multiple dwelling (North Shore Towers) which expired on March 28, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on March 6, 2003; waiver of the rules and an Amendment to eliminate the condition that a new Certificate of Occupancy be obtained.

PREMISES AFFECTED – 269-10, 270-10, 271-10 Grand Central Parkway, Northeast corner of 26th Street. Block 8489, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 28, 2009, at 10 A.M., for continued hearing.

149-01-BZ

APPLICANT – Eric Palatnik, P.C. for Jane Street Realty LLC, owner.

SUBJECT – Application March 26, 2009 – Amendment to a previously issued resolution that conditions the occupancy of one subsidized unit to a qualified senior citizen at a subsidized rate for a term of ten years, from the date of the issuance of the Certificate of Occupancy be removed.

PREMISES AFFECTED – 88 Jane Street, between Washington and Greenwich Streets, Block 641, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 10 A.M., for postponed hearing.

246-01-BZ

APPLICANT – Eric Palatnik, P.C., for Bodhi Fitness Center, Inc., owner.

SUBJECT – Application January 29, 2009 – Extension of Term for a previously granted special permit (§73-36) which permitted the operation of Physical Culture Establishment (Bodhi Fitness Center) within a M1-1/C2-2 zoning district.

The application seeks to reflect the new owner/operator of the site. The term of the previous grant expired on June 1, 2008.

PREMISES AFFECTED – 35-11 Prince Street, between 35th Avenue and Northern Boulevard, Block 4958, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 28, 2009, at 10 A.M., for continued hearing.

APPEALS CALENDAR

293-08-A & 294-08-A

APPLICANT – Juan D. Reyes, III, Riker Danzig, et al., for Alexandra Hladky, owner; Leonessa Development Corporation/Frank Volpicello, lessees.

SUBJECT – Application November 25, 2008 – Proposed construction of two semi detached two family homes located within the bed of a mapped street contrary to General City Law Section 35. R4 zoning district.

PREMISES AFFECTED – 36-40 166th Street, northwest corner of Depot Road and 166th Street, Block 5288, Lot 39, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Juan D. Reyes, III.

ACTION OF THE BOARD – Application granted on

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condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson and Commissioner Montanez.....4

Absent: Commissioner Ottley-Brown.....1

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Queens Borough Superintendent, dated October 3, 2008 and November 21, 2008, acting on Department of Buildings Application Nos. 410166029 and 410166038, reads in pertinent part:

“The proposed buildings located partially within the mapped but unimproved section of Depot Road are contrary to General City Law Section 35 and require approval at the NYC Board of Standards and Appeals;” and

WHEREAS, this application requests permission to build two two-story semi-detached two-family residences in the bed of a mapped but unimproved section of Depot Road; and

WHEREAS, a public hearing was held on this application on June 9, 2009, after due notice by publication in the *City Record*, and then to decision on June 23, 2009; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

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

WHEREAS, by letter dated February 9, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated February 2, 2009, the Department of Environmental Protection (DEP) states that it has reviewed the application and advises the Board that there is an existing 12-inch diameter combined sewer, as per Amended Drainage Plan No. 33B, and an existing eight-inch diameter water main in Depot Road between 166th Street and 165th Street; and

WHEREAS, DEP requested that the applicant provide a survey showing the mapped width of Depot Road at the intersection of 166th Street, and the distance from the existing water main and combined sewer to the lot line in Depot Road between 166th Street and 165th Street; and

WHEREAS, in response, the applicant submitted a revised survey indicating that 29.68 feet of the 50-foot total width of Depot Road will be available for the maintenance and/or reconstruction of the existing 12-inch diameter combined sewer and an eight-inch diameter city water main; and

WHEREAS, by letter dated March 10, 2009, DEP states that it has reviewed the revised site plan and has no further objections; and

WHEREAS, by letter dated January 22, 2009, the Department of Transportation (DOT) states that it has reviewed the application and requires that the future construction should not block the traffic view at the intersection of Depot Road and 166th Street and it should not extend out beyond the building line or fence line in the neighborhood; and

WHEREAS, DOT requested that the applicant provide drawings that show the full width of both Station Road and 166th Street, as well as a revised plan with an overlay of the mapped street line; and

WHEREAS, in response, the applicant provided revised drawings as requested and has agreed to comply with the DOT requirements; and

WHEREAS, DOT notes 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 Superintendent, dated October 3, 2008 and November 21, 2008, acting on Department of Buildings Application Nos. 410166029 and 410166038 is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received June 16, 2009” – 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 23, 2009.

160-09-A

APPLICANT – Eric Palatnik, P.C., for HBC Corona, LLC, owner.

SUBJECT – Application April 22, 2009 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior C2-4 /R6 zoning district. C2-4 /R6A.

PREMISES AFFECTED – 112-15 Northern Boulevard, between 112th Street and 112th Place, Block 1706, Lot 25, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Appeal granted.

THE VOTE TO GRANT –

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Affirmative: Chair Srinivasan, Vice-Chair Collins,
Commissioner Hinkson and Commissioner Montanez.....4
Absent: Commissioner Ottley-Brown.....1
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 seven-story mixed-use hotel/residential/ community facility building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on June 9, 2009 after due notice by publication in *The City Record*, and then to decision on June 23, 2009; and

WHEREAS, the site was inspected by Chair Srinivasan, Commissioner Montanez and Commissioner Ottley-Brown; and

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

WHEREAS, the subject site consists of an approximately 21,341 sq. ft. lot fronting on the north side of Northern Boulevard between 112th Street and 112th Place; and

WHEREAS, the applicant proposes to develop the site with a seven-story mixed-use hotel/residential/community facility building with a floor area of 97,112 sq. ft., consisting of approximately 100 traditional transient hotel rooms (Use Group 5) on the cellar level through third floor, approximately 63 hotel suites on the fourth through seventh floors (Use Group 2), and a community facility which will have a floor area of 1,639 sq. ft. on the first floor (the "Building"); and

WHEREAS, the subject site was formerly located within a C2-4 (R6) zoning district; and

WHEREAS, however, on March 24, 2009 (hereinafter, the "Enactment Date"), the City Council voted to adopt the North Corona 2 Rezoning, which rezoned the site to C2-4 (R6A); and

WHEREAS, the applicant represents that the Building complies with the former C2-4 (R6) zoning district parameters; specifically, the FAR of 4.53 was permitted; and

WHEREAS, because the site is now within a C2-4 (R6A) zoning district, the Building does not comply with the maximum FAR of 3.0 and

WHEREAS, on April 1, 2009, the applicant was issued a Stop Work Order by DOB, halting construction on the site; 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, on May 20, 2008, DOB issued Permit No. 410110954-01-AL, permitting shoring work for the Building (the "Shoring Permit"), and on July 9, 2008, DOB issued Permit No. 402425470-01-FO, permitting construction of the Building's foundations (the "Foundation Permit"), prior to the Enactment Date; and

WHEREAS, the applicant states that the Shoring Permit and the Foundation Permit were based on complete plans and specifications examined and approved by DOB and were filed

in conjunction with New Building Application No. 402425470 (the "New Building Permit"); and

WHEREAS, however, no New Building Permit was issued in connection with the New Building Application prior to the Enactment Date; and

WHEREAS, by letter dated June 8, 2009, DOB stated that the Foundation Permit was lawfully issued, authorizing construction of the Building prior to the Enactment Date; and

WHEREAS, the Foundation Permit lapsed by operation of law on the Enactment Date because the plans did not comply with the new C2-4 (R6A) zoning district regulations and DOB determined that the Building's foundation was not complete; and

WHEREAS, the Board notes that DOB issued a Stop Work Order related to construction safety at the site on October 3, 2008; however, DOB issued Partial Rescind Orders on October 6, 2008, December 29, 2008, and January 13, 2009 and the applicant states that no work was performed beyond the scope of the partial rescind orders at any time; and

WHEREAS, thus, the Board finds that the Foundation Permit was validly issued by DOB to the owner of the subject premises and was in effect until the Enactment Date; and

WHEREAS, the applicant cites to Glenel Realty Corp. v. Worthington (4 A.D.2d 702, 703 (2d Dept. 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 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, the applicant cites to Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance;" and

WHEREAS, however, notwithstanding this general framework, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that "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 Enactment Date, the owner had completed site preparation, shoring of adjacent properties, 98 percent of excavation work, and 64 percent of

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foundation work, including the pouring of 1,109 cubic yards of concrete out of an estimated total of 1,735 cubic yards required to complete the foundations of the Building; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site prior to the Enactment Date; an affidavit of the foundation contractor; construction contracts; invoices; cancelled checks; and concrete pour tickets; 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 found by New York State courts to support a positive vesting determination, a significant amount of work was performed at the site prior to the rezoning; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress was made prior to the Enactment Date, and that said work 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

WHEREAS, the applicant states that prior to the Enactment Date, the owner expended \$6,365,700, including hard and soft costs and irrevocable commitments, out of \$33,386,354 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, invoices, cancelled checks, and concrete pour tickets; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid \$5,397,700 for excavation, shoring, installation of foundations, architectural and engineering fees; and

WHEREAS, the applicant further states that the owner also irrevocably owes an additional \$968,000 in connection with costs committed to the development under irrevocable contracts prior to the Enactment Date; 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 the serious loss that the owner would incur if required to construct the building under the current zoning, the applicant states that the floor area that would result if vesting was not permitted would be reduced from 97,112 sq. ft. to 63,586 sq. ft. (from an FAR of 4.53 to 3.0); and

WHEREAS, the applicant states that this would lead to

financial loss because: (1) 33,525 sq. ft., or approximately 33 percent, of floor area would be lost; (2) the applicant would be required to reduce the room count from 172 to 125; and (3) further architectural and engineering costs would be required to reconfigure and redesign the building to account for this loss; and

WHEREAS, the applicant states that the decrease in the permissible floor area under the new zoning would result in the elimination of 47 hotel rooms, constituting approximately 27 percent of the hotel's rooms; and

WHEREAS, the applicant further states that, in order to realize a reasonable rate of return on the premises, the owner entered into a franchise agreement with Marriot International and that the elimination of 47 hotel rooms would jeopardize that franchise agreement; and

WHEREAS, the applicant further states that Marriot International would be unlikely to maintain the franchise agreement for a hotel with a further reduced room count, given that an earlier proposal included a 230-room hotel; and

WHEREAS, the applicant represents that Marriot International may also hold the owner in default of the franchise agreement if it were required to eliminate 47 rooms and the owner could then be liable for consequential legal costs; and

WHEREAS, the applicant states that the Marriot franchise is essential to ensuring the financial feasibility of the hotel because access to Marriot's global reservation system allows it to achieve a higher daily hotel rate and a higher occupancy rate; and

WHEREAS, as proof of the serious loss that the owner would incur if required to construct the building under the current zoning, the applicant submitted an appraisal indicating that the value of the hotel would decrease by approximately \$10,000,000; and

WHEREAS, the Board notes that a serious loss determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning; and

WHEREAS, the applicant submitted a proposal estimating that the architectural fees associated with redesigning and getting approval for a complying development would be approximately \$355,000; and

WHEREAS, here, the Board agrees that the building would have to be redesigned at significant cost, and that the prior architectural and engineering costs related to the plans accepted by DOB could not be recouped; and

WHEREAS, additionally, serious loss can be substantiated by a determination that there would be diminution in income if the FAR requirement of the new zoning were imposed; and

WHEREAS, here, the Board agrees that a significant reduction in floor area will result in a serious loss; and

WHEREAS, the Board notes that its conclusion that serious loss would occur includes consideration of the costs related to the need to revise the plans; and

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WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building had accrued to the owner of the premises as of the Enactment Date; and

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a rescission of the Stop Work Order and a reinstatement of DOB Permit No. 402425470, 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 23, 2009.

62-08-A

APPLICANT – Eric Palatnik, P.C. for Benny Ulloa, owner
SUBJECT – Application March 27, 2009 – Proposed construction not fronting on a legally mapped street contrary to General City Law Section 36. R1-2 Zoning District.

PREMISES AFFECTED – 398 Nugent Street, Nugent Street, North of Saint George Road, Block 2284, Lot 25, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Kathleen Meaghan, Helen Kravetz and Louise Colavito.

ACTION OF THE BOARD – Laid over to August 11, 2009, at 10 A.M., for continued hearing.

22-09-A

APPLICANT – Gary D. Lenhart for The Breezy Point Cooperative, Incorporated, owner; Maura Roche, lessee.

SUBJECT – Application February 10, 2009 – Reconstruction and enlargement of an existing single family home located partially in the bed of a mapped street and the upgrade of an existing non complying private disposal system contrary to General City Law Section 35 and contrary to Department of Buildings Policy. R4 Zoning.

PREMISES AFFECTED – 663 Highland Place, East side of Highland Place partially in the bed of mapped Beach 202nd Street. Block 16350, Lot 300, Borough of Queens

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary D. Lenhart.

ACTION OF THE BOARD – Laid over to July 28, 2009, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M

REGULAR MEETING TUESDAY AFTERNOON, JUNE 23, 2009 1:30 P.M.

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

ZONING CALENDAR

11-07-BZ

APPLICANT – Dominick Salvati and Son Architects, for Joseph Giahn, owner.

SUBJECT – Application January 9, 2007 – Variance (§72-21) to allow a five (5) story office building with ground floor retail, contrary to use regulations (§22-00). R6B district.

PREMISES AFFECTED – 41-06 Junction Boulevard, south west corner formed by Junction Boulevard and 41st Avenue, Block 1598, Lots 7 & 8, Borough of Queens.

COMMUNITY BOARD #4Q

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, June 23, 2009.

177-07-BZ

APPLICANT – Manish S. Savani, for Maurice Dayan, owner.

SUBJECT – Application July 6, 2007 – Variance (§72-21) to construct a two story, two family residential building on a vacant corner lot. This application seeks to vary the front yard requirement on one street frontage (§23-45) in an R-5 zoning district.

PREMISES AFFECTED – 886 Glenmore Avenue, corner of Glenmore Avenue and Milford Street, Block 4208, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #7BK

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 Montanez.....5

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Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated June 7, 2007, acting on Department of Buildings Application No. 302233189, reads in pertinent part:

“Proposed Yard: Front is contrary to ZR 23-45”; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R5 zoning district, the construction of a two-story two-family home on a lot that does not comply with front yard requirements, contrary to ZR § 23-45; and

WHEREAS, a public hearing was held on this application on March 3, 2009, after due notice by publication in *The City Record*, with continued hearings on April 21, 2009, and June 9, 2009, and then to decision on June 23, 2009; and

WHEREAS, the site and surrounding area had a site and neighborhood examination by Vice-Chair Collins and Commissioner Montanez; and

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

WHEREAS, the proposed building will provide a single front yard with a depth of 10’-0” on the Glenmore Avenue frontage (two front yards with depths of 10’-0” are the minimum required); and

WHEREAS, the proposed building will provide a complying side yard along the southern lot line with a width of 30’-6”; and

WHEREAS, the site is a vacant lot located on the northeast corner of Glenmore Avenue and Milton Street, with a width of approximately 20’-0” and a total lot area of approximately 1,800 sq. ft.; and

WHEREAS, the proposal reflects a floor area of 2,241 sq. ft., 1.24 FAR, a wall height of 23’-9”, a total height of 32’-9”, and two parking spaces; all of these parameters comply with zoning district regulations; and

WHEREAS, the applicant states that the site cannot be developed without a variance, due to its narrow width, 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 site in compliance with underlying district regulations: the corner lot’s narrow width of 20 feet; and

WHEREAS, as to the lot’s width, the applicant notes that without a front yard waiver, the site could not feasibly be developed; and

WHEREAS, the applicant notes that, given the narrow width, the provision of two front yards would result in an uninhabitable home with a width of 10’-0”; 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, specifically, the applicant notes that all of the 25 lots in the study area between Atkins Avenue and Fountain Avenue with lot widths of 20 feet, are occupied by

buildings with widths of 20 feet, except for one church; and

WHEREAS, the applicant notes that the site is the only vacant corner lot within a 400-ft. radius of the site; and

WHEREAS, thus, the Board finds that the aforementioned unique physical condition creates a practical difficulty in developing the site in 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 a complying and viable building could be constructed; and

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

WHEREAS, the applicant notes that the proposed home complies with all R5 zoning district regulations aside from the front yard requirements, and that the proposed bulk and height is compatible with the other residential buildings in the immediate vicinity; and

WHEREAS, the applicant notes that many of the existing homes in the area are attached and semi-detached, like the one proposed, and have pre-existing non-complying yard conditions; and

WHEREAS, additionally, the applicant notes that other nearby corner lots are occupied by buildings which extend to or near the lot line and, which do not provide a complying front yard along the narrow dimension of the lot; and

WHEREAS, additionally, the Board agrees that there is a strong context for lot line buildings in the area, which includes the three buildings to the east of the site which provide either non-complying front and side yards or no front or side yards at all; and

WHEREAS, as to bulk, the Board agrees that the proposed two-story two-family home is compatible with buildings in the area, which include two- and three-story homes and multiple dwellings with heights of two and three stories; and

WHEREAS, based upon its review of the submitted land use maps, the submitted pictures, and site visits, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent properties, nor will it be detrimental to the public welfare; and

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

WHEREAS, the Board notes that the inclusion of a complying front yard on Glenmore Avenue and a complying side yard at the southern portion of the site limit the degree of the waiver and that the front yard waiver reflects the minimum necessary to afford the applicant relief; and

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

Therefore it is Resolved that the Board of Standards and

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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 R5 zoning district, the construction of a two-story two-family home on a lot that does not comply with front yard requirements, contrary to ZR § 23-45; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received December 1, 2008”– (5) sheets; and *on further condition*:

THAT the parameters of the proposed home are as follows: a maximum floor area of 2,241 sq. ft. (1.24 FAR), one side yard of 30’-6” along the southern lot line, one front yard of 10’-0” along the northern lot line, and two parking spaces, as illustrated on the BSA-approved plans;

THAT there shall be no habitable space in the cellar;

THAT the above condition shall appear on the Certificate of Occupancy

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

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, June 23, 2009.

235-08-BZ

CEQR #09-BSA-026K

APPLICANT – Eric Palatnik, P.C., for Agudath Taharath Mishpachan, owners.

SUBJECT – Application September 16, 2008 – Variance (§72-21) to permit the expansion of a Use Group 3 Mikvah. The proposal is contrary to ZR §33-12 (Maximum floor area ratio) and §33-431 (Maximum height of walls and required setbacks). C2-3/R4 district.

PREMISES AFFECTED – 1508 Union Street, located at the southwest corner of Union Street and Albany Avenue, Block 1279, Lot 41, Borough of Brooklyn.

COMMUNITY BOARD #9BK

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

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated September 18, 2008, acting on Department of Buildings Application No. 310167903, reads in pertinent part:

“1. Proposed floor area ratio for community facility is contrary to ZR 33-121.

2. Proposed height and setback is contrary to ZR 33-431;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within a C2-3 (R4) zoning district, the enlargement of an existing mikvah (Use Group 4) and its extension into portions of an existing building, which does not comply with floor area ratio (FAR), front wall height and setback requirements for community facilities, contrary to ZR §§ 33-121 and 33-431; and

WHEREAS, a public hearing was held on this application on March 24, 2009, after due notice by publication in *The City Record*, with continued hearings on April 28, 2009 and May 19, and then to decision on June 23, 2009; 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, this application is being brought on behalf of the Crown Heights Mikvah (hereinafter, the “Mikvah”), which is owned and operated by Agudath Taharath Mishpachah of Eastern Parkway, Inc., a non-profit religious entity; and

WHEREAS, the subject premises is located on the southwest corner of the intersection at Union Street and Albany Avenue, within a C2-3 (R4) zoning district; and

WHEREAS, the site has a rectangular shape with 40 feet of frontage on Union Street, a depth of 100 feet, and a total lot area of 4,000 sq. ft.; and

WHEREAS, the subject site is occupied by a four-story mixed use residential/community facility building, the Mikvah currently occupies approximately 7,965 sq. ft. of floor area and the residential use occupies approximately 1,301 sq. ft. of floor area; and

WHEREAS, the applicant proposes to convert the 1,301 sq. ft. of residential floor area to Mikvah use and to enlarge the Mikvah by an additional 3,365 sq. ft.; and

WHEREAS, the existing, legally non-complying building has the following parameters: a FAR of 2.32 (the maximum permitted FAR is 2.0), a front wall height of 37’-9” (the maximum permitted front wall height is 35’-0”) and no setback (a minimum front wall setback of 20’-0” on a narrow street is required for the portion of the building above 35’-0”); and

WHEREAS, the proposed building provides for a four-

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story mikvah with the following increases to the existing non-compliances: a floor area of approximately 12,631 sq. ft. (3.16 FAR), a front wall height of 43'-3 1/2", and no setback; and

WHEREAS, the applicant initially proposed a building with a front wall height of 47'-3", but in response to concerns raised by the Board it reduced the floor-to-ceiling heights of the proposed building, resulting in a reduction of the overall height from 47'-3" to 43'-3 1/2"; and

WHEREAS, the proposal provides for the following uses: (1) a laundry room, mechanical room, storage area, waiting rooms, and offices in the basement; and (2) 33 preparation rooms, three bridal rooms, and six ritual pools on the first, second, and third floors; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Mikvah: (1) a sufficient number of preparation rooms and ritual pools to accommodate all current and future Mikvah users at one facility; (2) separate bridal rooms for use by women on the night before marriage; and (3) privacy for the women who use the Mikvah; and

WHEREAS, the applicant states that the Mikvah currently services approximately 50 women on a daily basis and that approximately 80 patrons are anticipated by the Spring of 2010, the estimated completion date for the proposed construction; and

WHEREAS, in support of this statement, the applicant submitted a letter from the operator of the Mikvah, stating that their daily logs indicate a 20 percent annual increase in Mikvah users and that many women in Crown Heights who currently must go elsewhere due to the overcrowding of the existing Mikvah will use the proposed building; and

WHEREAS, the applicant submitted a letter from Rabbi Osdoba of Beth Din of Crown Heights, stating that approximately 25 Crown Heights synagogues are affiliated with the subject Mikvah, which is in the heart of the Chabad Lubavitch headquarter serving the Lubavitch worldwide movement; and

WHEREAS, the applicant also submitted a letter from Rabbi Raskin of Congregation B'nai Avraham in Brooklyn Heights, stating that a large number of women from Crown Heights come to their mikvah in Brooklyn Heights on a daily basis due to the overburdening of the subject Mikvah; and

WHEREAS, the applicant represents that the FAR, height and setback waivers are necessary to provide the program space necessary to adequately serve its current and projected users; and

WHEREAS, specifically, (1) the increased height allows for nine-foot floor-to-ceiling heights throughout the building; (2) the absence of a setback allows for uniform, efficient floor plates, and (3) the additional FAR allows for floor area to accommodate all of the necessary components of the Mikvah; and

WHEREAS, the applicant states that the existing Mikvah consists of 16 preparation rooms, no bridal rooms, and three ritual pools; and

WHEREAS, the letter submitted by the operator of the Mikvah states that, on average, each patron spends

approximately one-and-a-half hours in a preparation room, including the time needed for the cleaning staff to replenish supplies and sanitize the room; and

WHEREAS, the letter from the operator of the Mikvah further states that immersion in the ritual bath must happen after sundown and the hours of operation of the Mikvah vary based on the time of year, such that the Mikvah operates from approximately 8:00 p.m. to 11:00 p.m. during the summer months and from approximately 5:30 p.m. to 10:00 p.m. during the winter months; and

WHEREAS, the applicant submitted an operational hours chart indicating that the existing Mikvah provides 72 available hours for preparation room use in the winter months and 48 available hours for preparation room use in the summer months, and that 75 hours are needed per evening for the approximately 50 current Mikvah patrons; and

WHEREAS, the operational hours chart further indicates that the proposed Mikvah will provide 148.5 available hours for preparation room use in the winter months and 99 available hours for preparation room use in the summer months, and that 120 hours will be needed per evening for the 80 anticipated Mikvah patrons; and

WHEREAS, thus, the applicant represents that the proposed enlargement is necessary to provide an adequate number of preparation rooms for the current and anticipated number of Mikvah patrons; and

WHEREAS, the applicant represents that the requested waivers are also necessary to provide three bridal rooms for the exclusive use of women on the night before their marriage; and

WHEREAS, the applicant states that the bridal rooms are necessary because the mikvah ritual is a sacred right and the proper introduction of the bride to the mikvah ritual is critical to the perpetuation of the Jewish faith; and

WHEREAS, the applicant represents that the Mikvah currently services three to four brides per evening and anticipates that it will serve between four and six brides per evening after the proposed enlargement; and

WHEREAS, the applicant further represents that, on average, the bridal rooms are occupied for approximately three hours at a time, twice as long as the average mikvah visit, due to the sacred nature of the occasion and the fact that it is the bride's introduction to the mikvah ritual; and

WHEREAS, the applicant states that the current Mikvah provides no bridal rooms, forcing brides to use the same preparation rooms as other patrons and further overburdening the Mikvah; and

WHEREAS, the operational hours chart submitted by the applicant indicates that approximately 15 hours will be needed for the four to six brides anticipated at the proposed Mikvah each night; and

WHEREAS, the applicant represents that therefore three bridal rooms are necessary to accommodate the number of brides anticipated per evening after the proposed enlargement; and

WHEREAS, the applicant further represents that the requested waivers are necessary to ensure the privacy of the

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women who use the Mikvah; and

WHEREAS, the applicant states that modesty and privacy are fundamental aspects of the deeply personal mikvah ritual; and

WHEREAS, the applicant further states that women who use the Mikvah currently must remain in a waiting room with other women for more than an hour before they have access to a preparation room; and

WHEREAS, the applicant represents that the proposed Mikvah will provide a sufficient number of preparation rooms, bridal rooms, and ritual baths to preserve the privacy of the women by keeping their waiting time to a minimum; and

WHEREAS, the applicant states that the proposed circulation plan for the Mikvah will help maintain the privacy of the women, as they will enter the Mikvah on Albany Avenue and move in one direction before they ultimately exit onto Union Street, thus minimizing the need to “double back” and pass other women walking through the Mikvah or to exit through the same door other women are entering; and

WHEREAS, in support of this statement, the applicant submitted drawings reflecting the circulation pattern at the proposed Mikvah; and

WHEREAS, the Board acknowledges that the Mikvah, 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 applicant provided a submission briefing the prevailing New York State case law on religious deference; and

WHEREAS, the Board notes that under established precedents of the courts, “[r]eligious use is conduct with a religious purpose, the determination of which focuses on the proposed use itself, not the religious nature of the organization” (McGann v. Incorporated Village of Old Westbury, 293 A.D.2d 581 (2d Dep’t 2002)), and includes uses ancillary to the function of the house of worship (See Community Synagogue v. Bates, 1 N.Y.2d 445 (1956)); and

WHEREAS, the Board recognizes the role of a mikvah in the religious Jewish community and its significance to Jewish life; accordingly, the Board finds that the Mikvah qualifies as a religious use and is therefore entitled to significant deference under the law of the State of New York as to zoning; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Mikvah 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 Mikvah is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

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

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant represents that the scale and bulk of the Mikvah is consistent with the scale and bulk of many of the corner lots located on Albany Avenue between Carroll Street and Eastern Parkway; and

WHEREAS, specifically, the applicant submitted a radius diagram indicating that there is a seven-story residential building on the corner of Albany Avenue and Eastern Parkway, and provided photographs of three four-story buildings located on the corner of President Street and Albany Street and the corner of Carroll Street and Albany Street, all of which have approximate heights of more than 40 feet; and

WHEREAS, at hearing, the Board requested that the applicant amend the façade of the building to provide brickwork that is in character with the surrounding area, and to replace the existing turret that will have to be removed as a result of the enlargement; and

WHEREAS, in response, the applicant provided revised plans indicating that the brickwork and turret will be provided as per the Board’s request; 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 Mikvah 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, during the hearing process the applicant revised the proposal to reduce the height of the building by approximately four feet; and

WHEREAS, the applicant also submitted an analysis by the architect indicating that every use of the proposed structure has been allocated the minimal amount of space necessary to accommodate its need; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Mikvah 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

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ZR § 72-21; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.09BSA026K, dated December 23, 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, 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 (C2-3) zoning district, the proposed enlargement of an existing mikvah (Use Group 4) and its extension into portions of an existing building, which does not comply with floor area ratio, front wall height and setback requirements for community facilities, contrary to ZR §§ 33-121 and 33-431, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received May 12, 2009" – fourteen (14) sheets; and *on further condition*:

THAT the building parameters shall be: 12,631 sq. ft. of floor area; an FAR of 3.16; a front wall height of 43'-3 1/2"; and no setback;

THAT the use shall be limited to a mikvah (Use Group 4);

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

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

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, June 23, 2009.

265-08-BZ

CEQR #09-BSA-040K

APPLICANT – Mark A. Levine for 70 Wyckoff Avenue LLC, owner.

SUBJECT – Application October 28, 2008 – Variance pursuant to §72-21 to allow for the legalization of residential units located in a manufacturing building, contrary to §42-00; M1-1 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 Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, decision of the Brooklyn Borough Commissioner, dated February October 2, 2008, acting on Department of Buildings Application No. 310199969, reads:

“Residential use is not permitted in a manufacturing M1-1 district as per Section 42-00 of Zoning Resolution”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-1 zoning district, the legalization of a residential conversion (UG 2) of an existing four-story manufacturing building; and

WHEREAS, a public hearing was held on this application on March 17, 2009, after due notice by publication in the *City Record*, with continued hearings on April 21, 2009, and May 19, 2009, and then to decision on June 23, 2009; and

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

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

WHEREAS, the site is located on the southeast corner of Wyckoff Avenue and Suydam Street, within an M1-1 zoning district; and

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WHEREAS, the site has 100'-1" of frontage on Wyckoff Avenue, 215'-3" of frontage on Suydam Street, and a lot area of 21,302 sq. ft.; and

WHEREAS, the site is currently occupied by a four-story manufacturing building with a penthouse, with a total floor area of 66,578 sq. ft. and an FAR of 3.12, with 51 dwelling units; the building also has a penthouse; and

WHEREAS, the applicant states that the four-story building was built prior to 1924 and the penthouse was completed in 2003, pursuant to DOB Permit No. 301130504-01, which was approved on February 13, 2001; and

WHEREAS, as noted, the applicant proposes to legalize the existing dwelling units, which were converted from manufacturing use in 2003; 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 building is obsolete for manufacturing use; and (2) the building's yard configuration and location does not permit access for the movement of goods and large trucks as is required of modern manufacturing uses; and

WHEREAS, the applicant represents that the building is obsolete for modern manufacturing due to (1) constrained floor plates, (2) low ceiling height, (3) lack of an elevator and (4) lack of a loading dock; and

WHEREAS, the applicant states that the building was built for a single user, which was a specialty cut and sew manufacturer, and the building's design served the specific needs of such a business; and

WHEREAS, the applicant represents that the building could not be modified to accommodate multiple conforming tenants, particularly given the other noted constraints, including the presence of only one elevator; and

WHEREAS, as to the building's constrained floor plates, the applicant asserts that the presence of two rows of columns 22 feet apart, with columns spaced at 12-foot intervals results in many narrow bays within each floor, which results in inefficient floor plates and inhibits the movement and storage of goods; and

WHEREAS, the applicant represents that this condition constrains the building for use as a warehouse or for an active conforming use; and

WHEREAS, as to ceiling height, the applicant notes that the floor-to-ceiling height is approximately 12'-0"; and

WHEREAS, the applicant represents that modern commercial use requires at least 16-foot floor-to-ceiling heights and modern industrial use requires at least 20- to 30-foot floor-to-ceiling heights in order to accommodate stacking and efficient storage and maneuvering of bulk goods; and

WHEREAS, as to the communication between floors, the applicant states that the building lacks a passenger elevator and contains only one freight elevator for multiple tenants; further, the freight elevator is located at the eastern end of the building, opening into a small, confined loading area; and, finally, the freight elevator is deemed to be too small and positioned so that a truck cannot back up to it; and

WHEREAS, the applicant represents that the elevator and constrained loading area cannot accommodate the movement of freight or goods for a conforming use; and

WHEREAS, as to building access, the applicant states that there is not any direct access to the building or loading area from the street; specifically, the loading area cannot be accessed directly from the street and deliveries must maneuver through a narrow yard, approximately 100 feet from the sidewalk; and

WHEREAS, additionally, the applicant states that the building does not have a basement and, therefore, certain infrastructure is located in the narrow rear and side yards, further reducing available space for building access; and

WHEREAS, narrow rear and side yards also constrain access to the site and inhibit loading and un-loading; and

WHEREAS, as to the uniqueness of the site conditions, the applicant identified 19 other industrial buildings within close proximity to the site and found that all have direct access from the street; 12 have loading docks; and none, with such information available, had as narrow column-spacing as the subject building; and

WHEREAS, accordingly, the applicant concludes that none of the other industrial buildings analyzed are similarly constrained with regard to access and floor plate design; and

WHEREAS, the Board finds that the combination of the column-spacing, low ceiling height, lack of multiple elevators and loading berths, and lack of direct access for bulk goods, trucks, and machinery, from the street to the building creates unnecessary hardship and practical difficulty in using the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant provided a feasibility study analyzing three alternatives: (1) the building used in conformance with M1-1 zoning district regulations; (2) the four-story building converted to a residential use, without a penthouse; and (3) the proposed four-story building converted to a residential use, with a penthouse; and

WHEREAS, the applicant's feasibility study reflects that neither the building occupied by a conforming use, nor the four-story building converted to residential use without the penthouse, provide 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 existing and proposed residential 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, although zoned M1-1, the site is surrounded by a large R6 zoning district, the applicant represents that the actual land uses in the area are compatible with residential use; and

WHEREAS, the applicant represents that the block where the site is located is characterized by a majority of residential

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uses and certain commercial uses to serve the residential community, such as a supermarket; and

WHEREAS, the applicant represents that there are not any manufacturing uses on the subject block; and

WHEREAS, the applicant notes that half of the subject block is zoned R6 as is the area across Wyckoff Avenue and a portion of the block across Suydam Street; and

WHEREAS, as to bulk, the applicant states that the existing four-story building with penthouse has an FAR of 3.12, which is comparable to the buildings within the adjacent R6 zoning district; and

WHEREAS, based on review of land use maps and site examinations, the Board agrees that there is a significant amount of nearby residential use; and

WHEREAS, based upon the above, the Board finds that the proposed legalization of the residential conversion of the subject building 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, accordingly, the Board finds that the current proposal, which does not provide for any new construction, is the minimum necessary to afford the owner relief; and

WHEREAS, additionally, the Board notes that the applicant analyzed the four-story building without a penthouse alternative since that was not part of the original obsolete structure and the additional space provided by the penthouse is required to offset the costs of the significant alterations to the building necessary for a viable residential use; 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 Part 617 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. 09-BSA-040K, dated September 19, 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, 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, the legalization of a residential conversion (UG 2) of an existing four-story manufacturing building, which is contrary to ZR § 42-00, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 11, 2008"-(11 sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a total floor area of 66,578 and an FAR of 3.12, as illustrated on the BSA-approved plans;

THAT a certificate of occupancy be obtained by December 23, 2009;

THAT this approval 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 23, 2009.

301-08-BZ

APPLICANT – Fridman Saks LLP, for 2717 Quentin Realty LLC, owner.

SUBJECT – Application December 10, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area and lot coverage (§23-141), side yard (§23-461), perimeter wall height (§23-631(b)) and less than the minimum rear yard (§23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 2717 Quentin Road, between East 27th and East 28th Streets, Block 6790, Lot 32, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Borris Saks.

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 Montanez.....5
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated November 19, 2008, acting on Department of Buildings Application No. 310223157, reads in pertinent part:

“The proposed enlargement of the existing 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 yard by not meeting the minimum requirements of Section 23-461 of the Zoning Resolution.
4. Creates non-compliance with respect to perimeter wall height of building and is contrary to Section 23-631(b) of the Zoning Resolution.
5. Creates non-compliance with respect to rear yard by not meeting the minimum requirements of Section 23-47 of the Zoning Resolution;”

and
WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio (“FAR”), lot coverage, side yards, perimeter wall height, and rear yards, contrary to ZR §§ 23-141, 23-461, 23-631, and 23-47; and

WHEREAS, a public hearing was held on this application on April 21, 2009, after due notice by publication in *The City Record*, with a continued hearing on May 19, 2009, and then to decision on June 23, 2009; 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 north side of Quentin Road, between East 27th Street and East 28th Street, in an R3-2 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 2,222 sq. ft. (0.44 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 2,222 sq. ft. (0.44 FAR) to approximately 5,029 sq. ft. (1.01 FAR); the maximum permitted floor area

is 2,500 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of approximately 42 percent (35 percent is the maximum permitted); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard with a width of 3’-11” along the eastern lot line (a minimum width of 5’-0” is required) and will provide a complying side yard of 8’-0” along the western lot line; and

WHEREAS, the proposed enlargement provides a perimeter wall height of 21’-7” (a maximum perimeter wall height of 21’-0” is permitted)

WHEREAS, the Board notes that a special permit under ZR § 73-622 allows a perimeter wall height to exceed the permitted height, provided that the perimeter wall height is equal to or less than the perimeter wall height of an adjacent building; and

WHEREAS, in support of making the finding, the applicant submitted a survey demonstrating that the perimeter wall height of the adjacent home to the west is 21’-8”; therefore the perimeter wall height of the proposed home falls within the scope of the special permit; and

WHEREAS, the applicant initially proposed a perimeter wall height of 22’-6”; and

WHEREAS, the Board noted that the proposed perimeter wall height did not comply with the provisions of ZR § 23-631 and directed the applicant to revise the plans so that the perimeter wall height would comply with ZR § 23-631; and

WHEREAS, accordingly, the applicant reduced the perimeter wall height to 21’-7”; and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 20’-3” (a minimum rear yard 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 indicating the portions of the existing home that are being retained; 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

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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 R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, lot coverage, side yards, perimeter wall height, and rear yards, contrary to ZR §§ 23-141, 23-461, 23-631, 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 5, 2009”-(9) sheets and “Received June 1, 2009”-(5) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 5,029 sq. ft. (1.01 FAR); a lot coverage of 42 percent; a side yard with a minimum width of 3’-11” along the eastern lot line; a perimeter wall height of 21’-7”; and a rear yard with a minimum depth of 20’-3”, as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT DOB shall confirm that the portions of the existing building shall be retained as illustrated on the BSA-approved plans; and

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, June 23, 2009.

10-09-BZ

APPLICANT – Francis R. Angelino, Esq., for Religious Org. Tenseishinbikai USA, Inc., owner.

SUBJECT – Application January 23, 2009 – Variance pursuant to § 72-21 to allow a community facility use (house of worship), contrary to front yard regulations, §24-34. R3-2 District.

PREMISES AFFECTED – 2307 Farragut Road/583 East 23rd Street, north east corner of Farragut Road and East 23rd Street, Block 5223, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Francis R. Angelino, Esq., Omar Walrond, Michiyo Ishikawa, Joseph Tarella, Takashi Omoto and Seiji Ochi.

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 Brooklyn Borough Commissioner, dated January 9, 2009, acting on Department of Buildings Application No. 310202777 reads, in pertinent part:

“Proposed front yard on Farragut Road for community facility in R3-2 district is contrary to ZR 24-34;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21 to permit, on a site within an R3-2 zoning district, a two-story building to be occupied by a church (Use Group 4) and rectory, which does not comply with front yard requirements for community facilities, contrary to ZR § 24-34; and

WHEREAS, a public hearing was held on this application on May 12, 2009, after due notice by publication in *The City Record*, with a continued hearing on June 9, 2009, and then to decision on June 23, 2009; 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 14, Brooklyn, recommends disapproval of this application; and

WHEREAS, members of the South Midwood Residents Association, along with other members of the community, provided testimony in opposition to the proposal; and

WHEREAS, this application is being brought on behalf of Religious Organization Tenseishinbikai, U.S.A., Inc., a non-profit religious entity (the “Church”); and

WHEREAS, the subject site is located on the northeast corner of the intersection at Farragut Road and East 23rd Street, with 100’-0” of frontage along Farragut Road and 50’-0” of frontage along East 23rd Street, and a lot area of 5,000 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the proposed building provides for a two-story church with no front yard along a portion of the southern lot line; and

WHEREAS, the proposal provides for the following uses: (1) mechanical rooms and storage rooms at the cellar level; (2) a lobby and rectory on the first floor; and (3) a sanctuary and ceremonial meeting room on the second floor; and

WHEREAS, the applicant states that the primary programmatic need of the Church which necessitates the requested variance is the need to accommodate the anticipated

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congregation of approximately 82 people; and

WHEREAS, the applicant represents that a complying building would not be able to accommodate more than 43 congregants; and

WHEREAS, the applicant states that the requested waiver enables the Church to provide adequate space for worship services in the second floor sanctuary; 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 applicant states that, in addition to its programmatic needs, the following unique physical condition creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the site's narrow width; and

WHEREAS, specifically, the subject site is a corner lot with a width of 50 feet and a depth of 100 feet; and

WHEREAS, the applicant states that two fifteen-foot front yards and two ten-foot side yards would be required for a complying community facility building in the subject zoning district; and

WHEREAS, the applicant represents that due to the front and side yard requirements, a complying community facility building would have a width of 25 feet, providing for a sanctuary space of less than 20 feet in width, which would be too narrow to accommodate the anticipated congregation; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Church 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 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 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, the applicant further states that the development of the proposed Church is entirely as-of-right, with the exception of the non-compliant front yard, and the waiver for the front yard is necessary to permit a building that can accommodate the size of the congregation; and

WHEREAS, the applicant provided a 400-foot radius diagram indicating that the bulk and height of the Church are consistent with the bulk and height of the two-and-a-half-story homes that characterize the area; and

WHEREAS, the applicant also submitted an analysis of the front yard context of corner lots located on Farragut Road between East 21st Street and East 26th Street, establishing that all 19 of the lots studied are occupied by buildings that encroach into some portion of the required front yard; and

WHEREAS, at hearing, residents of the community argued that the proposed building was out of context with the Victorian character of the neighborhood and does not provide the requisite eight-foot planting strip between the building and the sidewalk along Farragut Road; and

WHEREAS, in response, the applicant states that the area is not within a designated historic district, and thus does not require approval from the Landmarks Preservation Commission; and

WHEREAS, the applicant also submitted a survey indicating that the eight-foot planting strip will be provided as required along Farragut Road; and

WHEREAS, at hearing, the Board requested that the applicant also plant trees along East 23rd Street; and

WHEREAS, in response, the applicant submitted revised drawings indicating that two trees will be planted on the applicant's property along East 23rd Street; 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, 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 front yard waiver is required for only 62'-10" of the 100'-0" frontage on Farragut Road; a complying front yard will be provided along the other 37'-2" of frontage; and

WHEREAS, 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 construct a building that is compatible with the character of the neighborhood; and

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

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

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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, a two-story building to be occupied by a church (Use Group 4) and rectory, which does not comply with front yard requirements for community facilities, contrary to ZR § 24-34, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received March 25, 2009” – (6) sheets and “Received June 11, 2009” – (1) sheet and *on further condition*:

THAT the building parameters shall be: a floor area of 4,996 sq. ft., an FAR of 1.0; a 15’-0” front yard along the East 23rd Street frontage; a 10’-0” side yard along the northern lot line; and a 10’-0” side yard along the eastern lot line;

THAT all landscaping shall be provided and maintained in accordance with 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) and rectory;

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, June 23, 2009.

25-09-BZ

CEQR #09-BSA-072M

APPLICANT – Law Offices of Howard Goldman LLC., for AJJ Canal LLC, owner and Champion Fitness LLC, lessee. SUBJECT – Application February 13, 2009 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment on the third floor of a three-story commercial building. The proposal is contrary to ZR §42-10. M1-5B district.

PREMISES AFFECTED – 277 Canal Street, Northwest corner of Canal and Broadway. Block 209, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

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 Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Superintendent, dated January 23, 2009, acting on Department of Buildings Application No. 110419379, reads in pertinent part:

“ZR 42-31. BSA approval is required for physical culture establishment;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-5B zoning district, the legalization of a physical culture establishment (PCE) on the third floor of a three-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on May 19, 2009 after due notice by publication in *The City Record*, and then to decision on June 23, 2009; and

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

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

WHEREAS, the subject site is located on the northeast corner of the intersection at Canal Street and Broadway, in an M1-5B zoning district; and

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

WHEREAS, the PCE will occupy 9,960 sq. ft. of floor area, comprising the entire third floor of the existing building; and

WHEREAS, the PCE will be operated as Champion Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 5:30 a.m. to 10:00 p.m.; Saturday, from 7:00 a.m. to 4:00 p.m.; and Sunday, from 9:00 a.m. to 4:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE will include facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics and martial arts, and facilities for the practice of massage; 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

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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 November 23, 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 November 23, 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. 09BSA072M, dated May 6, 2009; 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 an M1-5B zoning district, the legalization of a physical culture establishment on the third floor of an existing three-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 6, 2009"- six (6) sheets and *on further condition*:

THAT the term of this grant shall expire on November 23, 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 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 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 23, 2009.

63-08-BZ

APPLICANT – Eric Palatnik for Royal Palace, lessee. Manton Holding , owner

SUBJECT – Application March 27, 2008 – Special Permit (§73-244) to legalize an eating and drinking establishment with entertainment and a capacity of more than 200 persons with dancing within a C4-2 zoning district.

PREMISES AFFECTED – 116-33 Queens Boulevard, Between 77th and 78th Avenues, Block 2268, Lot 23, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Eric Palatnik, Nancy Neumen and Dasha.
For Opposition: Eric Goidel, Charlotte Picot, Carole Keit, James Messemer , Amelia McClancy, Elaine F. Wallace, Michael Hunter and George McGrett.

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 11, 2009, at 1:30 P.M., for decision, hearing closed.

241-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Devonshire Enterprises, Inc., owner.

SUBJECT – Application September 25, 2008 – Variance (§72-21) to permit a one-story commercial building (Use

MINUTES

Group 6) on a vacant lot. The proposal is contrary to ZR Section 32-10. R3-1 district.

PREMISES AFFECTED – 546 Midland Avenue, a/k/a 287 Freeborn Street, southwest corner of the intersection of Freeborn Street and Midland Avenue, Block 3803, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to July 28, 2009, at 1:30 P.M., for continued hearing.

297-08-BZ

APPLICANT – Lewis E. Garfinkel, for Itzhak Bardror, owner.

SUBJECT – Application December 4, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141(a)); and less than the required rear yard (§23-47) in an R2 zoning district.

PREMISES AFFECTED – 3496 Bedford Avenue, between Avenue M and Avenue N, Block 7660, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik and Lewis E. Garfindel.

For Opposition: Stuart A. Klein and Marcus Fuchs.

ACTION OF THE BOARD – Laid over to August 25, 2009, at 1:30 P.M., for continued hearing.

30-09-BZ

APPLICANT – Sheldon Lobel, P.C., for 136-33 37th Avenue Realty, LLC, owner.

SUBJECT – Application February 23, 2009 – Special Permit pursuant to §73-44 to reduce the amount of required parking spaces for commercial and medical offices uses from 153 to 97 spaces. C4-3 zoning district.

PREMISES AFFECTED – 136-33 37th Avenue, north side of 37th Avenue, between Main Street and Union Street, Block 4977, Lot 95, Borough of Queens.

COMMUNITY BOARD #7Q

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 July 28, 2009, at 1:30 P.M., for decision, hearing closed.

256-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP for

Hayden Rester, owner.

SUBJECT – Application November 5, 2007 – Variance (72-21) to permit a Use Group 4 community youth center within a portion of a proposed mixed-use building The proposal is contrary to section 24-35 (side yard). R5 district.

PREMISES AFFECTED – 1978 Atlantic Avenue, Southern side of Atlantic Avenue, 180 feet west of the intersection of Atlantic and Ralph. Block 1339, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD # 8BK

APPEARANCES –

For Applicant: Adam Rothkrug and Hayden Hester.

For Opposition: ??????

ACTION OF THE BOARD – Laid over to August 11, 2009, at 1:30 P.M., for continued hearing.

254-08-BZ

APPLICANT – Eric Palatnik, P.C., for Yeshiva Ohr Yitzchok, owner.

SUBJECT – Application October 15, 2008 – Variance to legalize the use and enlargement of a Yeshiva, contrary to use regulations.

PREMISES AFFECTED – 1214 East 15th Street, Western side of East 15th Street between Avenue L and Locust Avenue. Block 6734, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD # 14BK

APPEARANCES –

For Applicant: Eric Palatnik, Hiram Rothkrug, Steven Itchowitz and Rabbi Groner.

ACTION OF THE BOARD – Laid over to August 25, 2009, at 1:30 P.M., for continued hearing.

9-09-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Gerry Kaplan/Marlene Realty Co., for Force Fitness LLC, lessee.

SUBJECT – Application January 22, 2009 – Special Permit (§73-36) to allow a physical culture establishment in an existing one-story building. The proposal is contrary to ZR Section 42-10. M1-1 district.

PREMISES AFFECTED – 63-03 Fresh Pond Road, east side of Fresh Pond Road, 269.8' south of Metropolitan Avenue and Fresh Pond Road, Block 3608, Lot 14, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: Sandy Anagnostov.

ACTION OF THE BOARD – Laid over to July 28, 2009, at 1:30 P.M., for continued hearing.

18-09-BZ

APPLICANT – Stuart A. Klein, for Ascot Properties, Ltd., owner; Gold's Gym, lessee.

SUBJECT – Application February 6, 2008 – Special Permit

MINUTES

(§73-36) to allow the legalization of an existing physical culture establishment on the first, second and third floors in an existing twelve-story building. The proposal is contrary to ZR Section 32-10. C6-5, C6-7 and Special Midtown Districts.

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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 28, 2009, at 1:30 P.M., for decision, hearing closed.

23-09-BZ

APPLICANT – Eric Palatnik, P.C., for Alla Simirnov, owner.

SUBJECT – Application February 12, 2009 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a single family home. This application seeks to vary open space, lot coverage and floor area (23-141(b)) and rear yard (23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 114 Amherst Street, west side of Amherst Street between Hampton Avenue and Oriental Boulevard, Block 8732, Lot 71, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to July 28, 2009, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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July 24, 2009

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DOCKETS

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195-09-BZ

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196-09-BZY

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197-09-A

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198-09-BZ

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199-09-A

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200-09-A

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201-09-A

159 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 62, Borough of **Queens, Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.

202-09-A

155 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 63, Borough of **Queens, Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.

203-09-A

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204-09-A

151 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 64, Borough of **Queens, Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.

205-09-A

149 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 66, Borough of **Queens, Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.

206-09-A

145 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 67, Borough of **Queens, Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.

207-09-A

143 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 68, Borough of **Queens, Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.

208-09-A

141 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 69, Borough of **Queens, Community Board: 2**. Construction within a mapped street, contrary to Section 35 of the General City Law.

DOCKET

209-09-A

137 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 70, Borough of **Queens, Community Board: 2.** Construction within a mapped street, contrary to Section 35 of the General City Law.

210-09-A

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211-09-A

131 Roswell Avenue, Between Wild Avenue and Dead End., Block 2641, Lot(s) 72, Borough of **Queens, Community Board: 2.** Construction within a mapped street, contrary to Section 35 of the General City Law.

212-09-A

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213-09-A

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214-09-BZ

1464 Astor Avenue, South side of Astor Avenue, 100ft. East of the intersection with Fenton Avenue., Block 4389, Lot(s) 26,45, Borough of **Bronx, Community Board: 11.** Special Permit (73-125) health care facility.

215-09-BZ

92-16 95th Avenue, Southwest corner of 93rd Street and 95th Avenue., Block 9032, Lot(s) 8, Borough of **Queens, Community Board: 9.** Special Permit(11-411,11-412,11-413) to reinstate variance.

216-09-A

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217-09-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: 3.** Multiple Dwelling Appeal

218-09-BZ

57 Empire Boulevard, Between Mckeever Place and Bedford Avenue, bounded by Sullivan Place on south., Block 1306, Lot(s) 1, Borough of **Brooklyn, Community Board: 9.** Special Permit (73-243) for accessory drive-through facility.

219-09-BZ

802 East 147th Street, South side of East 147th Street, east of the intersection of East 147th Street and Tinton Avenue., Block 2582, Lot(s) 10, Borough of **Bronx, Community Board: 1.** Variance to allow five 3-story two family residential buildings.

220-09-BZ

804 East 147th Street, South side of East 147th Street, east of the intersection of East 147th Street and Tinton Avenue., Block 2582, Lot(s) 11, Borough of **Bronx, Community Board: 1.** Variance to allow five 3-story two family residential buildings.

221-09-BZ

806 East 147th Street, South side of East 147th Street, east of the intersection of East 147th Street and Tinton Avenue., Block 2582, Lot(s) 110, Borough of **Bronx, Community Board: 1.** Variance to allow five 3-story two family residential buildings.

DOCKET

222-09-BZ

808 East 147th Street, South side of East 147th Street, east of the intersection of East 147th Street and Tinton Avenue., Block 2582, Lot(s) 111, Borough of **Bronx, Community Board: 1.** Variance to allow five 3-story two family residential buildings.

223-09-BZ

810 East 147th Street, South side of East 147th Street, east of the intersection of East 147th Street and Tinton Avenue., Block 2582, Lot(s) 112, Borough of **Bronx, Community Board: 1.** Variance to allow five 3-story two family residential buildings.

224-09-BZ

218-51 Hempstead Avenue, Northwest corner of intersection of Hempstead Avenue, Block 10766, Lot(s) 38,46,48,51, Borough of **Queens, Community Board: 13.** Special Permit (73-52) to allow accessory commercial parking.

225-09-BZ

45 Beacon Avenue, Beacon Avenue c/o Luigi Place., Block 948, Lot(s) 27, Borough of **Staten Island, Community Board: 2.** Variance (72-21) to allow a one family home, contrary to use regulations.

226-09-BZ

24 East 13th Street, South side of East 13th Street, 142'-2 & 3/4" west of University Place., Block 570, Lot(s) 17, Borough of **Manhattan, Community Board: 2.** Special Permit (73-36) to legalize the operation of a physical culture establishment.

227-09-BZ

100-14 Roosevelt Avenue, South side of Roosevelt Avenue, distant 109.75' west of the corner of 102nd Street & Roosevelt Avenue., Block 1609, Lot(s) 8, Borough of **Queens, Community Board: 4.** Variance (72-21) to allow a two story commercial building, contrary to use regulations.

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

CALENDAR

JULY 28, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 28, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

441-31-BZ

APPLICANT – Ian Peter Barnes, IPB Associates, for Gurdev Singh Kang, owner.

SUBJECT – Application April 24, 2009 – Extension of Term/waiver for a Gasoline Service Station with accessory convenience store in a C2-2/R5 zoning district which expired on April 26, 2007.

PREMISES AFFECTED – 7702 Flatlands Avenue, southeast corner of Flatlands Avenue and East 77th Street, Block 8014, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

271-81-BZ

APPLICANT – Mitchell S. Ross, Esq., for Pamela Equities Corporation, owners; New York Health and Racquet Club, lessees.

SUBJECT – Application June 4, 2009 – Extension of Term (73-11) to reopen waive the rules and amend special permit for a term of ten years for physical culture establishment.

PREMISES AFFECTED – 110/112 West 56th Street, Block 1008, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #5M

128-04-BZ

APPLICANT – Marvin B. Mitzner, Esq., for Park East Day School, Incorporated, owner.

SUBJECT – Application June 24, 2009 – Extension of Time to Complete Construction and to obtain a Certificate of Occupancy/waiver to a previously granted Variance for the enlargement of an existing school, in an R8B zoning district, which expired on December 14, 2008.

PREMISES AFFECTED – 162-168 East 68th Street, south side of East 68th Street, 100' west of Third Avenue, Block 1402, Lots 41 & 42, Borough of Manhattan.

COMMUNITY BOARD #8M

197-05-BZ

APPLICANT – Marvin Mitzner, Esq., for B&E 813 Broadway Realty, owner.

SUBJECT – Application April 17, 2009 – Reopening for an amendment to the resolution for full commercial coverage on the ground floor and commercial FAR of 0.82. Zoning District C6-1.

PREMISES AFFECTED – 813/815 Broadway, west side of Broadway, 42' south of East 12th Street, Block 563, Lots 33 & 34, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEALS CALENDAR

83-08-A

APPLICANT – NYC Department of Buildings, for H. Patel, P.M. – Purvi Enterprises, LLC, owner.

SUBJECT – Application April 9, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 301279319 issued on January 17, 2007 as it was issued in error due to failure to comply with ZR §62-711 requiring waterfront certification and the failure to comply with ZR §12-10(d) in the formation of the zoning lot R5 SP Sheepshead Bay District.

PREMISES AFFECTED – 3218 Emmons Avenue, Emmons Avenue between Bringham Street, and Bragg Street, Block 8815, Lot 590, Borough of Brooklyn.

COMMUNITY BOARD #15BK

55-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Mary Kay Rail and William Kahaly, lessees.

SUBJECT – Application April 9, 2009 – Proposed reconstruction and enlargement of an existing single family dwelling partially in the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law and the proposed upgrade of an existing no conforming private disposal system in the bed of the service road contrary to Department of Buildings policy. R4 Zoning District.

PREMISES AFFECTED – 1 Kildare Walk, southeast corner of Kildare Walk and Oceanside Avenue, Block 16350, Lot p/o 400, Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

JULY 28, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, July 28, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

53-09-BZ

APPLICANT – Harold Weinberg, P.E., for David Salamon, owner.

SUBJECT – Application April 6, 2009 – Variance (§72-21) for the construction of a three-family home on a vacant undersized lot. This application seeks to vary floor area (§23-141); front yard (§23-45) side yard (§23-461) and parking (§25-161) in an R5 zoning district.

PREMISES AFFECTED – 540 Schenck Avenue, southwest corner of Dumont Avenue, between Schenck Avenue and Hendrix Street, Block 4075, Lot 118, Borough of Brooklyn.

COMMUNITY BOARD #5BK

161-09-BZ

APPLICANT – Rizzo Group, for 25 Garfield Sparta, LLC, owner.

SUBJECT – Application April 23, 2009 – Variance (§72-21) for the development of two residential buildings (20 dwelling units) contrary to bulk regulations (ZR §23-533, §23-145, §23-711, §23-861). R6B District.

PREMISES AFFECTED – 580 Carroll Street (25 Garfield Place) Carroll Street/Garfield Place, between Fourth and Fifth Avenue, Block 951, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #6BK

176-09-BZ

APPLICANT – Bryan Cave LLP/Margery Purlmutter, for City of New York, owner.

SUBJECT – Application May 25, 2009 – Special Permit pursuant to §73-64 to waive height and setback regulations (ZR §33-432) for a community facility building (Fashion Institute of Technology). C6-2 District.

PREMISES AFFECTED – 220-236 West 28th Street, south side of West 28th Street, between Seventh and Eighth Avenues, Block 777, Lots 1, 18, 37, Borough of Manhattan.

COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JULY 14, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

55-01-BZ

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for 568 Broadway Perty, LLC, owner; Blissworld LLC, lessee. SUBJECT – Application March 31, 2009 – Extension of Term/waiver of a previously granted Special Permit (§73-36) for the continued operation of a PCE (Bliss Spa) located on portions of the second and third floors of an eleven-story mixed use building in an M1-5B zoning district which expired on April 1, 2007.

PREMISES AFFECTED – 568 Broadway, north side of Prince Street, between Broadway and Crosby Street, Block 511, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice-Chair 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, an extension of term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on April 1, 2007, an extension of time to obtain a certificate of occupancy, and an amendment to reflect the current owners and operators of the PCE; and

WHEREAS, a public hearing was held on this application on June 9, 2009, after due notice by publication in *The City Record*, and then to decision on July 14, 2009; and

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

WHEREAS, the PCE is located on the north side of Prince Street, between Broadway and Crosby Street, in an M1-5B zoning district within the SoHo Cast Iron Historic District; and

WHEREAS, the site is located in portions of the second and third floors of a 12-story commercial building; and

WHEREAS, the PCE has a total floor area of 8,408 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 7, 2001 when, under the subject calendar number, the Board granted a special permit to legalize a physical culture establishment in the subject building, to

expire on April 1, 2007; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years and to extend the time to obtain a new certificate of occupancy ; 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 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 to obtain a certificate of occupancy, and amendment to the previous grant 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 7, 2001, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years, to expire on April 1, 2017, and to extend the time to obtain a certificate of occupancy to January 14, 2010, *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 April 1, 2017;

THAT a certificate of occupancy shall be obtained by January 14, 2010;

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 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. 110436939)

Adopted by the Board of Standards and Appeals, July 14, 2009.

198-66-BZ

APPLICANT – Eric Palatnik, P.C., for 300 East 74 Owners Corporation, owner.

SUBJECT – Application June 8, 2009 – Extension of Time to complete substantial construction of an existing plaza for a residential high rise building which expires on July 28, 2009; located in a C1-9 zoning district.

PREMISES AFFECTED – 300 East 74th Street, between first and Second Avenues, Block 1448, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

MINUTES

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 11, 2009, at 10 A.M., for continued hearing.

336-98-BZ & 337-98-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP for 312 Flatbush Avenue LLC, owner; AGT Crunch, lessee.

SUBJECT – Application December 31, 2008 – Application filed pursuant to §73-11 to Extend the term of a special permit granted pursuant to §73-36 authorizing a physical culture establishment (PCE) (Crunch Fitness), extend the PCE to include additional area in the cellar and on the first floor, permit a change in operator and extend the time to obtain a certificate of occupancy. The subject site is located in a C2-4 zoning district.

PREMISES AFFECTED – 312/18 and 324/34 Flatbush Avenue, 157' west of the northwest corner of the intersection of Flatbush Avenue and Sterling Place, Block 1057, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to August 11, 2009, at 10 A.M., for decision, hearing closed.

200-00-BZ

APPLICANT – Eric Palatnik, P.C., for Blans Development Corporation, owner.

SUBJECT – Application June 1, 2009 – Extension of Time to obtain a Certificate of Occupancy for a Physical Culture Establishment (Squash Total Fitness), in a C1-4(R6B) zoning district, which expired on February 19, 2009.

PREMISES AFFECTED – 107-24 37th Avenue, southwest corner of 37th Avenue and 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 Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 28, 2009, at 10 A.M., for decision, hearing closed.

26-02-BZ

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; A & A Automotive Corporation, lessee. SUBJECT – Application June 8, 2009 – Extension of Time to obtain a Certificate of Occupancy for a UG16 Gasoline Service Station (Mobil), in a C1-2(R3X) zoning district, which expires on July 13, 2009.

PREMISES AFFECTED – 1680 Richmond Avenue, north west corner of Victory Boulevard, Block 2160, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Cindy Bachan.

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 28, 2009, at 10 A.M., for decision, hearing closed.

322-05-BZ

APPLICANT – Eric Palatnik, P.C., for Queens Jewish Community Council, owner.

SUBJECT – Application June 8, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for an enlargement of a single family home and the change in use from Residential to Community Use Facility (Queens Jewish community Council), located in an R4B zoning district, which will expire on March 7, 2010.

PREMISES AFFECTED – 69-69 Main Street, Main Street and 70th Avenue, Block 6642, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to July 28, 2009, at 10 A.M., for decision, hearing closed.

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APPEALS CALENDAR

4-09-A

APPLICANT – NYC Department of Buildings
OWNER OF RECORD – 27-00 Queens Plaza South, LLC.
SUBJECT – Application January 13, 2009 – An appeal filed by the Department of Buildings seeking to amend the Certificate of Occupancy No. 400872631 issued on June 17, 1999 to remove the reference to "Adult" Establishment use on the second floor. M1-6/R-10 Special Mixed Use.
PREMISES AFFECTED – 27-02 Queens Plaza South, southeast corner of Queens Plaza South and 27th Street, Block 422, Lot 9, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES – None.

ACTION OF THE BOARD – Application granted.

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 Department of Buildings (“DOB”) seeks to modify Certificate of Occupancy Number 400872631 (the “Current CO”), issued to the subject premises on June 17, 1999, on the basis that it improperly reflects a non-conforming adult establishment on the second floor of the existing building located at the premises; and

WHEREAS, a public hearing was held on this application on June 16, 2009, after due notice by publication in the *City Record*, and then to decision on July 14, 2009; and

WHEREAS, representatives of Queens Off Broadway Corp., the lessee of the second floor of the subject building (hereinafter, the “Opposition”), testified at hearing and made submissions to the record in opposition to the application; and

WHEREAS, the owner of the subject building testified in opposition to the application; and

WHEREAS, the subject premises is located on the southeast corner of Queens Plaza South and 27th Street, in an M1-6/R10 zoning district within the Special Long Island City Mixed-Use District; and

WHEREAS, the Current CO reflects the following uses: (i) Use Group 8 parking garage and accessory uses in the cellar; (ii) Use Group 6 retail store and office on the first floor; and (iii) Use Group 12A adult eating and drinking establishment with entertainment and a capacity of more than 200 persons or an establishment of any capacity with dancing on the second floor; and

WHEREAS, DOB asserts that the adult establishment use on the second floor became a non-conforming use on July 26, 2001, when the premises was rezoned to an M1-6/R10 zoning district within the Special Long Island City Mixed-Use District; and

WHEREAS, DOB states that, pursuant to ZR § 42-01(a), adult establishments are prohibited in manufacturing districts in which residential use is permitted as-of-right; and

WHEREAS, DOB further states that, pursuant to ZR § 123-20, Special Mixed-Use Districts, such as the subject

district, permit residential use as-of-right; and

WHEREAS, DOB further states that, pursuant to ZR § 52-77, a non-conforming adult establishment must terminate within one year from the date it becomes non-conforming; thus, because the rezoning became effective on July 26, 2001, the adult establishment use at the subject building should have terminated on or before July 26, 2002; and

WHEREAS, ZR § 52-77 provides, in pertinent part, “a non-conforming adult establishment shall terminate within one year from October 25, 1995, or from such later date that the adult establishment becomes nonconforming...However, the provisions of this Section shall not apply to an adult establishment subject to the provisions of paragraph (f) of Section 32-01 or 42-01;” and

WHEREAS, ZR § 42-01(f) provides that, “[a]dult establishments which were established on October 25, 1995 and conform to all provisions of the Zoning Resolution relating to adult establishments other than the provisions of all or any combination of paragraphs (c), (d) and (e) of this Section, shall not be subject to the provisions of Section 52-77;” and

WHEREAS, the Opposition argues that the appeal should be denied because, pursuant to ZR § 42-01(f), the premises is not subject to ZR § 52-77 since it was in existence prior to October 25, 1995; and

WHEREAS, in support of its claim that the adult establishment use on the second floor was in existence prior to October 25, 1995, the Opposition submitted an affidavit from the owner of the building and Certificate of Occupancy Number Q207752 (the “Prior CO”), issued to the subject premises on April 8, 1988, which indicated a Use Group 12 eating and drinking place with entertainment and dancing was permitted on the second floor of the subject building; and

WHEREAS, DOB asserts that the exception set forth in ZR § 42-01(f) applies only if: (1) the use was established prior to October 25, 1995; and (2) such establishment otherwise conforms to all adult establishment provisions of the Zoning Resolution other than paragraphs (c), (d) and (e) of ZR § 42-01; and

WHEREAS, thus, DOB states that an adult establishment that was in existence on October 25, 1995 but does not conform to ZR § 42-01(a) by virtue of a zoning map change adopted subsequent to October 25, 1995 is not covered by ZR § 42-01(f), and such adult establishment is required to terminate within one year from the date the adult establishment becomes non-conforming, as per ZR § 52-77; and

WHEREAS, as noted above, DOB states that the adult establishment use at the subject premises became non-conforming on July 26, 2001 when the zoning district in which it lies changed from an M1-5 district to an M1-6/R10 district within the Special Long Island City Mixed-Use District, and therefore it no longer conforms to ZR § 42-01(a) and should have terminated on or before July 26, 2002; and

WHEREAS, DOB concludes that proof of whether the subject adult establishment existed prior to October 25, 1995 is irrelevant to the question of whether the adult establishment is currently permitted because it does not comply with ZR § 42-01(a), which provides that adult establishments are not permitted in manufacturing districts in which residences are

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allowed as-of-right; and

WHEREAS, the Board agrees with DOB that the subject adult establishment does not conform to ZR § 42-01(a) by virtue of the rezoning of the premises to an M1-6/R10 district within the Special Long Island City Mixed-Use District on July 26, 2001, and therefore ZR § 42-01(f) is inapplicable to the subject premises; and

WHEREAS, accordingly, the Board finds that the adult establishment use should have been terminated on or before July 26, 2002, pursuant to ZR § 52-77; and

WHEREAS, therefore, the Board finds that the reference on the Current CO to adult establishment use on the second floor is contrary to the provisions of the Zoning Resolution.

Therefore it is Resolved that the application brought by the Deputy Commissioner of the Department of Buildings on January 13, 2009, seeking to modify Certificate of Occupancy No. 400872631 by removing any reference to "adult establishment" on the second floor, is hereby granted.

Adopted by the Board of Standards and Appeals, July 14, 2009.

140-08-BZY

APPLICANT – Eric Palatnik, P.C., for 1016 East 13th Realty, LLC, owner.

SUBJECT – Application April 5, 2008 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 district regulations. R5 zoning district.

PREMISES AFFECTED – 1016 East 13th Street, between Avenue J and K, Block 6714, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 25, 2009, at 10 A.M., for an adjourned hearing.

313-08-A

APPLICANT – Howard Goldman , LLC & Berger & Kramer , LLP for Chuck Close, for Proprietary Lessee of Studio and Basement Cooperative at 20 Bond Street , lessee. SUBJECT – Application December 22, 2008 – Appeal seeking to revoke permits and approvals for a six story commercial building that violates the Building Code and Zoning Resolution. M1-5B zoning district.

PREMISES AFFECTED – 363-371 Lafayette Street, east side of Lafayette Street between Great Jones and Bond Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Caroline Harris.

For Opposition: Judy Gallent.

For Administration: Lisa Orrantia, Department of Buildings.

ACTION OF THE BOARD – Laid over to October 27, 2009, at 10 A.M., for an adjourned hearing.

317-08-A

APPLICANT – Margaret R. Garcia, AIA, for Block 17 Lot 112 LLC, owner.

SUBJECT – Application December 23, 2009 – Proposed construction of a four story dwelling located within the bed of a mapped street contrary to General City Law Section 35. R5 Zoning District.

PREMISES AFFECTED – 124 Montgomery Avenue, west side of Montgomery Avenue, 140' north of Victory Boulevard, Block 17, Lot 112, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 25, 2009, at 10 A.M., for postponed hearing.

165-09-A

APPLICANT – Law Office of Howard Goldman, for 13 Hendricks LLC, owner.

SUBJECT – Application April 30, 2009 – Appeal seeking a determination that the owner has acquired common law vested rights for a development commenced under the prior R4 district regulations. R3 Zoning district.

PREMISES AFFECTED – 150 Hendricks Avenue, between Jersey Street and Bismark Avenue, Block 44, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

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 28, 2009, at 10 A.M., for decision, hearing closed.

172-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Susan & Brett Flynn, lessees.

SUBJECT – Application May 19, 2009 – Reconstruction and enlargement of an existing single family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. The proposed upgrade of the existing non complying private disposal located partly in the bed of the service road is contrary to Department of Building Policy. R4 zoning district.

PREMISES AFFECTED – 10 Gotham Walk, west side of Gotham Walk, 105.46' south of mapped Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to July 28, 2009, at 10 A.M., for postponed hearing.

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191-09-A

APPLICANT – Michael T. Cetera, AIA, for Devorah Halberstam, owner.

SUBJECT – Application June 16, 2009 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced prior to the text amendment of April 30, 2008. R2 zoning district.

PREMISES AFFECTED – 1291 Carroll Street, north side, 60’ west of the intersection of Brooklyn Avenue and Carroll Street, Block 1284, Lot 48, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Michael T. Cetera.

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 28, 2009, at 10 A.M., for decision, hearing closed.

REGULAR MEETING TUESDAY AFTERNOON, JULY 14, 2009 1:30 P.M.

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

ZONING CALENDAR

222-07-BZ

APPLICANT – Stuart A. Klein, Esq., for Century Realty Corp./Randall Co. LLC., owner.

SUBJECT – Application September 27, 2007 – Variance pursuant to §72-21 to legalize residential uses on the second and third floor of an existing building. M1-6 District.

PREMISES AFFECTED – 110 West 26th Street, between Sixth Avenue and Seventh Avenue, Block 801, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Abigail Patterson.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

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 August 27, 2007, acting on Department of Buildings Application No. 100495144, reads in pertinent

part:

“Proposed residential use at 2nd and 3rd floors (UG 2) in Manufacturing District M1-6 is not permitted as-of-right and is contrary to ZR 42-10;” and

WHEREAS, this is an application under ZR § 72-21, to legalize Use Group 2 residential use of the second and third floors of a seven-story mixed-use commercial/residential building, within an M1-6 zoning district, contrary to ZR §§ 42-00 and 42-133; and

WHEREAS, a public hearing was held on this application on March 31, 2009, after due notice by publication in the *City Record*, with continued hearings on April 28, 2009 and June 9, 2009, and then to decision on July 14, 2009; 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 No. 4, Manhattan, has no objection to the proposed application; and

WHEREAS, the site is located on the south side of West 26th Street, between Sixth Avenue and Seventh Avenue, within an M1-6 zoning district; and

WHEREAS, the subject zoning lot is approximately 41’-5” wide by 98’-9” deep, with a total lot area of approximately 4,090 sq. ft.; and

WHEREAS, the site is currently occupied by a seven-story mixed-use commercial/residential building, with retail uses located on the cellar level and first floor, illegal residential units located on the second and third floors, and rent-stabilized Interim Multiple Dwelling (“IMD”) units located on the fourth through seventh floors; and

WHEREAS, the applicant notes that the owner purchased the rights to four of the original eight IMD units in the building pursuant to Multiple Dwelling Law § 286.12, enabling the rental of those four units at market rate; 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: the building is obsolete for modern manufacturing and commercial uses in that it has small floor plates, only one passenger size elevator and no freight elevators, low floor-to-ceiling heights, columns spaced at narrow intervals, a deficient floor loading capacity, and rent-stabilized IMD units on the fourth through seventh floors; and

WHEREAS, the applicant concludes that these features combine to create unnecessary hardship and practical difficulties in using the building for a conforming use; and

WHEREAS, the applicant states that the subject building provides a floor plate size of approximately 3,700 sq. ft. per floor; and

WHEREAS, the applicant represents that the small size of the floor plates limits the efficient use of space for commercial or manufacturing uses; and

WHEREAS, as to the elevator, the applicant states that the subject building lacks a freight elevator and provides only one small passenger elevator; and

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WHEREAS, the applicant represents that the presence of only one small passenger elevator creates a hardship in accommodating conforming commercial or manufacturing use because it is inadequate to service such use above the first floor and it requires IMD residents and tenants of the commercial units to share an elevator; and

WHEREAS, the applicant further represents that this creates security issues for the building's residents, in that every visitor would have access to the entire residential portion of the building through the shared elevator; and

WHEREAS, the applicant further represents that any deliveries to commercial tenants would disrupt the residential tenants' access to their homes; and

WHEREAS, the Board requested that the applicant establish that the small floor plates and single elevator are in fact unique building conditions by submitting an analysis of neighboring buildings, showing whether such buildings had the same conditions as the subject building; and

WHEREAS, the applicant initially studied sites with lot widths between 36 feet and 46 feet in the area from West 24th Street to West 28th Street, from 6th Avenue to 7th Avenue, but at the request of the Board expanded the study to include all sites with lot widths of 46 feet or less; and

WHEREAS, the applicant's analysis reflects that although there are a significant number of similarly small sites, only 16 of the 61 lots included in the study area are similar to the subject site in that they provide only one elevator and have a mix of uses above the first floor; and

WHEREAS, the Board notes that the applicant's study analyzed 71 lots, however the Board discounted ten lots that are located along Sixth Avenue within a C6-4X zoning district, in which residential use is permitted as-of-right; and

WHEREAS, as to the ceiling heights, the applicant represents that the subject building provides nine-foot floor-to-ceiling heights which are more compatible with residential use, and are not suitable for conforming commercial or manufacturing use; and

WHEREAS, the applicant submitted a study by a financial consultant which reflects that the subject building's low floor-to-ceiling heights result in a competitive disadvantage for modern manufacturing and commercial use; the study notes that the subject building's floor-to-ceiling heights are 12 percent lower than those of the adjacent building; and

WHEREAS, as to the column-spacing, the applicant states that the subject building provides vertical columns that run the depth of the building at ten-foot intervals; and

WHEREAS, the applicant represents that the ten-foot intervals between the columns create narrow bays which make manufacturing or commercial use infeasible; and

WHEREAS, as to the floor loading capacity, the Board finds that the evidence submitted by the applicant reflects that the floor loading capacity for the subject building, at 100 pounds per square foot, is not unusual for the surrounding area and therefore should not be considered a unique physical condition; and

WHEREAS, as to the IMD status of certain units of the subject building, the Board disagrees that the mere presence of

IMD units and other tenancy issues is either unique or an unnecessary hardship; and

WHEREAS, the Board observes that the applicant has not demonstrated any nexus between the presence of IMD units rather than market rate units and the feasibility of conforming uses on the second and third floors; and

WHEREAS, the Board notes that such a condition is not unique since rent-controlled or rent-stabilized units are found in buildings within the surrounding area and throughout the city; and

WHEREAS, the Board further notes that the tenancy of the building does not relate to the physical conditions of the site; and

WHEREAS, based upon the above, the Board finds that certain of the conditions cited by the applicant, namely the small floor plates, the presence of one passenger elevator and no freight elevator, low floor-to-ceiling heights, and the columns spaced at ten-foot intervals create unnecessary hardship and practical difficulties in strictly conforming with the applicable provision of the Zoning Resolution; and

WHEREAS, as to the (b) finding, the applicant submitted a financial analysis of (i) an as-of-right scenario, and (ii) the proposed scenario, and concluded that the as-of-right scenario would not result in a reasonable return while the proposed scenario would result in a reasonable return; and

WHEREAS, the applicant initially submitted a feasibility study analyzing the following as-of-right scenario: retail use on the first floor, commercial use on the second and third floor, market rate residential use on the fourth and sixth floors, and IMD tenant use on the fifth and seventh floors; and

WHEREAS, the applicant notes that the feasibility analysis contemplates different types of uses on the fourth through seventh floors because the owner of the subject building purchased the rights to four of the original eight IMD units in the building, enabling the rental of those units at market rate; and

WHEREAS, the applicant concluded that such a scenario would not realize a reasonable return; and

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

WHEREAS, specifically, the Board raised concerns about the applicant's inclusion of the regulated low rents paid by some of the IMD tenants to support the lack of a reasonable return for the as-of-right scenario; and

WHEREAS, the applicant asserts that the Board has considered depressed rent rolls in past variance decisions, citing BSA Cal. No. 399-04-BZ as a case in which the Board granted a variance for a building containing two rent-stabilized IMD units; and

WHEREAS, the Board has reviewed the resolution for BSA Cal. No. 399-04-BZ and finds that the applicant has misinterpreted the Board's decision; and

WHEREAS, although the Board granted a variance for a building containing two rent-stabilized IMD units in BSA Cal. No. 399-04-BZ, the resolution specifically notes that the applicant in that case "assumed full market value for the IMD units in calculating return;" and

WHEREAS, thus, the Board disagrees with the

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applicant's assertion that the rent-stabilized IMD units should be included as part of the financial burden in calculating return; and

WHEREAS, in response to the Board's concerns, the applicant submitted a revised feasibility study that contemplates use of the existing building with retail on the ground floor, commercial loft use on the second, third, fifth and seventh floors, and market rate residential use on the fourth and sixth floors; and

WHEREAS, the revised feasibility study concludes that the as-of-right scenario would not realize a reasonable return, and that the financial burden is due to the physical challenges and marketability associated with the commercial loft space in the building and not because of the existing below market rental income associated with the rent-stabilized IMD units; and

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

WHEREAS, the applicant represents that the proposed variance, if granted, will not negatively impact the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant represents that the character of the community is mixed-use in nature, including a large amount of residential uses; and

WHEREAS, the applicant submitted a 400-foot radius diagram indicating that 14 of the 27 lots on the subject block include residential units; and

WHEREAS, specifically, the applicant states that the adjacent property to the east of the subject site is a 33-story mixed-use building with 227 residential units, the adjacent property to the south of the subject site is a six-story multiple dwelling, and the adjacent property to the west of the subject site is a 12-story multiple dwelling; and

WHEREAS, the applicant further states that three other buildings on the subject block have IMD units; and

WHEREAS, based upon the evidence submitted, the Board agrees that the neighborhood in which the subject site is located is best characterized as mixed-use; and

WHEREAS, the Board also finds that the proposal only contemplates the legalization of four residential units, which is compatible with the mixed-use character of the neighborhood; 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, based upon the above, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

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

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

WHEREAS, the Board has conducted an environmental

review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08-BSA-048M dated December 31, 2007; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. § 72-21 and grants a variance to permit, in an M1-6 zoning district, the legalization of residential use on the second and third floors of a seven-story mixed-use commercial/residential building, contrary to ZR §§ 42-00 and 42-133; *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 14, 2009"– (3) sheets; and *on further condition*;

THAT required egress, light and air shall be reviewed by DOB;

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

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

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

Adopted by the Board of Standards and Appeals, July 14, 2009.

99-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) to construct a three story with cellar single family home on an irregular triangular lot that does not meet the rear yard requirement (§23-47) in an R3-2 (SRD) zoning district.

MINUTES

PREMISES AFFECTED – 102 Drumgoole Road, South side of Drumgoole Road, 144.62 ft. west of the intersection of Drumgoole Road and Wainwright Avenue, Block 5613, Lot 221, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Superintendent, dated March 19, 2008, acting on Department of Buildings Application No. 510017866, reads in pertinent part:

“Proposed construction one-family, Use Group 1, detached, three-story residential building in residential district R3-2 located in Special South Richmond District without rear yard is contrary to Section 23-47 of the Zoning Resolution and therefore referred to the Board of Standards and Appeals for variance;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R3-2 zoning district within the Special South Richmond Development District, the proposed construction of a three-story single-family home that does not provide the required rear yard contrary to ZR § 23-47; and

WHEREAS, a public hearing was held on this application on February 3, 2009, after due notice by publication in *The City Record*, with continued hearings on February 24, 2009, March 24, 2009, April 21, 2009, May 19, 2009 and June 16, 2009, and then to decision on July 14, 2009; 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 3, Staten Island, recommends disapproval of the application; and

WHEREAS, the site is located on the south side of Drumgoole Road, between Brandis Avenue and Wainwright Avenue, in an R3-2 zoning district within the Special South Richmond Development District; and

WHEREAS, the site has a width of approximately 103 feet, a depth of 80 feet, and a total lot area of approximately 3,586 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a three-story single-family home on the site; and

WHEREAS, the proposed home will have the following complying parameters: approximately 1,958 sq. ft. of floor area (0.54 FAR, 0.60 FAR is the maximum permitted with an attic bonus); a lot coverage of approximately 23 percent; a perimeter wall height of 20'-6"; a total height of 35'-0"; and a front yard of 20'-0"; and

WHEREAS, however, the applicant proposes to provide a rear yard with a depth of 5'-0" (a minimum depth of 30'-0" is required); and

WHEREAS, the applicant has provided documentation establishing that the subject lot was owned separately and individually from all other adjoining tracts of land as of December 15, 1961, and as of the date of application for a building permit, and is therefore an undersized lot pursuant to ZR § 23-33; and

WHEREAS, the Board notes that ZR § 23-33 exempts the lot area requirement for a single-family dwelling on a pre-existing undersized lot, but the rear yard requirement remains; and

WHEREAS, the applicant represents that rear 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 subject lot's irregular shape; and

WHEREAS, the applicant states that the site is a vacant, triangular-shaped lot that cannot feasibly accommodate as-of-right development; and

WHEREAS, the Board notes that the site is one of two triangular-shaped sites within a 200-foot radius and one of three vacant sites within a 400-foot radius; and

WHEREAS, the applicant represents that the requested rear yard waiver is necessary to develop the site with a viable home; and

WHEREAS, the applicant states that compliance with the applicable bulk regulations would result in a triangular-shaped home with a width of 17 feet, a depth of 26 feet, and a floor plate of only 221 sq. ft.; and

WHEREAS, the applicant asserts that a complying home would therefore result in narrow rooms and no interior corridors; and

WHEREAS, the applicant further states that the New York State Department of Transportation ("NYSDOT") maintains a slope easement along the length of the Drumgoole Road frontage of the site, for a depth of approximately 20 feet; and

WHEREAS, the applicant represents that, as a result of the NYSDOT easement, the applicant is unable to increase the depth of the rear yard by relocating the proposed home closer to Drumgoole Road; and

WHEREAS, the applicant submitted a letter from NYSDOT indicating that the owner was granted the right to use the easement area for storm and sewer equipment, a driveway, and a walkway only; 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 rear yard regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

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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 building's proposed bulk complies with zoning district regulations and is compatible with the neighborhood character; and

WHEREAS, the applicant notes that because of the orientation of the triangular site and the compliance of all other yards, the distance maintained between the subject home and homes on adjacent sites is compatible with the neighborhood character; and

WHEREAS, the applicant further notes that the abutting rear yards of adjoining lots significantly exceed the 30-foot minimum requirement of the underlying R3-2 zoning district and therefore minimize any impact of the proposed variance; and

WHEREAS, in support of this statement, the applicant submitted a survey indicating that the attached dwellings located to the east of the subject lot, adjacent to the proposed rear yard, are located 80 feet from the subject lot, and the attached dwellings located to the south of the subject lot, adjacent to the proposed rear yard, are located 40'-6" from the subject lot; and

WHEREAS, the applicant's initial proposal did not provide a rear yard setback at the third floor, such that the third floor was located five feet from the rear lot line; and

WHEREAS, at hearing, the Board questioned whether the third floor of the proposed home could be setback along the rear lot line to make the home more compatible with neighborhood character; and

WHEREAS, in response, the applicant revised its proposal to provide an 8'-4" rear yard setback at the third floor of the proposed home, such that the proposed third floor will be 13'-4" from the rear lot line; and

WHEREAS, the Board notes that the complying open space ratio and yards meet or exceed zoning district requirements; 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 hardship herein was not created by the owner or a predecessor in title, but is due to the unique conditions of the lot; and

WHEREAS, the Community Board contends that the applicant's hardship is instead created by its purchase of the subject site with knowledge of the restrictions on its development; and

WHEREAS, the Board notes that the purchase of a zoning lot subject to the restriction sought to be varied is specifically not a self-created hardship under ZR § 72-21(d); 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, the Board notes that the proposal complies with all R3-2 zoning district regulations except for the required rear yard; and

WHEREAS, as noted above, during the hearing process the applicant revised its plans to increase the rear yard setback at the third floor of the proposed home to 8'-4", such that the third floor will be a total of 13'-4" from the rear lot line; 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, in an R3-2 zoning district within the Special South Richmond Development District, the proposed construction of a three-story single-family home that does not provide the required rear yard and is 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 "Received June 9, 2009" – (12) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: approximately 1,958 sq. ft. of floor area (0.54 FAR); a maximum lot coverage of approximately 23 percent; a perimeter wall height of 20'-6"; a total height of 35'-0"; a front yard of 20'-0"; a rear yard with a minimum depth of 5'-0"; and two 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 significant 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 14, 2009.

188-08-BZ

APPLICANT – Rizzo Group, for Hotel Carlyle Owners Corp., owners; The Hotel Carlyle, lessee.

SUBJECT – Application July 14, 2008 – Special Permit (§73-36) and Variance (§72-21) to allow the legalization of a Physical Culture Establishment and to extend this use into an R8B district for the subject hotel which exists in the C5-1MP and R8B zoning districts. The proposal is contrary to ZR §32-10.

MINUTES

PREMISES AFFECTED – 35 East 76th Street, (975-983 Madison; 981 Madison; 35-53 East 76th Street) northeast corner of Madison Avenue and East 76th Street, Block 1391, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAWN –

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, July 14, 2009.

259-08-BZ

CEQR #09-BSA-039Q

APPLICANT – Jeffrey A. Chester, Esq., for AAC Douglaston Plaza, LLC, owner.

SUBJECT – Application October 20, 2008 – Variance (§72-21) to permit the proposed expansion to an existing supermarket. The proposal is contrary to ZR §52-41 (increase in the degree of non-conforming use of the building. R4 district.

PREMISES AFFECTED – 242-02 61st Avenue, Douglaston Parkway at 61st Avenue, Block 8266, 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, the decision of the Queens Borough Superintendent, dated October 16, 2008, acting on Department of Buildings Application No. 410156361, reads in pertinent part:

“Proposed enlargement will increase the degree of non-conforming use of the building. Enlargement will increase the degree of non-conforming use requires BSA approval;” and

WHEREAS, this is an application under ZR §72-21, to permit, within an R4 zoning district, the enlargement of a pre-existing non-conforming one-story commercial building (Use Group 6) which does not conform to district use regulations, contrary to ZR § 52-41; and

WHEREAS, a public hearing was held on this application on April 28, 2009, after due notice by publication in *The City Record*, with continued hearings on May 19, 2009 and June 16, 2009, and then to decision on July 14, 2009; and

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

and

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

WHEREAS, the Queens Borough President provided written testimony in support of the application; and

WHEREAS, New York State Assembly Member Mark S. Weprin provided written testimony in support of the application; and

WHEREAS, certain community members, including a residents and representatives of the Beech Hills Cooperative, submitted written and oral testimony in support of the 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 Douglaston Plaza Shopping Mall, a three-level shopping mall with 297,516 sq. ft. of floor area and 1,282 accessory parking spaces; 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 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, the Board granted a variance under BSA Cal. No. 370-82-BZ to permit the conversion of retail space to a seven-theater multiplex cinema (Use Group 8) use to occupy the largest building at the site; and

WHEREAS, only the sub-cellar building currently occupied by a supermarket (the “Supermarket Building”) with a 42,557 sq. ft. building is the subject of the current variance request; and

WHEREAS, the Board notes that in August 2006, the applicant proposed to convert the existing supermarket (Use Group 6) to a consumer electronics store (Use Group 10); that application was ultimately withdrawn; and

WHEREAS, the current application does not propose any changes to the other three buildings, including the one occupied by the cinema; and

WHEREAS, the applicant notes that, without a use variance for another non-conforming use, the use of the Supermarket Building is limited to Use Group 6 and the Zoning Resolution limits the size of Use Group 6 uses to 10,000 sq. ft.; and

WHEREAS, because of the large amount of floor area of the Supermarket Building, if another Use Group 6 use were introduced into the space, it would require a subdivision of the large building; and

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WHEREAS, the applicant notes that supermarket use is one of the few Use Group 6 uses that does not have any limitation on floor area; thus, the applicant currently seeks to replace the existing supermarket use with another supermarket use in the Supermarket Building; and

WHEREAS, the existing Waldbaum's supermarket which has occupied the site for decades is now leaving the site and a Fairway supermarket is proposed to be the new tenant; and

WHEREAS, the applicant asserts that in order to find a new viable tenant without the requirement for a use waiver, a waiver is required to permit the enlargement of the Supermarket Building to accommodate a modern supermarket use; and

WHEREAS, accordingly, the applicant seeks a variance to permit the enlargement of the pre-existing non-conforming Use Group 6 use within the Supermarket Building; and

WHEREAS, the applicant proposes to enlarge the existing Supermarket Building by adding 3,500 sq. ft. of retail space and 11,644 sq. ft. of storage and food preparation area for a total increase of 15,144 sq. ft. (a total increase from 42,557 sq. ft. to 57,701 sq. ft.); the building enlargement will be adjacent to the Supermarket Building and will occupy space currently occupied by a parking lot; the enlargement will result in the reduction of the number of parking spaces from 1,282 to 1,265 (17 spaces); 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 site's topography; (2) the historic use of the Supermarket Building; and (3) the obsolescence of the existing Supermarket Building for modern use; and

WHEREAS, as to the site's topography, the large irregularly-shaped zoning lot slopes steeply downward from its northern boundary along 61st Avenue; and

WHEREAS, the applicant asserts that in order to develop this constrained site, the shopping center was constructed on three decked levels; and

WHEREAS, the decked parking level above the lowest level creates very limited retail visibility and limits the viability of that portion of the site for retail use; and

WHEREAS, accordingly, the applicant states that if the Supermarket Building were subdivided into multiple Use Group 6 retail spaces with fewer than 10,000 sq. ft., it would not be marketable because the subdivided space would be (1) constrained in terms of narrow or shallow spaces or (2) result in a configuration where only one store benefits from the necessary visibility from the street; and

WHEREAS, as to the history of use at the Supermarket Building, the applicant notes that the building was designed for a supermarket and that, rather than seek a use variance to permit a change in use group for a retail use that exceeds the 10,000 sq. ft. floor area limitation, for example, additional floor area is required to maintain a supermarket use; and

WHEREAS, as to the obsolescence of the building, the applicant asserts that the design and demands of supermarkets have changed significantly in the decades since the shopping

center was built; and

WHEREAS, as to the design, the applicant asserts that modern supermarkets are generally in the range of 60,000 sq. ft. to 85,000 sq. ft.; and

WHEREAS, as to the demands, the applicant represents that the trend in modern supermarkets is to offer a larger selection of fresh and prepared foods; and

WHEREAS, the applicant represents that fresh foods require greater amounts of storage area and prepared foods require preparation areas for staff to cook, bake, and package food; and

WHEREAS, the applicant represents that an additional 15,144 sq. ft. above the existing 42,557 sq. ft. is required to provide enough space for a viable modern supermarket; and

WHEREAS, the applicant represents that the increase in space will be dedicated primarily to storage space and food preparation areas to serve these modern supermarket needs; and

WHEREAS, in support of this claim, the applicant submitted (1) testimony from real estate brokers who tried, without success, to market the Supermarket Building to another supermarket use, (2) a City study on the challenges confronting the supermarket industry, and (3) additional studies and analyses about modern supermarket requirements; and

WHEREAS, further, one real estate broker detailed the efforts to secure a supermarket tenant and explained that the Supermarket Building did not fit the prototype for supermarket size and would require a complete retrofit; 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) two possible layouts for the subdivision of the Supermarket Building into five smaller Use Group 6 units, (2) a single Use Group 6 use in the existing Supermarket Building without enlargement, and (3) the proposed enlargement; and

WHEREAS, the study concluded that (1) the constrained smaller spaces would result in unmarketable space and (2) the existing space is obsolete and too small for a single Use Group 6 tenant and is thus unmarketable; and

WHEREAS, additionally, noting that street frontage and visibility are key factors in marketing a retail space, the applicant asserts that there would be a 75 percent vacancy rate due to unattractive, difficult layout and space configuration; and

WHEREAS, the feasibility study reflected that only the proposal would realize a reasonable return; and

WHEREAS, based upon the above, 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 zoning will provide a reasonable return; 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

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or development of adjacent property, and will not be detrimental to the public welfare; and

WHEREAS, the applicant states that the Supermarket Building and supermarket use have occupied the site for decades; and

WHEREAS, in addition to compatibility with the other commercial uses at the shopping center, the supermarket use is adjacent to residential use, which it serves and with which it is deemed to be compatible; and

WHEREAS, as to the reduction of the parking lot by 17 parking spaces, the applicant notes that the increased floor area is required primarily for food storage and preparation and not additional open store space, which may generate the need for more parking; and

WHEREAS, additionally, the applicant notes that the proposed supermarket will provide an elevator to transport visitors to the upper deck parking area, which was not formerly conveniently accessible to visitors to the Supermarket Building; and

WHEREAS, the Board agrees that based on the fact that the additional floor area will be primarily dedicated to storage and food preparation, and based upon the parking survey, the proposed reduced parking appears to be sufficient; and

WHEREAS, the applicant's traffic study reflects that the anticipated increased parking demand of 42 trips during peak hours does not meet the minimum threshold for a traffic impact analysis; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the unique site conditions; and

WHEREAS, the Board notes that the increase in floor area is the minimum necessary to accommodate a modern supermarket use and that the enlargement has been designed so as to limit the reduction in the number of 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 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. 09BSA039Q, dated March 16, 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, within an R4 zoning district, the enlargement of a pre-existing non-conforming one-story commercial building (Use Group 6) which does not conform to district use regulations, contrary to ZR § 52-41; *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 "June 2, 2009" – Five (5) sheets; and *on further condition*:

THAT the following are the bulk parameters of the proposed Supermarket Building: a maximum floor area of 57,701 sq. ft., with a minimum total of 1,265 shopping center parking spaces, as indicated on the BSA-approved plans;

THAT all signage shall comply with C1 zoning district parameters;

THAT the use of the Supermarket Building shall be limited to a Use Group 6 supermarket;

THAT all lighting shall be directed away from residences;

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

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

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

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

Adopted by the Board of Standards and Appeals, July 14, 2009.

295-08-BZ

APPLICANT – Akerman Senterfitt Stadtmauer Bailkin, for Ronald & Meryl Bratt, owners.

SUBJECT – Application November 25, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary lot coverage and floor area (§23-141), side yards (§23-461) and does not comply with the required perimeter wall height (§23-631) in an R3-2 zoning district.

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PREMISES AFFECTED – 1934 East 26th Street, east side between Avenue S and T, Block 7304, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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 Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 12, 2009, acting on Department of Buildings Application No. 310151233, reads in pertinent part:

“ZR 23-141. Proposed enlargement does not comply with floor area ratio regulations.

ZR 23-141. Proposed enlargement does not comply with lot coverage regulations.

ZR 23-46. Proposed enlargement does not comply with side yard regulations.

ZR 23-631. Proposed enlargement does not comply with wall height regulations.

ZR 23-47. Proposed enlargement does not comply with rear yard regulations;” 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”), lot coverage, side yards, perimeter wall height, and rear yards contrary to ZR §§ 23-141, 23-46, 23-631, and 23-47; and

WHEREAS, a public hearing was held on this application on May 19, 2009, after due notice by publication in *The City Record*, with a continued hearing on June 19, 2009, and then to decision on July 14, 2009; 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 26th Street, between Avenue S and Avenue T, in an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 2,500 sq. ft., and is occupied by a single-family home with a floor area of approximately 2,518 sq. ft. (1.01 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 to modify the floor area from approximately 2,518 sq. ft. (1.01 FAR) to approximately 2,350 sq. ft. (0.94 FAR); the maximum permitted floor area is 1,250 sq. ft. (0.50 FAR); and

WHEREAS, the applicant notes that, because the floor level of the existing basement will be excavated and lowered by 3’-7” to convert the existing basement into a cellar, the amount of zoning floor area will actually be reduced; and

WHEREAS, the applicant proposes to provide a lot coverage of approximately 47 percent (35 percent is the maximum permitted); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard with a width of 0’-0” along the southern lot line (a minimum width of 5’-0” is required) and will provide a complying side yard of 5’-0” along the northern lot line; and

WHEREAS, the proposed enlargement provides a perimeter wall height of 22’-7” (a maximum perimeter wall height of 21’-0” is permitted); and

WHEREAS, the Board notes that a special permit under ZR § 73-622 allows a perimeter wall height to exceed the permitted height, provided that the perimeter wall height is equal to or less than the perimeter wall height of an adjacent building; and

WHEREAS, in support of making the finding, the applicant submitted a survey demonstrating that the perimeter wall height of the adjacent home is 24’-11”; therefore the perimeter wall height of the proposed home falls within the scope of the special permit; and

WHEREAS, the applicant’s original proposal included an attic and provided a perimeter wall height of 23’-3” and a total height of 34’-11”; and

WHEREAS, at hearing, the Board raised concerns as to whether the square footage in the attic should count as floor area and whether the perimeter wall height exceeded the allowable height; and

WHEREAS, in response, the applicant submitted revised plans which provided a flat roof, eliminated the attic, reduced the total height to 29’-10”, and increased the perimeter wall height to 26’-0” to match the perimeter wall height of the adjacent home, according to a survey submitted by the applicant; and

WHEREAS, in response to further concerns raised by the Board, the applicant submitted a revised survey indicating that the actual perimeter wall height of the adjacent home is 24’-11” and the actual perimeter wall height of the subject home is 22’-7”; and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 25’-0” (a minimum rear yard of 30’-0” is required); and

WHEREAS, the Board notes that the enlargement of the building is not located within 20’-0” of the rear lot line, as per ZR § 73-622; 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 R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for FAR, lot coverage, side yards, perimeter wall height, and rear yards, contrary to ZR §§ 23-141, 23-46, 23-631, 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 29, 2009"-(10) sheets; and on further condition:

THAT the following shall be the bulk parameters of the building: a floor area of approximately 2,350 sq. ft. (0.94 FAR); a lot coverage of approximately 47 percent; a side yard with a minimum width of 5'-0" along the northern lot line and no side yard along the southern lot line; a perimeter wall height of 22'-7"; and a rear yard with a minimum depth of 25'-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, July 14, 2009.

15-09-BZ CEQR #09-BSA-064M

APPLICANT – Francis R. Angelino, Esq., for Lafayette Astor Associates, LLC, owner; David Barton Gym, lessee. SUBJECT – Application February 3, 2009 – Special Permit (§ 73-36) to allow a physical culture establishment on portions of the sub-cellar, cellar and ground floors and the entire second floor in an existing seven-story commercial building. The proposal is contrary to ZR § 42-10. M1-5B

district.

PREMISES AFFECTED – 8-10 Astor Place, south side between Broadway and Lafayette Street, Block 545, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Francis R. Angelino.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Superintendent, dated April 27, 2009, acting on Department of Buildings Application No. 1100434741, reads in pertinent part:

"ZR 73-36. Physical culture establishment is not permitted as of right in this district. Secure approval from Board of Standards and Appeals;" and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-5B zoning district within the NoHo Historic District, the establishment of a physical culture establishment (PCE) on the second floor and portions of the sub-cellar, cellar and first floor of a seven-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on June 16, 2009 after due notice by publication in *The City Record*, and then to decision on July 14, 2009; and

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

WHEREAS, the subject site is located on the south side of Astor Place between Broadway and Lafayette Street, in an M1-5B zoning district; and

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

WHEREAS, the PCE has a total floor area of 22,567 sq. ft., which includes 6,657 sq. ft. on the first floor and 15,910 sq. ft. on the second floor, with 9,311 sq. ft. of space in the sub-cellar and 8,826 sq. ft. of space in the cellar; and

WHEREAS, the PCE will be operated as David Barton Gym; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 5:30 a.m. to 12:00 a.m.; Saturday, from 8:00 a.m. to 9:00 p.m.; and Sunday, from 8:00 a.m. to 11:00 p.m.; 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

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approving the proposed PCE, dated January 2, 2008; 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. 09BSA064M, dated May 14, 2009; 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 an M1-5B zoning district, the establishment of a physical culture establishment on the second floor and portions of the sub-cellar, cellar and first floor of an existing seven-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received May 21, 2009"- Six (6) sheets and *on further condition*:

THAT the term of this grant shall expire on July 14, 2019;

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;

THAT substantial construction be completed in accordance with ZR § 73-70; 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 14, 2009.

36-09-BZ

CEQR #09-BSA-099Q

APPLICANT – MetroPCS New York, LLC, for Milford House, LLC, owner; MetroPCS New York, lessee.

SUBJECT – Application March 3, 2009 – Special Permit (§§73-03, 73-30) to allow a non-accessory radio tower on the rooftop of an existing building with all accessory equipment.

PREMISES AFFECTED – 53-01 32nd Avenue, north side of 32nd Avenue between 51st Street and 54th Street, Block 1131, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Ben Weisel.

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 Superintendent, dated February 23, 2009, acting on Department of Buildings Application No. 410132761, reads in pertinent part:

“Proposed telecommunications facility exceeds 400 square feet allowed under TPPN # 5/98 and

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therefore will require a special permit from the Board of Standards and Appeals pursuant to Section 73-30 of NYC Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, within an R5 zoning district, the proposed construction of a telecommunications facility, which consists of six panel antennas and related equipment for public utility wireless communications, which is contrary to ZR § 22-21; and

WHEREAS a public hearing was held on this application on June 16, 2009, after due notice by publication in *The City Record*, and then to decision on July 14, 2009; and

WHEREAS, Community Board 1, Queens, recommends disapproval of this application, citing concerns with its potential impacts on neighborhood character and health; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Chair Srinivasan; and

WHEREAS, the subject site is currently occupied by a six-story residential building; and

WHEREAS, the proposed telecommunications facility will be located on the roof of the six-story residential building, upon which existing antennas are already situated; and

WHEREAS, the applicant states that the proposed telecommunications facility consists of: (i) five panel antennas mounted to the interior of the building parapet and extending to a maximum height of six feet above the parapet; (ii) one panel antenna mounted to the building’s facade and extending to a maximum height of six feet above the facade; (iii) two new equipment cabinets, two new battery cabinets and one new PPC cabinet, to be placed on a steel equipment platform located on the rooftop; (iv) two GPS units attached to the steel equipment platform; and (v) all accessory equipment, wires, cables, conduits and other necessary appurtenances; and

WHEREAS, the applicant represents that the telecommunications facility is necessary to remedy a significant gap in reliable service in the vicinity of the site caused by a lack of coverage and capacity; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the proposed telecommunications facility, provided it finds “that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood;” and

WHEREAS, the applicant represents that the facility has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the facility will comply with all applicable laws, that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant further represents that the size and profile of the facility is the minimum necessary to provide the required wireless coverage, and that the facility will not interfere with radio, television, telephone or other uses; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed facility and related

equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

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

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

WHEREAS, therefore, the Board finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09-BSA-099Q, dated March 3, 2009; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR § 73-03 and § 73-30, to permit, within an R5 zoning district, the proposed construction of a telecommunications facility (non-accessory radio facility) for public utility wireless communications, which is contrary to ZR § 22-21, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked “Received March 3, 2009”-(7) 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

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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 plan(s) and/or configuration(s) not related to the relief granted.
Adopted by the Board of Standards and Appeals, July 14, 2009.

52-09-BZ

APPLICANT – Dennis Dell’Angelo, for Yehuda A. Lieberman, owner.

SUBJECT – Application April 6, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141) and less than the required rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1438 East 26th Street, west side of East 26th Street, between Avenue H and Avenue O, Block 7679, Lot 66, Borough of Brooklyn.

COMMUNITY BOARD #14BK

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 Otley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated March 13, 2009, acting on Department of Buildings Application No. 310302669, reads:

- “1. The proposed FAR and OSR constitutes an increase in the degree of existing non-compliance contrary to Section 23-141 of the NYC Zoning Resolution.
2. Proposed horizontal enlargement provides less than the required rear yard contrary to Section 23-47 of the NYC Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family 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 June 16, 2009 after due notice by publication in *The City Record*, and then to decision on July 14, 2009; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan 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 26th Street, between Avenue N and Avenue O, in an R2 zoning district; and

WHEREAS, the subject site has a total lot area of 2,667 sq. ft., and is occupied by a single-family home with a floor area of approximately 1,418 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 approximately 1,418 sq. ft. (0.53 FAR) to approximately 2,013 sq. ft. (0.75 FAR); the maximum permitted floor area is 1,333.5 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of approximately 81 percent (150 percent is the minimum required); the existing open space ratio is 133 percent; 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, the applicant notes that due to the condition of the lot having a pre-existing undersized width, the existing side yards of 5’-0” along the northern lot line and approximately 5’-6” along the southern lot line comply with the applicable zoning regulations, pursuant to ZR § 23-48; and

WHEREAS, the applicant has submitted evidence establishing that the subject lot was owned separately and apart from all adjacent lots on December 15, 1961 and on the date of the application; therefore the subject lot qualifies for ZR § 23-48; 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 Z.R. § 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, open space ratio and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially

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conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received April 6, 2009"-(10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of approximately 2,013 sq. ft. (0.75 FAR); an open space ratio of approximately 81 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, July 14, 2009.

139-07-BZ

APPLICANT – Agusta & Ross, for 328 Realty Holding, LLC, owner.

SUBJECT – Application May 25, 2007 – Variance (§72-21) to permit the development of a two-story and cellar, two-family residence on a vacant lot. The proposal is contrary to section 42-10. M1-2 district.

PREMISES AFFECTED – 328 Jackson Avenue, easterly side of Jackson Avenue, 80' northerly of East 141st Street, Block 2573, Lot 5, Borough of Bronx.

COMMUNITY BOARD #1BX

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 August 11, 2009, at 1:30 P.M., for continued hearing.

203-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gastar, Inc., owner.

SUBJECT – Application August 17, 2007 – Variance (§72-21) to allow a new thirteen (13) story mixed-use building containing twenty (20) dwelling units, ground floor retail and third and forth floor community facility (medical) uses;

contrary to bulk and parking regulations (§35-311 & §36-21). R6/C2-2 district.

PREMISES AFFECTED – 137-35 Elder Avenue (a/k/a 43-49 Main Street) located at the northwest corner of Main Street and Elder Avenue, Block 5140, Lot 40, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to July 14, 2009, at 1:30 P.M., for an adjourned hearing.

97-08-BZ

APPLICANT – Eric Palatnik, P.C., for Chesky Berkowitz, owner; Central UTA, lessee.

SUBJECT – Application April 18, 2008 – Special Permit (§73-19) to allow the proposed legalization of the existing yeshiva (Use Group 3 school). M1-1 district.

PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik and Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to August 25, 2009, at 1:30 P.M., for continued hearing.

100-08-BZ & 101-08-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) for the construction of a two story with basement, single family residence on a irregularly shaped vacant lot that extends into a mapped, unbuilt street which is contrary to General City Law Section 35. This application seeks to vary front yard (§23-45) in an R3-2 zoning district.

PREMISES AFFECTED – 205 Wolverine Street, northwest of intersection of Wolverine Street and Thomas Street, Block 4421, Lot 167, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Harold McGough, Best O'Neil and Carol Donovan.

ACTION OF THE BOARD – Laid over to August 18, 2009, at 1:30 P.M., for continued hearing.

210-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Samaritan Foundation, Inc., owner.

SUBJECT – Application August 15, 2009 – Variance (§72-21) to permit the two-story enlargement to the existing drug treatment facility which would result in a four-story drug treatment center with sleeping accommodations (Use Group 3). The proposal is contrary to use regulations (ZR §43-00)

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and bulk regulations (ZR §52-22) in an M1-1 district.
PREMISES AFFECTED – 130-15 89th Road, north side of 89th Road, approximately 125' east of 130th Street, Block 9338, Lot 147, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Richard Lobel and Hiram Rothkrug

ACTION OF THE BOARD – Laid over to August 25, 2009, at 1:30 P.M., for continued hearing.

229-08-BZ

APPLICANT – Sheldon Lobel, P.C. for Edward Haddad, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) for the construction of a new single family home. This applications seeks to vary floor area (§23-141), less than the minimum side yards (§23-461) and the location of the required off street parking to the front yard (§25-62) in an R2X zoning district.

PREMISES AFFECTED – 866 East 8th Street, West side of East 8th Street, north of Avenue I, and adjacent to railroad, Block 6510, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #12BK

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 August 11, 2009, at 1:30 P.M., for continued hearing.

7-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sandra Zagelbaum and Yechiel Zagelbaum, owners.

SUBJECT – Application January 20, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary open space and floor area (§23-141), side yards (§23-461) and rear yard (§23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1082 East 26th Street, East 26th Street, between Avenue J and Avenue K, Block 7607, Lot 85, Borough of Brooklyn.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: Michael A. Colin, Lois S. Colin and Sanford Goldhabst.

ACTION OF THE BOARD – Laid over to August 11, 2009, at 1:30 P.M., for continued hearing.

42-09-BZ

APPLICANT – Francis R. Angelino, Esq., for Arrow Linen Supply Company, Inc., owner.

SUBJECT – Application March 6, 2009 – Special Permit filed pursuant to §11-411 & §11-412 to permit a re-instatement of a variance which expired on July 12, 1992 which allowed the extension of a legal non conforming use within a residential zoning district. The application seeks an amendment to allow for a one-story enlargement of approximately 770 sq. ft. in the rear of the lot for additional storage for the commercial laundry. The subject site is located in a R5B zoning district.

PREMISES AFFECTED – 441-477 Prospect Avenue, between Eight Avenue and Prospect Park West, Block 1113, Lot 73, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Francis R. Angelino, Anderson Hool, Frank Park and John Magliocco, Jr.

For Opposition: Michael Zlabinger and Arabella Hutter.

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 11, 2009, at 1:30 P.M., for continued hearing.

46-09-BZ

APPLICANT – Eric Palatnik, P.C., for Igor Orak, owner.

SUBJECT – Application March 23, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home. This application seeks to vary floor area, lot coverage and open space (§23-141(b)); side yards (§23-461) and rear yard (§23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 122 Oxford Street, between Shore Boulevard and Oriental Avenue, Block 8757, Lot 92, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August 11, 2009, at 1:30 P.M., for continued hearing.

50-09-BZ

APPLICANT – Eric Palatnik, P.C., for Roni Mova, owner; Warrior Fitness, lessee.

SUBJECT – Application March 26, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment on the third floor in a twelve-story building. The proposal is contrary to ZR §42-10. M1-6 district.

PREMISES AFFECTED – 29 West 35th Street, West 35th Street and Fifth Avenue, Block 837, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

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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 August
11, 2009, at 1:30 P.M., for decision, hearing closed.

56-09-BZ

APPLICANT – Omnipoint Communications, Inc., for The
South Shore Swimming Club, Inc., owner.
SUBJECT – Application April 15, 2009 – Special Permit
(\$73-30) to allow a proposed non-accessory radio tower and
related equipment.

PREMISES AFFECTED – 6736 Hylan Boulevard, south
side of Hylan Boulevard between Culotta Lane and Page
Avenue, Block 7734, Lot 50, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Robert Guardioso.

For Opposition: Julia Chazov, Carol Messina and Salvatore
Piro

ACTION OF THE BOARD – Laid over to
September 22, 2009, at 1:30 P.M., for continued hearing.

168-09-BZ

APPLICANT – Lewis E. Garfinkel R.A., for Yaakov Miller,
owner.

SUBJECT – Application May 7, 2009 – Special Permit
(\$73-622) for the enlargement of an existing single family
home. This application seeks to combine two semi-attached
homes to create one single family home that varies in floor
area and open space (ZR §23-141(a)) and less than the
required rear yard (ZR §23-47) in an R-2 zoning district.

PREMISES AFFECTED – 1435 & 1437 East 26th Street,
east side of East 26th Street, 292' south of Avenue N, Block
7680, Lots 34 and 35, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to August
11, 2009, at 1:30 P.M., for continued hearing.

177-09-BZ

APPLICANT – Raymond H. Levin, Esquire Wachtel Masyr,
LLP, for FTC Residential Company III, L.P., owner.

SUBJECT – Application May 29, 2009 – Special Permit
(\$73-66) for to seek a waiver of the height restrictions
within the Flight Obstruction Area (ZR §61-21) for six mid-
rise residential towers located above a three story
commercial/retail/accessory parking base.

PREMISES AFFECTED – 40-22 College Point Boulevard,
west side of College Point Boulevard, between Roosevelt
Avenue and 40th Road, Block 5066, Lots 1 and 100 (tent.

9001, 9002 and 9100), Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Raymond H. Levin.

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
11, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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July 30, 2009

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49-09-BZ 1323 East 32nd Street, Manhattan
164-09-BZ 124 Irwin Street, Brooklyn
171-09-BZ 325 Fifth Avenue, Manhattan
184-09-BZ 4072 Bedford Avenue, Brooklyn

DOCKETS

New Case Filed Up to July 21, 2009

228-09-A

37-45 98th Street, East side of 98th Street, approximately 200 feet north of 38th Avenue., Block 1761, Lot(s) 48,49 (tent), Borough of **Queens, Community Board: 3**. Appeal for vested rights to continue development of the proposed building.

229-09-A

37-47 98th Street, East side of 98th Street, approximately 200 feet north of 38th Avenue., Block 1761, Lot(s) 48,49 (tent), Borough of **Queens, Community Board: 3**. Appeal for vested rights to continue development of the proposed building.

230-09-BZ

1700 White Plains Road, Northeast corner of the intersection of White Plains Road and Van Nest Avenue., Block 4033, Lot(s) 31, Borough of **Bronx, Community Board: 11**. Variance to allow three story, three family residential building, contrary to use regulations.

231-09-BZ

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(s) 17, Borough of **Manhattan, Community Board: 1**. Variance to permit the construction of a 6 story and penthouse residential building.

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

CALENDAR

AUGUST 11, 2009, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 11, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

719-56-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Victory Service Station Incorporated, lessee.

SUBJECT – Application July 14, 2009 – Extension of Time to obtain a Certificate of Occupancy for a Gasoline Service Station (Mobil), in a C2-1/R3-2 zoning district, which expires on November 10, 2009.

PREMISES AFFECTED – 2525 Victory Boulevard, northwest corner Willowbrook Road, Block 1521, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

261-98-BZ

APPLICANT – Sheldon Lobel, P.C. for Steve Steigelfest, owner.

SUBJECT – Application May 29, 2009 – Extension of Term of a previously granted variance (§72-21) for the use of a UG16A warehouse for HVAC related uses in a residential district which expired on April 20, 2009; and an Amendment for the addition of a mezzanine level within the existing building in an R6B zoning district.

PREMISES AFFECTED – 193 20th Street, North side of 20th Street, between 4th and 5th Avenues. Block 637, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #7BK

269-98-BZ

APPLICANT – Mothiur Rahman, for Mothiur Rahman, owner.

SUBJECT – Application September 15, 2008 – Extension of Time to complete construction of a two story building for commercial use (Use Group 6), previously granted by the Board pursuant to §72-21, located in an R-8 zoning district which is contrary to §22-00.

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

45-09-A

APPLICANT – Eric Palatnik, P.C., for Kevin Yang, owner. SUBJECT – Application March 11, 2009 – Appeal seeking a determination that owner has acquired a common law vested rights to continue construction commenced under the prior R7-1/C1-2 zoning district regulations. Current R7B/C1-3 Zoning District.

PREMISES AFFECTED – 142-19 Cherry Avenue, northeast corner of Cherry Avenue and Bowne Street, Block 5186, Lot 51, Borough of Queens.

COMMUNITY BOARD #7Q

167-09-A

APPLICANT – Harold Weinberg, P.E., for Yi Fu Rong, owner.

SUBJECT – Application May 5, 2009 – An appeal challenging Department of Buildings determination that the reconstruction of the existing non-complying subject building must be done in accordance with ZR Section 54-41 and be required to provide a 30 foot rear yard. M1-2 zoning district.

PREMISES AFFECTED – 820 39th Street, south side, 150' east of 8th Avenue, Block 916, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #12BK

196-09-BZY

APPLICANT – Ping C. Moy, for 174 Clermont Avenue, LLC, owner.

SUBJECT – Application June 24, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 district regulations. R6B Zoning District

PREMISES AFFECTED – 174 and 176 Clermont Avenue, west side of Clermont Avenue, Block 2074, Lots 37 and 39, Borough of Brooklyn.

COMMUNITY BOARD #2BK

CALENDAR

AUGUST 11, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 11, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

195-07-BZ

APPLICANT – Greenberg Traurig by Deirdre A. Carson, for Bond Street Partners LLC (as to lot 64) c/o Convermat, owner.

SUBJECT – Application August 9, 2007 – Variance to allow hotel and retail uses below the floor level of the second story, contrary to use regulations §42-14(d)(2). M1-5B District.

PREMISES AFFECTED – 8-12 Bond Street, Northwest corner of Bond and Lafayette Streets, Block 530, Lot 62 & 64, Borough of Manhattan.

COMMUNITY BOARD #2M

51-09-BZ

APPLICANT – Eric Palatnik, P.C., for Shiranian Nizi, owner.

SUBJECT – Application April 3, 2009 – Special Permit (§73-622) for the Legalization of an enlargement to an existing single family home. This application seeks to vary the side yard requirements (ZR §461) in an R-5 zoning district.

PREMISES AFFECTED – 2032 East 17th Street, East 17th Street and Avenue T, Block 7321, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

183-09-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 1400 5th Commercial LLC, owner; TSI West 115th Street LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application June 4, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment on a portion of the ground floor and cellar in an eight-story mixed-use building. The proposal is contrary to section 32-10. C4-5X district.

PREMISES AFFECTED – 1400 5th Avenue, Northeast corner of 5th Avenue and West 115th Street. Block 1599, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #10M

195-09-BZ

APPLICANT – Mark Levine, Esq., Herrick, Feinstein LLP, for Brooklyn Academy of Music, Incorporated, owner.

SUBJECT – Application June 24, 2009 – Variance to waive the required rear yard (ZR §33-26) for a community facility building (Brooklyn Academy of Music). C6-1 zoning district.

PREMISES AFFECTED – 321 Ashland Place, east side of Ashland Place between Lafayette Avenue and Hanson Place, Block 2111, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #2BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JULY 21, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

174-96-BZ

APPLICANT – Sheldon Lobel, P.C., for Phillip Pollicina, owner.

SUBJECT – Application June 19, 2008 – Extension of term and Waiver for a previously granted variance pursuant to §72-21. The application seeks the authorization to continue operation of an existing food products manufacturing establishment (Use Group 17B) within a R4 zoning district. The most recent term expired on July 1, 2007.

PREMISES AFFECTED – 1108/10 Allerton Avenue, South side of Allerton Avenue between Laconia Avenue and Yates Avenue. Block 4456, Lot 47, Borough of the Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Elizabeth Safian.

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 term of a previously granted variance permitting a food products manufacturing establishment (Use Group 17B) within an R4 zoning district, which expired on July 1, 2007; and

WHEREAS, a public hearing was held on this application on June 16, 2009 after due notice by publication in *The City Record*, and then to decision on July 21, 2009; and

WHEREAS, Community Board 11, Bronx, recommends approval of this application; 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 south side of Allerton Avenue, between Laconia Avenue and Yates Avenue, within an R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 1, 1997 when, under the subject calendar number, the Board granted a variance to permit the structural alteration and enlargement of an existing one-story building used as a non-conforming bakery (Use Group 6A), and its conversion to a food products manufacturing establishment

(Use Group 17B), to expire on July 1, 2007; and

WHEREAS, the applicant represents that there have been no changes to the site; and

WHEREAS, the applicant now requests an additional ten-year 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 *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on July 1, 1997, so that as amended this portion of the resolution shall read: “to extend the term for ten years from July 1, 2007, to expire on July 1, 2017, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received May 5, 2009”- (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on July 1, 2017;

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. 200377029)

Adopted by the Board of Standards and Appeals, July 21, 2009.

303-99-BZ

APPLICANT – Vito J. Fossella, P.E. (LPEC), for 2122 Richmond Avenue LLC, owner.

SUBJECT – Application March 26, 2009 – Extension of Time to obtain a Certificate of Occupancy which expired on September 12, 2004 and an Amendment to legalize the change in use from the previously granted Auto Sales Establishment (UG16) to Commercial/Retail (UG6) in an R3-2 zoning district.

PREMISES AFFECTED – 2122 Richmond Avenue, west side of Richmond Avenue, 111.72’ north of corner formed by the intersection of Richmond Avenue and Draper Place, Block 2102, Lot 120, 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 Montanez.....5

Negative:.....0

THE RESOLUTION

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WHEREAS, this is an application for a reopening, an extension of time to obtain a certificate of occupancy, and an amendment to legalize a change in use from an auto sales establishment (Use Group 16) to commercial/retail use (Use Group 6); and

WHEREAS, a public hearing was held on this application on June 9, 2009, after due notice by publication in the *City Record*, with a continued hearing on June 23, 2009, and then to decision on July 21, 2009; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

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

WHEREAS, the site is located on the west side of Richmond Avenue, approximately 112 feet north of the corner formed by Richmond Avenue and Draper Place, within an R3-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 9, 1965 when, under BSA Cal. No. 1029-64-BZ, the Board granted a variance to permit the enlargement of an existing automotive service station in order to relocate the pump islands, curb cuts and driveway; and

WHEREAS, on March 6, 1968, under BSA Cal. No. 902-67-BZ, the Board granted a variance to permit the reconstruction of the automotive 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, on March 15, 1982, under BSA Cal. No. 746-81-BZ, the Board granted a variance to permit the enlargement and change in use of the accessory structure on the site into a retail store for a term of ten years; and

WHEREAS, subsequently the grant was amended and the term extended for five years; and

WHEREAS, most recently, on September 12, 2000, under BSA Cal. No. 303-99-BZ, the Board granted a variance to permit the legalization of an open and enclosed auto sales establishment and a proposed increase in floor area for a car wash and minor repairs with hand tools only (Use Group 16); and

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

WHEREAS, the applicant represents that a certificate of occupancy was not obtained due to delays related to the previous owner's difficulty in renting the site for automobile sales; and

WHEREAS, the applicant also seeks to legalize the change in use of the site from an auto sales establishment (Use Group 16) to a retail store and showroom (Use Group 6); and

WHEREAS, the applicant states that no change in the building floor area is being proposed; and

WHEREAS, the applicant represents that the proposed change in use will reduce the traffic impact on the surrounding area, as a retail use will generate less traffic than an automobile service station or car sales use; and

WHEREAS, in addition, the applicant seeks to convert the portion of the lot area formerly used for car sales into 15 additional parking spaces; and

WHEREAS, the applicant also proposes to eliminate the middle of three curb cuts fronting Richmond Avenue to enhance traffic circulation at the site; and

WHEREAS, at hearing, the Board questioned why the applicant made changes to the façade and roof of the building in contravention of the BSA-approved plans; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that an existing flat parapet on the roof had to be extended to cover the entire façade of the building in response to severe water damage on the interior of the building caused by the connection between the original roof and the extension indicated on the BSA-approved plans; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to obtain a certificate of occupancy and amendment for a change in use 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 September 12, 2000, so that as amended this portion of the resolution shall read: "to grant an extension of time to obtain a certificate of occupancy to January 21, 2010, and to permit the change in use from auto sales (Use Group 16) to commercial/retail use (Use Group 6); *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 26, 2009"-(1) sheet, "May 11, 2009" and "June 9, 2009"-(1) sheet; and *on further condition*:

THAT a certificate of occupancy shall be obtained by January 21, 2010;

THAT all signage shall comply with C1 zoning district regulations;

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. 500455134)

Adopted by the Board of Standards and Appeals July 21, 2009.

55-97-BZ

APPLICANT – Sheldon Lobel, P.C. for Baker Tripi Realty, owner.

SUBJECT – Application March 18, 2009 – Extension of term filed pursuant to §11-411 of the Zoning Resolution requesting an extension of the term of a variance previously

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granted by the Board of Standards and Appeals and an extension of time to obtain a certificate of occupancy allowing the continued operation of an automotive repair shop (Use Group 16) located in a C2-2/R3-2 zoning district.

The previous term expired on September 23, 2007.

PREMISES AFFECTED – 76-36 164th Street, southwest corner of the intersection formed by 164th Street and 76th Road. Block 6848, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to July 28, 2009, at 10 A.M., for continued hearing.

853-53-BZ

APPLICANT – Walter T. Gorman, P.E., for Knapp LLC, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application March 4, 2009 – Extension of Time/waiver to obtain a Certificate of Occupancy for a Gasoline Service Station (Mobil) in a C-2/R3-2 which expired on January 22, 2009.

PREMISES AFFECTED – 2402/16 Knapp Street, south west corner of Avenue Z, Block 7429, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Cindy Bachan.

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 11, 2009, at 10 A.M., for decision, hearing closed

709-55-BZ

APPLICANT – Walter T. Gorman, P.E., for LMT Realty Company, owner; ExxonMobil Oaks Corporation, lessee.

SUBJECT – Application May 21, 2009 – Extension of Term to permit the continued operation of a gasoline service station (Mobil) which expires on February 2, 2010 in an R4/C1-2 zoning district.

PREMISES AFFECTED – 2000 Rockaway Parkway, northwest corner of Seaview Avenue, Block 8299, Lots 68 and 63, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Cindy Bachan.

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 18, 2009, at 10 A.M., for decision, hearing closed

32-91-BZ

APPLICANT – Walter T. Gorman, P.E., for Fulvan Realty Corporation, owner; Fulton Auto Repair Incorporated, lessee.

SUBJECT – Application May 5, 2009 – Extension of Term and waiver of a Special Permit for a (UG16) Gasoline Service Station (Coastal) in a C2-4/R7A zoning district which expired on May 19, 2007.

PREMISES AFFECTED – 838/846 Fulton Street, south east corner of Vanderbilt Avenue, Block 2010, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Cindy Bachan.

ACTION OF THE BOARD – Laid over to August 18, 2009, at 10 A.M., for continued hearing.

203-00-BZ

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for Sunset Warehouse Condominium, owners.

SUBJECT – Application April 29, 2009 – Application to amend the variance granted in 2001 for BSA Calendar No. 203-00-BZ. The Amendment is to permit the conversion of three additional condominium units (designated originally for commercial use) on the second floor to three residential units. The proposal is contrary to sections 42-10 (use) and 42-133 (no new dwelling units allowed). M1-5 district.

PREMISES AFFECTED – 603 Greenwich Street, aka 43 Clarkson Street, northeast intersection of Greenwich and Clarkson Streets, Block 601, Lots 1201-1212, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jay Segal and Bruce Roffine.

ACTION OF THE BOARD – Laid over to August 11, 2009, at 10 A.M., for continued hearing.

327-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Beth Gavriel Bukharian Congregation, owner.

SUBJECT – Application June 5, 2009 – Extension of Time to Complete Construction and Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (72-21) for the enlargement of an existing Synagogue and School (Beth Gavriel), in an R1-2 zoning district, which expired on June 7, 2009.

PREMISES AFFECTED – 66-35 108th Street, east side of 108th Street, east side of 108th Street, between 66th Road and 67th Avenue, Block 2175, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to August 18, 2009, at 10 A.M., for continued hearing.

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REGULAR MEETING
TUESDAY AFTERNOON, JULY 21, 2009
1:30 P.M.

APPEALS CALENDAR

296-08-A

APPLICANT – Gerald J. Caliendo, R.A., for Federico Camacho, owner.

SUBJECT – Application November 25, 2008 – Proposed four-story, six family dwelling with a community facility located within the bed of a mapped street contrary to General City Law Section 35. R6B Zoning District.

PREMISES AFFECTED – 45-02 111th Street, east side of 45th Avenue, 100' south of intersection of 111th Street and 45th Avenue, Block 2001, Lot 37, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Sandy Anagnostov.

ACTION OF THE BOARD – Laid over to September 15, 2009, at 10 A.M., for continued hearing.

179-09-A

APPLICANT – Eric Palatnik, P.C., for Zaki Turkieh, owner.

SUBJECT – Application June 1, 2009 – Proposed construction of a one story extension to an existing commercial building not fronting on a mapped street contrary to General City Law Section 36.

PREMISES AFFECTED – 252-02 Rockaway Boulevard, corner of First Street and Rockaway Boulevard, Block 1392, Lot 69, Borough of Queens.

COMMUNITY BOARD #13Q

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 August 11, 2009, 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

287-06-BZ

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

SUBJECT – Application October 27, 2006 – Variance (§72-21) to allow a residential/community facility building contrary to yard regulations. R5 zoning district.

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

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Richard Lobel.

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, the decision of the Queens Borough Commissioner dated September 29, 2006, acting on Department of Buildings Application No. 401515017, reads:

“Proposed conversion of one dwelling unit in a new building previously approved exclusively for residences to a community facility use in an R5 zone without two side yards complying with Section 24-35 of the Zoning Resolution is not permitted.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot within an R5 zoning district, the legalization of a mixed-use two-family/community facility building that does not provide the required side yards, contrary to ZR § 24-35; and

WHEREAS, procedurally, acting on a prior objection issued by the Queens Borough Commissioner on November 24, 2004, the applicant filed an application under BSA Cal. No. 380-04-BZ, to permit the legalization of the subject building; and

WHEREAS, on the scheduled decision date, January 10, 2006, the applicant withdrew the application; and

WHEREAS, the applicant subsequently re-filed the application for the same relief under a new calendar number, BSA Cal. No. 287-06-BZ; and

WHEREAS, on August 7, 2007, the Board ultimately dismissed the application, under BSA Cal. No. 287-06-BZ for lack of prosecution; and

WHEREAS, the applicant filed a proceeding, BK

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Corporation v. Board of Standards and Appeals (Index No. 22581/2007) pursuant to Article 78 challenging the Board's determination and the Board stipulated to place the application on the zoning calendar to consider the applicant's variance request; thus, the subject application was restored to the calendar and proceeded in the public hearing process; and

WHEREAS, a public hearing was held on this application on March 17, 2009 after due publication in *The City Record*, with a continued hearing on June 9, 2009 and then to decision on July 21, 2009; 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 1, Queens, recommends that the application be approved with the stipulation that the first floor use be limited to a doctor's office; and

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

WHEREAS, the Board notes that the Borough President's recommendation is associated with the 2004 application, but that the applicant entered the recommendation into the record of the current application; and

WHEREAS, the zoning lot has approximately 9,594 sq. ft. of lot area, and is located on the northeast corner of 23rd Street and 33rd Avenue; and

WHEREAS, the subject building (the "Subject Building") at the referenced address is one of five attached mixed-use buildings on individual tax lots within the larger zoning lot; the Subject Building is the furthest into the mid-block and abuts an adjacent building; and

WHEREAS, the subject block is divided by a zoning district boundary line; the southern portion of the block is within an R5 zoning district and the northern portion of the block is within an R6B zoning district on its northerly half; and

WHEREAS, the applicant represents that the northerly half of the block was formerly within the R5 zoning district, but that a zoning map amendment adopted by the City Planning Commission on January 24, 2001 changed the zoning to R6B; and

WHEREAS, the applicant represents that the zoning lot was formerly occupied by a one-story non-conforming automotive repair shop and storage garage; and

WHEREAS, the repair shop and garage were demolished in June 2002 in anticipation of a five-building residential development (with no community facility use); and

WHEREAS, the applicant states that the Department of Buildings (DOB) approved plans for this residential development on September 20, 2002, and issued permits on February 14, 2003; thereafter, construction commenced; and

WHEREAS, however, this development proposal was based upon the assumption that the subject block was still entirely within an R5 zoning district, which, because of the

above-mentioned zoning change, was not the case; and

WHEREAS, thus, the architect, filing under DOB's Professional Certification program, assumed that the "predominantly built up area" ("PBA") bulk provisions set forth at ZR § 23-141(c) were applicable; and

WHEREAS, ZR § 12-10 defines a PBA, in part, as a block entirely within an R4 or R5 zoning district; and

WHEREAS, the PBA provisions allow for a greater Floor Area Ratio (FAR) than permitted otherwise; specifically, a FAR of 1.65 is allowed for a PBA in an R5, as opposed to a FAR of 1.25 on a block that does not meet the PBA definition; and

WHEREAS, since the subject block had been partially rezoned to R6B at least one and a half years prior to the plan approval and permit issuance, it no longer met the PBA definition; and

WHEREAS, therefore, an FAR of 1.65 was not allowed at the time the plan approval and permit were obtained; and

WHEREAS, consequently, the approval and permit that the architect obtained through the Professional Certification program erroneously allowed for a greater residential FAR than permitted by the ZR; and

WHEREAS, a DOB audit on February 25, 2004 revealed this error, and construction at the site was stopped by DOB; and

WHEREAS, the applicant represents that, by that point, the construction of the development was almost complete; and

WHEREAS, in order to meet the reduced residential FAR, the applicant eliminated one residential unit in each of the five buildings, and replaced them with a community facility use (medical office); and

WHEREAS, inclusion of community facility space at the first floor level would increase the permitted FAR over the entire development to 2.0, while decreasing the actual residential floor area to within the permitted maximum FAR of 1.25; and

WHEREAS, however, as noted above, the subject building was built abutting an adjoining building's wall; and

WHEREAS, because the applicant proposes to convert the first floor unit into community facility use, it must provide an eight-ft. side yard where it now currently abuts this wall; and

WHEREAS, the applicant contends that while the FAR issue has been resolved, compliance with the side yard requirement would involve the partial demolition of the subject building, which would result in a significant financial loss both due to the construction costs and the reduced revenue from the loss of a wider building; and

WHEREAS, each of the five buildings is three stories, with cellar; and

WHEREAS, per the certificates of occupancy, the first floor of each of 32-14 through 32-20 23rd Street (the "Four Buildings") has a community facility use on the first floor and a two-family home on the second and third floors; and

WHEREAS, the Board notes that the applicant states that DOB has issued certificates of occupancy for the Four

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Buildings; the applicant is not seeking any variance for the Four Buildings; and

WHEREAS, accordingly, the Board notes that the subject of this variance application is the northernmost building at 32-12 23rd Street (the Subject Building) and the analysis of the findings, other than the ZR § 72-21(b) finding, is generally limited to the Subject Building; 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 subject side yard requirement: (1) the history of non-conforming use at the site, (2) ZR §§ 52-31 and 54-31 would have allowed a change in use of the former auto repair shop at the site to community facility use without regard to the side yard condition and the proposed residences could have been constructed above the former auto repair building, (3) the conditions of adjacent development, (4) the water table and the proximity to a 100-year flood boundary line, and (5) there was environmental contamination on the site that cost approximately \$56,000 to remediate; and

WHEREAS, as to the history of non-conforming use at the site, the applicant states that prior to the construction of the Subject Building and the Four Buildings, the site was occupied by a one-story non-conforming automotive repair shop and storage garage with 100 percent lot coverage; and

WHEREAS, the applicant states that the historic use of the site for such use results in a commercial character for the site, which affects the desirability of the Subject Building for residential use; and

WHEREAS, the applicant cites to three Board variance cases: BSA Cal. Nos. 354-03-BZ, 261-03-BZ, and 209-03-BZ to support an argument for purported precedent; and

WHEREAS, the cited variance cases involve, respectively (1) the establishment of a non-conforming physical culture establishment in the cellar of an existing mixed-use building, (2) the legalization of a one-story automotive repair shop on an irregular lot, and (3) the establishment of a physical culture establishment in portions of a residential building; and

WHEREAS, the Board notes that these cases all (1) involved uses that were not permitted as of right in the subject zoning districts and (2) relied on arguments about the compatibility of the proposed use with existing uses; and

WHEREAS, because the proposed community facility use is as of right in the subject zoning district, a discussion about a non-conforming prior use is misplaced; and

WHEREAS, accordingly, the Board does not find the cited Board cases to be relevant to the subject case, which involves the conversion of a residential unit to a community facility unit in a zoning district that permits both uses as of

right on a site that was not formerly occupied by either; and

WHEREAS, additionally, the Board notes that the applicant does not make any assertions that the subject site is incompatible with or infeasible for residential use, as there are at least ten dwelling units within the Four Buildings and the Subject Building, along with community facility uses, per the certificates of occupancy; and

WHEREAS, the Board notes that the applicant does not propose to re-establish a commercial use, similar to that which may have formerly occupied the site and that the applicant does not assert that the Subject Building is only compatible with the proposed community facility use, which, again, would be permitted as of right provided it complied with all bulk parameters of the subject zoning district; and

WHEREAS, the Board understands that the applicant proposes to convert the use of the first floor unit from a residential use to a community facility use as a means to cure a side yard objection, and, thus finds that the applicant discussion of the findings for a use variance is confused; and

WHEREAS, the applicant erroneously likens the proposal to that of trying to establish the compatibility of a proposed non-conforming use with existing conforming uses; and

WHEREAS, as to the history of the site, the Board does not find the prior non-conforming status of the demolished auto repair building to be a unique physical condition that leads to a hardship in complying with the applicable community facility side yard requirement; and

WHEREAS, had the developer wished to proceed with a mixed-use residential/community facility development, the fact that a non-conforming use existed on the site would in no way have hindered a complying development; after demolition, the developer was left with a large vacant site upon which a complying development with required side yards could have been constructed as demonstrated in the multiple site plans provided with the applicant's feasibility study; and

WHEREAS, likewise, the fact that the prior building could have been maintained, with residences constructed on top, is not a unique physical condition that leads to hardship; rather, it is merely a description of an alternative development proposal that would have avoided the predicament that led to the instant variance application; and

WHEREAS, nor does the fact that ZR § 52-31 allows a change in use from a non-conforming use to a conforming use or that ZR § 54-31 allows for the enlargement of non-complying buildings, under certain conditions, have any relevance; and

WHEREAS, while ZR §§ 52-31 and 54-31 allow such changes to occur, reference to those provisions require that the non-conforming use and non-complying building remain; and

WHEREAS, here, the prior building occupied by the non-conforming use was demolished, and the applicant began construction on a vacant regularly-shaped site, than all rights to the non-conforming use were lost, rendering the applicant's argument meaningless; and

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WHEREAS, the Board therefore rejects any arguments that the previous non-conforming use and its non-complying side yards bears any relevance or hardship to the subject site and its ability to be developed with a conforming use and complying bulk conditions; and

WHEREAS, as to the adjacent development, the applicant asserts that the adjacency to a commercial use is a unique condition and that only 15 residential uses within a 400-ft. radius of the site are adjacent to commercial uses; and

WHEREAS, the applicant asserts that this condition contributes to a hardship at the site; and

WHEREAS, the Board reiterates that the applicant is not seeking a use variance or any waiver for the residential uses in the Subject Building, but is rather seeking a variance to eliminate a side yard requirement; and

WHEREAS, the Board notes that the applicant designed a building that, without the side yard, is actually closer to the purportedly incompatible adjacent commercial use than it would be if the side yard were provided; and

WHEREAS, the applicant refers to the approval of the vertical enlargement of the enlargement of the adjacent building at 21-34 Broadway on the lot line as evidence that DOB is not consistent with its approvals of side yard conditions in the zoning district; and

WHEREAS, the Board finds that the applicant's reference to Matter of Charles A Field Delivery Service, Inc. v. Lillian Roberts, 66 N.Y.2d 516, 498 N.Y.S.2d 111 (1985), a case that addresses an agency arriving at different outcomes when analyzing fact patterns deemed to be "indistinguishable," in this context is misplaced; and

WHEREAS, specifically, the applicant has not provided evidence that DOB's approval of the adjacent construction was based on the same set of facts as DOB's objection to the Subject Building; and

WHEREAS, the evidence submitted into the record suggests that the vertical enlargement of the pre-existing adjacent building for residential use is not factually similar to the development at the subject site; and

WHEREAS, additionally, the Board notes that Field Delivery states that agencies may correct erroneous interpretations; and

WHEREAS, the Board notes that adjacency to lot line buildings is a common condition in New York City and is thus not particularly unique, nor does it contribute to hardship; and

WHEREAS, the Board is not convinced that there is any nexus between the applicant's request for a side yard waiver and the presence of a commercial use with a lot line condition on the adjacent site; and

WHEREAS, as to the water table and flood zone, the applicant states that (1) the water table is approximately 15 feet below grade and (2) the site is 150 feet from the boundary of a 100-year flood area; and

WHEREAS, the applicant represents that these conditions make the construction of a sub-cellar cost-prohibitive; and

WHEREAS, the Board, which includes an expert

engineer, has reviewed the flood maps and notes that the site is approximately 150 feet from Zone X, which is described as an "area of moderate or minimal hazard from the principal source of flood in the area" and 500 feet from a 100-year flood zone AE; and

WHEREAS, further, the Board notes that none of the applicant's proffered building proposals include a sub-cellar and, thus, any reference to the inability to include such space is irrelevant to a hardship finding; and

WHEREAS, as to the environmental remediation costs, the applicant represents that the following factors contribute to hardship at the site: (1) the Phase 1 Environmental Site Assessment Report, dated March 21, 1998 discloses a spill which caused seepage into the adjacent building's cellar, (2) due to contamination, the demolition of the prior building was required, and (3) underground storage tanks were required to be removed; and

WHEREAS, the applicant identified \$41,000 in costs associated with the noted remediation; and

WHEREAS, the Board disagrees that the applicant has demonstrated that site remediation reaches a level at which it is unique or contributes to a hardship at the site; and

WHEREAS, specifically, the Board notes that the 1998 Phase 1 concluded that no further action was required after the 1996 oil spill (of less than 50 gallons) with seepage into the adjacent building; the report states that proper steps were taken and the spill was cleaned up, leaving no possibility of groundwater contamination; and

WHEREAS, further, the Board notes that a 2002 Phase 1 states that, although he did not perform minor clean-up or remove the underground storage tanks, the prior owner removed them from service; tests reflect that the semi-volatile organic compound contamination reading reflects very low concentrations, which are below EPA limits; and

WHEREAS, the Board notes that a November 2002 letter from the Department of Environmental Conservation is a reminder to register any existing tanks and is not evidence that there was a sub-surface contamination issue at the site; and

WHEREAS, as to remediation expenditure, the Board notes that checks written in mid-2003 to a wrecking company total \$41,000 as the applicant contends, but these costs likely include excavation as well as tank removal and even demolition of the prior building; and

WHEREAS, accordingly, those expenditures may not even all be attributed to remediation, but may be attributed to other more typical construction costs; and

WHEREAS, the applicant also claims that there are potentially an additional \$15,000 in remediation costs for a total of approximately \$56,000; and

WHEREAS, the Board notes that in the prior application associated with this case, the applicant stated that there were only \$30,000 in remediation costs, which represents seven-tenths of one percent of the development costs; and

WHEREAS, the Board notes that BSA Cal. No. 51-07-BZ, which the applicant cites to for an example of remediation costs which were incurred prior to the filing of a

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Board variance application involved \$340,000 in remediation costs, which is nearly ten times what the applicant discusses; and

WHEREAS, the Board notes that the total development cost is \$4 million and that \$56,000 represents one percent of the total development costs; and

WHEREAS, the applicant's discussion about the prohibitive costs of remediating the site if the auto repair building remained are misplaced because the applicant did not maintain the prior building; 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, more importantly, the Board finds that the applicant fails to assert, let alone establish that any of the alleged unique physical conditions have any nexus to the relief requested; and

WHEREAS, additionally, the applicant did not apply to the Board for a variance on the basis of any of these factors when it initiated development in 2003; and

WHEREAS, logically, if any of these factors truly inhibited development to the point where unnecessary hardship or practical difficulties resulted, then the project would not have been initiated without relief from this Board; and

WHEREAS, the Board concludes that the need for the side yard waiver really results from the erroneous assumption that the zoning lot was in a PBA, and that five residential buildings could therefore be developed without a community facility component as of right using the 1.65 FAR that the PBA regulations permit; 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 side yard requirement; 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 that the zoning district had changed on the north side of the block such that PBA regulations did not apply to 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 zoning change was adopted by the City Planning Commission on January 24, 2001, which is approximately one and a half years before the permit application was filed with DOB; and

WHEREAS, the applicant claims that the zoning map reflecting such change (zoning map 9a) was not made available to the public in any form until February of 2003; 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 had DOB performed an audit of the permit application and plan approval, it might have been alerted to the error prior the commencement of construction instead of in 2004; 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 an architect should be charged with constructive notice of both the zoning district in which the development site is located as well as adjacent zoning districts if a change in said district 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; and

WHEREAS, moreover, the Board finds that information regarding the zoning change on the subject block was readily available to the filing architect prior to issuance of the plans approvals and the permits; and

WHEREAS, for example, the Board notes that the architect could have contacted DCP directly to confirm the zoning of the block; and

WHEREAS, additionally, contrary to the representations of the applicant during the course of the 2004 application process, a revised zoning map 9a that reflected the changed zoning on the subject block was available on the DCP web-site as early as February 1, 2001, well before the permits were obtained; and

WHEREAS, during the review of the prior application, the Board's staff confirmed this fact through communication with DCP; the applicant was made aware of this communication and its substance; 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 web-site, where information about the zoning change that would have prevented the erroneous DOB filing could easily have been obtained; and

WHEREAS, while the applicant has submitted correspondence between its office and DCP regarding the web-site posting of revised zoning maps aside from zoning map 9a, such correspondence has no applicability to the instant matter; thus, the Board finds such correspondence irrelevant to its determination herein; and

WHEREAS, the Board also rejects the argument that DOB had any obligation to review the plan approvals and permit issuance prior to the commencement of construction; and

WHEREAS, DOB has issued numerous Policy and Procedure Notices (PPNs) regarding the Professional Certification program, all of which state that random audits of a certain percentage of applications will be made within a specified time period, but also that DOB reserves its right to audit any application at any time; and

WHEREAS, none of the PPNs issued by DOB require a DOB audit of all Professionally Certified jobs; and

WHEREAS, the Board concludes that there was no

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good faith reliance and no uniqueness leading to unnecessary hardship or practical difficulties; and

WHEREAS, instead, the need for the side yard waiver arises only because the development as a whole and the subject building in particular was constructed contrary to zoning; and

WHEREAS, thus, the Board concludes that applicant's argument that DOB acted contrary to its own policy is erroneous; 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 to the (b) finding, the applicant's feasibility study includes six schemes: as-of-right residential; the proposed residential/community facility; three alternative residential/community facility configurations; and one exclusive community facility; and

WHEREAS, the applicant represents that none of the alternatives results in a reasonable rate of return except the proposal; and

WHEREAS, the Board finds that the applicant's analysis and conclusions are flawed; and

WHEREAS, specifically, the Board notes that the differences between the rates of return for the alternatives is negligible, reflecting a difference of just fractions of a percentage point; and

WHEREAS, the Board questions certain of the applicant's assumptions, including the 43 percent operating expense rate, because 20 to 25 percent is the industry standard, particularly for this kind of development; and

WHEREAS, accordingly, in its review of the feasibility study, the Board has determined that a single minor change, including a reduction in the operating expense rate, results in a more reasonable rate of return; and

WHEREAS, alternately, the Board notes that if the special expense amount associated with the purported remediation were eliminated from the equation, there would not be any significant reduction in the rate of return; and

WHEREAS, the Board finds that the applicant has not shown that the as of right scenarios are not viable or that the remediation costs constrain the development; and

WHEREAS, finally, the Board notes that the alternatives with community facility use fail to reflect a change in the site value, which is based on residential use and thus exceeds that which would be paid for the lower return community facility space; and

WHEREAS, the Board notes that the site is valued at higher income generating residential space and, thus a comparison to any of the community facility scenarios is flawed; and

WHEREAS, accordingly, for the reasons stated above and due to the negligible differences between the development alternatives, the Board rejects the applicant's assertion that none of the alternatives are viable and that the proposal is the only scenario that results in a reasonable rate of return; and

WHEREAS, as stated above, the need to re-design the building now is not a hardship and the side yard waiver

arises 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 side yard waiver 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

WHEREAS, the applicant cites to case law, claiming it establishes precedent for the following issues and supports its case for a variance: (1) the quantum of proof required for variance applications and the nature of the variance sought, (2) the public policy goal of eliminating a non-conforming use, (3) the self-created hardship, and (4) the principle of good faith reliance; and

WHEREAS, as to the quantum of proof, the applicant cites to Human Development Services v. Zoning Board of Appeals of Port Chester, 110 A.D.2d 135 (1985) (quoting Matter of National Merritt v. Weist, 41 N.Y.2d 438 (1977) for the principle that the amount of proof necessary to satisfy variance findings varies with the degree of the requested waivers; and

WHEREAS, the Board notes that both cases draw some distinction between a use variance and an area variance and deem that the quantum of proof may be lower in area variances as area variances do not involve the introduction of a non-conforming use to a site; and

WHEREAS, however, the Board notes that neither case states that either a use or area variance could be granted absent evidence to support each of the variance findings; and

WHEREAS, if the Board has determined that the applicant fails to make any one of the five required variance findings, pursuant to ZR § 72-21, then the applicant would not even achieve a minimal quantum of proof, even if a lesser standard were appropriate given that the proposal reflects a yard waiver, rather than a use change; and

WHEREAS, the Board notes that the applicant's potential loss associated with a demolition of the illegal construction if the relief is not granted is not to be weighed against the magnitude of the relief sought; there is no exemption from making the five required findings; and

WHEREAS, the applicant cites to additional New York State cases, which address the differences between use and area variances; none of which suggest that the Board may grant a variance involving a side yard waiver without making each of the five required findings here; and

WHEREAS, the Board notes that the applicant dedicates a considerable portion of the argument for the (a) finding to a discussion about the prior non-conforming use at the site and cites prior Board cases regarding use variances, all of which are irrelevant; and

WHEREAS, the applicant cites to Toys "R" Us v. Silva, 89 N.Y.2d 411 (1996), for the principle that zoning

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supports the elimination of non-conforming uses; and
WHEREAS, the Board reiterates that the Subject Building and Four Buildings are occupied by and are proposed to be occupied by community facility and residential uses, which are conforming uses in the subject zoning district and any discussion of eliminating a non-conforming use is misplaced; and

WHEREAS, as to the self creation of the hardship, the applicant cites to Douglaston Civic Association v. Klein, 67 A.D.2d 54, 61 (2d Dep't. 1979), aff'd, 51 N.Y.2d 963, 435 N.Y.S.2d 705 (1980) for a purported distinction between discovering a hardship in the course of developing a site and anticipating a hardship prior to purchasing a site; and

WHEREAS, the Board distinguishes Douglaston from the subject case because it involves the purchase of a site with a marsh condition that physically constrained development; the applicant fails to draw any meaningful connection between the hardship in Douglaston and the subject case of failing to perform due diligence as to zoning; and

WHEREAS, the Board notes that any financial hardship that the applicant claims would be incurred if demolition of the Subject 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, as in Douglaston; and

WHEREAS, as to good faith reliance, 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 review and approvals, which were later reversed; and

WHEREAS, the Board readily distinguishes the subject case which involves building plans approved through the Professional Certification program, which means that DOB did not audit or review the plans prior to the applicant's construction; 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 as to the zoning map of the subject site, which had changed two years prior to the commencement of construction; and

WHEREAS, the applicant's reliance on DOB's approval at 21-34 Broadway is misplaced in that it involved the vertical enlargement of pre-existing lot line walls for a residential enlargement, which is not factually similar to the

subject case which involves new construction of a mixed-use residential/community facility building; and

WHEREAS, additional case law, including Pantelidis v. BSA, 10 Misc.3d 1077(A) at 8 (N.Y. Sup. Ct. 2005) (citing Matter of Hoffman v. Harris, 17 N.Y.2d 138, 144) aff'd 43 A.D.3d 314, 841 N.Y.S.2d 41 (1st Dep't 2007), aff'd, 10 N.Y.3d 846, 859 N.Y.S.2d 597 (2008), requires evidence of reliance, which the applicant in the subject case cannot demonstrate; and

WHEREAS, simply, the Board notes, the applicant participated in the Professional Certification program, then DOB audited the plans, identified zoning non-compliance, and issued a Stop Work Order; 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, since the application fails to meet the findings set forth at ZR §§ 72-21 (a), (b), 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), (b), 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 Queens Borough Commissioner, September 29, 2006, acting on Department of Buildings Application No. 401515017, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, July 21, 2009.

228-08-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sephardic Mikvah Israel by Isaac Hidary, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) to permit the construction of a one-story mikvah (ritual bath). The proposal is contrary to ZR §§ 24-34 (front yards) and 24-35 (side yards). R3-2 district.

PREMISES AFFECTED – 2802 Avenue R, a/k/a 1801-1811 East 28th Street, southeast corner of Avenue R and East 28th Street, Block 6834, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: Eric Palatnik, Stuart Klein and Martin Cohen.

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 Brooklyn Borough Superintendent, dated August 5, 2008, acting on Department of Buildings Application No. 310174637, reads in pertinent part:

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“Proposed plans are contrary to ZR 24-34 in that the proposed front yards are less than the minimum required front yards of 15 feet.

Proposed plans are contrary to 24-35 in that the proposed side yards are less than the minimum required side yards;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R3-2 zoning district, the construction of a one-story mikvah (Use Group 4), which does not comply with front yard and side yard requirements for community facilities, contrary to ZR §§ 24-34 and 24-35; and

WHEREAS, a public hearing was held on this application on February 10, 2009, after due notice by publication in *The City Record*, with continued hearings on March 17, 2009, April 28, 2009, and June 9, 2009, and then to decision on July 21, 2009; 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, a number of community residents testified in support of the application; and

WHEREAS, the adjacent neighbor at 1813 East 28th Street, represented by counsel, provided written and oral testimony in opposition to this application, requesting that the applicant redesign the proposed building to provide a complying side yard along its southern lot line; and

WHEREAS, other community members, represented by counsel, provided written and oral testimony in opposition to this application; and

WHEREAS, a number of community members individually testified in opposition to the 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 applicant did not establish a programmatic need for the number of patrons that will use the facility; (2) the programmatic needs do not justify locating the ritual baths solely on the first floor; (3) the programmatic needs do not justifying the number of preparation rooms in the proposal; (4) the proposal could be redesigned to provide complying side yards; (5) the applicant did not provide a parking analysis; (6) the applicant did not establish that the required mechanicals would incorporate proper sound attenuation measures; and (7) the applicant failed to provide certain information requested by the Opposition and/or the Board; and

WHEREAS, this application is being brought on behalf of the Sephardic Mikvah Israel, a non-profit religious entity; and

WHEREAS, the subject premises is located on the southeast corner of the intersection at Avenue R and East 28th Street, within an R3-2 zoning district; and

WHEREAS, the site has a rectangular shape with 38 feet

of frontage on Avenue R, a depth of 100 feet, and a total lot area of 3,800 sq. ft.; and

WHEREAS, the subject site is currently occupied by a vacant single-family home, which is to be demolished; and

WHEREAS, the applicant proposes to construct a one-story and cellar mikvah on the site (hereinafter, the “Mikvah”) with a floor area of approximately 2,448 sq. ft. (0.64 FAR) (1.0 FAR is the maximum permitted); two side yards of 4’-0” each (two side yards of 8’-0” and 8’-7 1/5”, respectively, are the minimum required); a front yard of 11’-0” along the northern lot line and a second front yard with a depth of 5’-0” along the western lot line (two front yards of 15’-0” each are the minimum required); and

WHEREAS, the applicant initially proposed a building with a front yard of 11’-6” along the northern lot line, a front yard of 5’-0” along the western lot line, and no side yards; and

WHEREAS, in response to concerns raised by the Opposition and at the request of the Board, the applicant revised its plans to provide a front yard of 11’-0” along the northern lot line, a front yard of 5’-0” along the western lot line, and two side yards of 4’-0” along the eastern and southern lot lines; and

WHEREAS, the proposal provides for the following uses: (1) two ritual pools, 11 preparation rooms, a dressing room, reception area, waiting room, powder room, linen/staff room, and foyer on the first floor; and (2) a laundry room, refuse room, mechanical room, bookkeeping and secretarial area, and storage rooms in the cellar; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Mikvah: (1) a centralized location to relieve the overcrowding of existing mikvahs in the community and to better serve the surrounding area; (2) a sufficient number of preparation rooms and ritual pools to accommodate the approximately 22 women anticipated to patronize the Mikvah on a daily basis; (3) to locate the ritual pools on the ground floor; and (4) privacy for the women who use the Mikvah; and

WHEREAS, the applicant states that there are currently only two Sephardic mikvahs, located at 810 Avenue S and 583 Kings Highway, servicing more than twenty Sephardic synagogues in the surrounding area; and

WHEREAS, the applicant further states that it operates the mikvah located at 810 Avenue S (the “Avenue S Mikvah”), which is operating at its maximum capacity with more than 100 women attending each night; and

WHEREAS, the applicant states that the Avenue S Mikvah, which is located more than one mile from the proposed Mikvah, does not have sufficient capacity for the women in the community who observe the mikvah ritual; and

WHEREAS, the applicant represents that the addition of the proposed Mikvah is therefore necessary to relieve the overcrowding at the Avenue S Mikvah; and

WHEREAS, in support of its statement that a mikvah is necessary at the proposed location, the applicant submitted a color-coded map reflecting that the Mikvah will be located to the east of the two existing Sephardic mikvahs, allowing it to serve six synagogues that are currently located more than a half mile from either of the existing mikvahs; and

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WHEREAS, the applicant represents that, due to the religious requirements of ritual purity, a woman must travel alone to the mikvah after sundown on a specific day each month, and is not permitted to delay; and

WHEREAS, in addition, the applicant states that Jewish law prohibits congregants from driving on the Sabbath; and

WHEREAS, the applicant represents that a mikvah at the subject site will reduce the inconvenience for many women who, due to religious requirements and the distance of their homes from the existing mikvahs, must walk more than a mile at night and by themselves every Sabbath; and

WHEREAS, thus, the applicant represents that a mikvah is necessary at the proposed location to relieve the overcrowded conditions of the existing mikvahs and to better serve areas of the community located furthest from the existing mikvahs in the area; and

WHEREAS, the applicant states that the requested front and side yard waivers will allow for a building footprint that is large enough to accommodate all of the required Mikvah services; and

WHEREAS, the applicant represents that the provision of complying side yards would reduce the interior of the building to such an extent that two bathrooms and the second mikvah pool would need to be eliminated, and as a result the facility would not be large enough to accommodate the number of women anticipated to use the Mikvah; and

WHEREAS, the applicant further represents that the requested front and side yard waivers are necessary to provide an adequate number of preparation rooms and ritual baths for the anticipated number of Mikvah patrons; and

WHEREAS, in support of this statement, the applicant submitted a chart reflecting that out of the six congregations that the proposed Mikvah will service, there are approximately 650 women who utilize a mikvah; and

WHEREAS, the applicant anticipates that the Mikvah will serve approximately 22 of those 650 women on a daily basis; and

WHEREAS, the applicant submitted letters from the Madison Torah Center and Congregation Shaare Shalom, two of the six congregation that the Mikvah will service, stating their support for the proposal given the community's need for such a facility; and

WHEREAS, the applicant represents that the appropriate ratio of preparation rooms to mikvah pools is six preparation rooms per mikvah pool; and

WHEREAS, the applicant further represents that the average amount of time for a woman to complete the ritual, including preparation and getting ready to leave, is approximately 70 minutes; and

WHEREAS, the Opposition submitted mathematical calculations asserting that, based on the evidence provided by the applicant, six to eight preparation rooms are sufficient for the proposed Mikvah, as opposed to the 11 preparation rooms proposed by the applicant; and

WHEREAS, in response, the applicant states that immersion in the ritual bath must happen after sundown, and the calculations submitted by the Opposition do not account for the fact that the hours of operation of the Mikvah therefore

vary based on the time of year, thereby limiting the potential time patrons can visit the Mikvah; and

WHEREAS, the applicant further states that the proposed Mikvah actually provides less than the ideal number of preparation rooms, as a result of the space constraints of the subject site; and

WHEREAS, the applicant concludes and, based on the documented programmatic needs, the Board agrees that, due to the condensed number of hours permitted for immersion and the number of women in the community that are required to go to the mikvah, 11 preparation rooms and two ritual baths are necessary to enable the Mikvah to handle the volume of women that are anticipated to use the proposed facility; and

WHEREAS, the applicant represents that the requested waivers are also necessary to accommodate two ritual baths at ground level; and

WHEREAS, the applicant states that the proposed Mikvah will cater to a segment of the community whose religious customs dictate that the Mikvah be located on the ground level; and

WHEREAS, the Opposition contends that there is nothing in Jewish law that prohibits the applicant from locating one or both ritual pools in the cellar or on a second floor; and

WHEREAS, in support of its argument, the Opposition submitted a letter from a rabbi from Congregation Kollel Bnei Hayeshivos, stating that Jewish law allows mikvah pools to be placed either below ground, at ground level, or above ground such as on the second floor; and

WHEREAS, in response, the applicant submitted a letter from the National Supervisor of Ritual Baths in Israel, stating that a mikvah should be built on the first floor and that it is forbidden to construct a mikvah below ground level where pipes may crack or leak in the winter, posing significant problems under Jewish law; and

WHEREAS, the applicant acknowledges that some mikvahs are in fact located in cellars, however the applicant represents that this is because they are used for men and are not subject to the same restrictions as women's mikvahs; and

WHEREAS, the applicant also submitted a letter from a professional engineer familiar with mikvah requirements, stating that any leakage of water from a mikvah renders the water "flowing water," invalidating the mikvah such that it cannot be used to satisfy the religious requirement; and

WHEREAS, the applicant states that locating the ritual baths at ground level allows for quality control to ensure that the baths do not leak; and

WHEREAS, in addition, the applicant represents that locating the Mikvah entirely in the cellar would be financially infeasible, as it would result in significant costs associated with additional excavation and shoring, larger holding tanks, protecting the cellar from leaks, an elevator, a more expensive ventilation system, and a larger boiler intake; and

WHEREAS, the applicant further represents that building the Mikvah on both the first floor and the cellar level would also be financially infeasible as it would require many duplicate costs and would also require additional staff; and

WHEREAS, thus, the applicant states that as a result of the need for the ritual baths to be located at ground level, the

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yard waivers are necessary to meet the Mikvah's programmatic needs; and

WHEREAS, the applicant further represents that the requested waivers are necessary to ensure the privacy of the women who use the Mikvah; and

WHEREAS, the applicant states that modesty and privacy are fundamental aspects of the deeply personal mikvah ritual; and

WHEREAS, the applicant represents that a complying building will not provide sufficient corridors or the appropriate number of preparation rooms to ensure the privacy of its patrons; and

WHEREAS, the Board acknowledges that the Mikvah, 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 applicant provided a submission briefing the prevailing New York State case law on religious deference; and

WHEREAS, the Board notes that under established precedents of the courts, "[r]eligious use is conduct with a religious purpose, the determination of which focuses on the proposed use itself, not the religious nature of the organization" (McGann v. Incorporated Village of Old Westbury, 293 A.D.2d 581 (2d Dep't 2002)), and includes uses ancillary to the function of the house of worship (See Community Synagogue v. Bates, 1 N.Y.2d 445 (1956)); and

WHEREAS, the Board recognizes the role of a mikvah in the religious Jewish community and its significance to Jewish life; accordingly, the Board finds that the Mikvah qualifies as a religious use and is therefore entitled to significant deference under the law of the State of New York as to zoning; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Mikvah 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 Mikvah is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

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

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant further notes that front and

side yard waivers are the only waivers requested and that the FAR and height of the proposed building are below what is permitted in the subject R3-2 zoning district; and

WHEREAS, the Board notes that an as-of-right residential building could be significantly larger, and while it would provide complying side yards, it could reach a height of 35'-0"; and

WHEREAS, by contrast, the proposed Mikvah, while having side yards of four feet, is a one-story structure with a maximum wall height of 13'-8" and a pitched roof with a total height of 26'-1", which is 8'-11" less than the maximum permitted height for a residential building; and

WHEREAS, thus, the Board notes that the lower building height and bulk of the proposed Mikvah as compared to an as-of-right building reflects conditions that are compatible with nearby homes; and

WHEREAS, the Opposition asserts that if the proposed building were smaller it would be more compatible with the surrounding neighborhood, and that the proposed building can be further redesigned to provide complying side yards while still satisfying the stated programmatic needs; and

WHEREAS, in support of this claim, the Opposition submitted alternative plans that modify certain design elements to achieve complying side yards, such as the location of the linen/staff room, the orientation of certain preparation rooms, and the width of the corridor; and

WHEREAS, in response, the applicant states that the alternative plans submitted by the Opposition fail to comply with certain Building Code requirements, and do not provide enough space for the number of people who are anticipated to use the Mikvah; and

WHEREAS, the Board notes that the applicant has already modified its plans to provide additional side yard relief on two occasions, resulting in the current proposal with 4'-0" side yards along the eastern and southern lot lines, and that the applicant represents that providing further side yard relief would prevent it from meeting its programmatic needs; and

WHEREAS, the Opposition asserts that the applicant must provide a parking analysis to establish that there will not be any parking impacts as a result of the proposed use; and

WHEREAS, in response, the applicant states that a waiver from the parking requirements of the Zoning Resolution was not requested with this application, and ZR §§ 25-33, 25-18 and 25-31 do not require parking due to the size of the community facility; and

WHEREAS, the Opposition contends that the applicant should document its assertions that there will not be any parking impacts as a result of the proposed use, because the Environmental Assessment Statement ("EAS") form requests parking regulations and the EAS Analysis has an entire section devoted to "Traffic and Parking;" and

WHEREAS, the applicant asserts, and the Board agrees, that the information related to parking is requested in the EAS to help determine areas of potential impact where further analysis will be required, and the "Traffic and Parking" section of the EAS Analysis specifically states that because the proposed development does not exceed the threshold amount of 15,000 sq. ft. of additional space, no further analysis is

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required; and

WHEREAS, the Board notes that, given the proximity of the proposed Mikvah to the homes of many of its anticipated users, in conjunction with the fact that Jewish law prohibits driving on the Sabbath, many Mikvah visitors are likely to walk to the proposed facility, thereby reducing any potential traffic impacts; and

WHEREAS, the Opposition asserts that the applicant failed to provide evidence that sufficient sound attenuation measures will be provided for the proposed mechanical equipment to ensure that the Mikvah will not have a detrimental impact on the surrounding community; and

WHEREAS, in response, the applicant states that in order to buffer noise, the air condenser units will be split and the blowers will be located in the roof cavity instead of directly on the roof; the boilers and additional mechanicals will be located in the cellar; and all venting will occur through the roof; and

WHEREAS, in support of this statement, the applicant submitted plans reflecting the location of the mechanical equipment; 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 Mikvah 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 to the minimum variance, as noted above, during the hearing process the applicant revised the proposal multiple times to provide side yards along the southern and eastern lot lines, and states that further side yard relief would prevent it from meeting its programmatic needs; and

WHEREAS, the Opposition contends that the proposal is not the minimum variance because the plans can be further redesigned to provide additional side yard relief; and

WHEREAS, the applicant represents that, in addition to the ritual pools and preparation rooms, a typical mikvah also includes one or more bridal rooms, to be used only by women on the day before marriage; and

WHEREAS, the applicant states that in order to minimize the requested zoning waiver, the proposed Mikvah will not provide a bridal room, and instead all brides will be referred to the Avenue S Mikvah; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Mikvah 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 Opposition asserts that the applicant has failed to provide the following information requested by the Board or the Opposition, and as such lacks sufficient evidence to establish that it has met the findings for the requested variance: a survey, the interior dimensions on all the plans, the

operating protocols of the Avenue S Mikvah, a list of potential visitors to the Mikvah or their addresses, a list of affiliated congregations, the means by which visits to the Mikvah will be scheduled, or a justification for the storage rooms at the cellar level; and

WHEREAS, as noted above, the Board finds the evidence submitted by the applicant to be sufficient to establish that the applicant has satisfied the findings of the requested variance; and

WHEREAS, additionally, the Board notes that the Opposition's requests are not reflective of the evidence required for a variance; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.09BSA-022K, dated September 3, 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, 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 R3-2 zoning district, the construction of a mikvah (Use Group 4), which does not comply with the zoning requirements for front yards and side yards for community facilities, contrary to ZR §§ 24-34 and 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 July 17, 2009" – One (1) sheet; "Received June 17, 2009" – Five (5) sheets and "Received May 19, 2009" – Six (6) sheets and *on further condition*:

THAT the building parameters shall be: approximately 2,448 sq. ft. of floor area; an FAR of 0.64; a front yard of 11'-

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0' along the northern lot line; a front yard of 5'-0" along the western lot line; a side yard of 4'-0" along the southern lot line; and a side yard of 4'-0" along the eastern lot line;

THAT the use shall be limited to a mikvah (Use Group 4);

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

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

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 21, 2009.

203-07-BZ

APPLICANT – Sheldon Lobel, P.C., for Gastar, Inc., owner.

SUBJECT – Application August 17, 2007 – Variance (§72-21) to allow a new thirteen (13) story mixed-use building containing twenty (20) dwelling units, ground floor retail and third and fourth floor community facility (medical) uses; contrary to bulk and parking regulations (§35-311 & §36-21). R6/C2-2 district.

PREMISES AFFECTED – 137-35 Elder Avenue (a/k/a 43-49 Main Street) located at the northwest corner of Main Street and Elder Avenue, Block 5140, Lot 40, Borough of Queens.

COMMUNITY BOARD #7Q

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 August 25, 2009, at 1:30 P.M., for decision, hearing closed.

173-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Royal One Real Estate, LLC, owner.

SUBJECT – Application July 1, 2008 – Variance (§ 72-21) to allow a new twelve (12) story hotel building containing ninety nine (99) hotel rooms; contrary to bulk regulations (§ 117-522). M1-5/R7-3 Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area C.

PREMISES AFFECTED – 42-59 Crescent Street, northeast corner of the intersection of Crescent Street and 43rd Avenue, Block 430, Lots 37, 38, Borough of Queens.

COMMUNITY BOARD #2Q

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 August 25, 2009, at 10 A.M., for decision, hearing closed

266-08-BZ

APPLICANT – Lewis E. Garfinkel R.A., for Harold Willig, owner.

SUBJECT – Application October 28, 2008 – Special Permit (§73-621) for the enlargement of an existing single family home. This application seeks to vary §34-141(b) as the proposed floor area ratio (FAR) exceeds what is permitted in an R-4 zoning district.

PREMISES AFFECTED – 2007 New York Avenue, east side of New York Avenue between Avenue K and Avenue L, Block 7633, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Lewis E. Garfinkel.

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 11, 2009, at 10 A.M., for decision, hearing closed

288-08-BZ

APPLICANT – Jeffrey Geary, for Vincent Passarelli, owner; Roland Costanzo, lessee.

SUBJECT – Application November 21, 2008 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (Costanzo's Martial Arts Studio) on the second floor of a two-story commercial building. The proposal is contrary to ZR §42-10. M1-1 district.

PREMISES AFFECTED – 2955 Veterans Road West, Cross Streets, Tyrellian Avenue and West Shore Parkway, Block 7511, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Jeffrey Geary.

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

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18, 2009, at 10 A.M., for decision, hearing closed

314-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 437-51 West 13th Street, LLC, owner.

SUBJECT – Application December 22, 2008 – Variance pursuant to §72-21 to allow for the construction of a 12 story commercial building contrary to bulk regulations §§43-12, 43-43, 43-26 and use regulations §42-12. M1-5 District.

PREMISES AFFECTED – 437-447 West 13th Street, 862-868 Washington Street, southeast portion, block bounded by West 13th, West 14th and Washington Streets, Tenth Avenue, Block 646, Lots 19, 20, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 11, 2009, at 1:30 P.M., for adjourned hearing.

13-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for 5621 21st Avenue LLC, for Congregation Tehilos Yitzchok, owner.

SUBJECT – Application January 26, 2009 – Variance (§72-21) to permit a synagogue contrary to bulk regulations ZR §24-34, §24-35, §24-11. R5 District.

PREMISES AFFECTED – 5611 21st Avenue, 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: Yosef S. Gottdiener.

For Opposition: Albano, Stella.

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 18, 2009, at 10 A.M., for decision, hearing closed

197-08-BZ

APPLICANT – Stuart A. Klein, for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application July 23, 2008 – Variance (§72-21) to permit a four-story and penthouse residential building. The proposal is contrary to ZR Sections 23-141 (Floor Area, FAR & Open Space Ratio), 23-22 (Number of Dwelling Units), 23-45 (Front Yard), 23-462 (Side Yard), and 23-631 (Wall Height). R4 district.

PREMISES AFFECTED – 341/349 Troy Avenue, aka 1515 Carroll Street, corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Stuart A. Klein, Allan M. Martin, Rabbi Eli

Cohen and Isriel Rappoport.

For Opposition: Gloria E. Goodwin and Joseph Scott.

ACTION OF THE BOARD – Laid over to September 15, 2009, at 1:30 P.M., for continued hearing.

49-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Beth Israel Medical Center, owner; Kollel Bnei Torah, lessee.

SUBJECT – Application March 26, 2009 – Variance pursuant to 72-21 to permit the enlargement of a synagogue contrary to side yard regulations ZR 24-35(a). R4 District.

PREMISES AFFECTED – 1323 East 32nd Street, east side of East 32nd Street, between Avenue M and Kings Highway, Block 7668, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #18M

APPEARANCES –

For Applicant: Lyra J. Altman, Charles Steinberg and Ezra Holezar.

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 25, 2009, at 10 A.M., for decision, hearing closed

164-09-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Palanker, owner.

SUBJECT – Application April 29, 2009 – Special Permit (§73-622) for the enlargement of an existing Two-Family home. This application seeks to vary floor area, lot coverage and open space (ZR 23-141) and less than the required rear yard (ZR 23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 124 Irwin Street, between Hampton Avenue and Oriental Boulevard, Block 8751, Lot 416, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Rita Mantell, Boris, Susan Klappe and Judith Baron.

ACTION OF THE BOARD – Laid over to August 25, 2009, at 1:30 P.M., for continued hearing.

171-09-BZ

APPLICANT – James Chin & Associates, LLC, for Chong Duk Chung, owner.

SUBJECT – Application May 15, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment on a portion of the first floor in an existing 42-story mixed-use building. The proposal is contrary to section 32-10. C5-2 district.

PREMISES AFFECTED – 325 Fifth Avenue, east side of 5th Avenue, 64.3’ from the corner of East 32nd and 5th Avenue,

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Block 862, Lot 7503, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Mindy Chin.

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
18, 2009, at 10 A.M., for decision, hearing closed

184-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for
Annie Daniel and Elliot Daniel, owners.

SUBJECT – Application June 4, 2009 – Special Permit
(\$73-622) for the enlargement of an existing single family
home. This application seeks to vary open space, lot
coverage and floor area (23-141); side yards (23-461) and
rear yard (23-47) in an R3-2 zoning district.

PREMISES AFFECTED – 4072 Bedford Avenue, west side
of Bedford Avenue, between Avenue S and Avenue T,
Block 7303, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to August
11, 2009, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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August 6, 2009

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232-09-A

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233-09-BZY

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Extension of Time (11-332) to complete construction under the prior zoning district.

234-09-BZ

25-71 44th Street, situated on the east side of 44th Street approximately 290 feet north of
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to allow a residential building, contrary to use regulations.

235-09-BZ

162-25 112th Road, Guy Brewer Boulevard and 112th Road., Block 12183, Lot(s) 35 (tent),
Borough of **Queens, Community Board: 12**. Variance to allow proposed community
facility use, contrary to bulk regulations.

**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings,
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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 18, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 18, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

461-37-BZ

APPLICANT – New York City Board of Standards and Appeals.

Peter Hirshman.

SUBJECT – Application for dismissal for lack of prosecution – Extension of Term/Waiver-To re-establish the existing parking lot for a term of ten (10) years.

PREMISES AFFECTED – 22 B East 39 Street, East 39 Street south side, 98’ east of Madison Avenue, Block 868, Lot 53, Borough of Manhattan.

COMMUNITY BOARD #6M

12-94-BZ

APPLICANT – New York City Board of Standards and Appeals

S. Kilgor for Mario KoKKonis

SUBJECT – Application for dismissal for lack of prosecution – Extension of Term/Waiver (32-31 & 73-36) to reopen and extend the term for a Physical Cultural Establishment.

PREMISES AFFECTED – 245-13 Jamaica Avenue, north side of Jamaica Avenue and 245th Street, Block 8659, Lot 1, Borough of Queens.

COMMUNITY BOARD # 13Q

5-96-BZ

APPLICANT – New York City Board of Standards and Appeals.

Sheldon Lobel, P.C.

SUBJECT – Application for dismissal for lack of prosecution – Extension of Time/Waiver of Term & Time (11-411) reopen, waive and extend the time of 10 years.

PREMISES AFFECTED – 564/92 St. John's Place, South side of Saint John's Place approximately 334’ west of Classon Avenue, Block 1178, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #8BK

384-03-BZ

APPLICANT – New York City Board of Standards and Appeals.

Anthony Somefun.

SUBJECT – Application for dismissal for lack of prosecution – To be withdrawn and filed as a special permit for parking for parking reduction pursuant to (§73-44) for the second and third floors of a commercial space.

PREMISES AFFECTED – 804-816 East 138th Street, south side of East 138th Street, 155.82’ east of corner formed by East 138th Street and Willow Avenue, Block 2589, Lot 16, Borough of Bronx.

COMMUNITY BOARD #1BX

262-07-BZ

APPLICANT – New York City Board of Standards and Appeals.

Peter Hirshman

SUBJECT – Application for dismissal for lack of prosecution – Special Permit (§11-411) for the reinstatement of previously approved variance for parking, contrary to use regulations

PREMISES AFFECTED – 23 East 38th Street, south east corner of East 38th Street and Madison Avenue, Block 869, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEALS CALENDAR

318-08-A

APPLICANT – Joseph A. Sherry, for Ralph Richardson, owner.

SUBJECT – Application December 31, 2008 – Proposed enlargement of a commercial use located within the bed of a mapped street contrary to General City Law Section 35. C8-1 zoning district.

PREMISES AFFECTED – 1009 Beach 21st Street, north west corner of Cornaga Avenue, Block 15705, Lot 1, Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

AUGUST 18, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 18, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

220-08-BZ

APPLICANT – Moshe M. Friedman, for Samuel Jacobowitz, owner.

SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the renovation and enlargement of a non-conforming one-family dwelling. The proposal is contrary to ZR Section 42-10. M1-1 district.

PREMISES AFFECTED – 95 Taaffe Place, east side, 123'-3.5" south of intersection of Taaffe Place and Park Avenue, Block 1897, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #3BK

249-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Gee Jay Real Estate Development Company, owner.

SUBJECT – Application October 6, 2008 – Variance (§72-21) for the construction of a single family dwelling which seeks to vary the required floor area and open space (23-141); does not provide the required front yard (23-45), rear yard (23-47), side yard (23-46) and the required off street parking (25-622) in an R2 (LDGM) zoning district.

PREMISES AFFECTED – 130 Adelaide Avenue, west side of Adelaide Avenue, 497' south of intersection with Guyon Avenue, Block 4705, Lot 151, Borough of Staten Island.

COMMUNITY BOARD #3SI

29-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chabad Israeli Center, owner.

SUBJECT – Application February 23, 2009 – Variance (§72-21) to permit the use of the existing structure for a synagogue on the first floor and the enlargement of the existing detached garage for an accessory mikvah. The variance requests are for lot coverage, front yards, side yards, and parking. R3X district.

PREMISES AFFECTED – 44 Brunswick Street, northwest corner of Brunswick Street and Richmond Hill Road, Block 2397, Lot 212, Borough of Staten Island.

COMMUNITY BOARD #2SI

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JULY 28, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

200-00-BZ

APPLICANT – Eric Palatnik, P.C., for Blans Development Corporation, owner.

SUBJECT – Application June 1, 2009 – Extension of Time to obtain a Certificate of Occupancy for a Physical Culture Establishment (Squash Total Fitness), in a C1-4(R6B) zoning district, which expired on February 19, 2009.

PREMISES AFFECTED – 107-24 37th Avenue, southwest corner of 37th Avenue and 108th Street, Block 1773, Lot 10, 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, this is an application for a reopening and an extension of time to obtain a certificate of occupancy for a physical culture establishment (“PCE”), which expired on February 19, 2009; and

WHEREAS, a public hearing was held on this application on July 14, 2009, after due notice by publication in *The City Record*, and then to decision on July 28, 2009; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson and 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, on July 17, 2001, 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 to expire July 17, 2006; and

WHEREAS, on May 11, 2004, the grant was amended to permit the expansion of the PCE onto the entire second floor;

and

WHEREAS, on August 21, 2007, under the subject calendar number, the Board reopened the variance to extend the term of the variance for an additional five years, to expire on July 17, 2011; and

WHEREAS, on August 19, 2008, the Board granted an extension of time to obtain a certificate of occupancy, to expire on February 19, 2009; and

WHEREAS, by letter dated January 12, 2009, the Board clarified that the physical culture establishment approved by the Board is located on the second floor only; and

WHEREAS, the applicant states that the property owner has completed general construction at the site; and

WHEREAS, the applicant further states that the planting of street trees as per the BSA-approved plans is the only work remaining at the site; and

WHEREAS, however, the applicant represents that administrative delays at the Department of Buildings (“DOB”) prevented the owner from obtaining the new certificate of occupancy for the PCE within the prescribed time frame; and

WHEREAS, the applicant therefore requests an extension of time to obtain a new 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 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 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 January 28, 2010; *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 January 28, 2010;

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

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

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

(DOB Application No. 402567254)

Adopted by the Board of Standards and Appeals, July 28, 2009.

26-02-BZ

APPLICANT – Walter T. Gorman, P.E., for Exxon Mobil Corporation, owner; A & A Automotive Corporation, lessee.

SUBJECT – Application June 8, 2009 – Extension of Time to obtain a Certificate of Occupancy for a UG16 Gasoline Service Station (Mobil), in a C1-2(R3X) zoning district,

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which expires on July 13, 2009.

PREMISES AFFECTED – 1680 Richmond Avenue, north west corner of Victory Boulevard, Block 2160, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Cindy 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 a reopening and an extension of time to obtain a certificate of occupancy for an automobile service station (Use Group 16) with accessory uses; and

WHEREAS, a public hearing was held on this application on July 14, 2009, after due notice by publication in *The City Record*, and then to decision on July 28, 2009; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, the site is located on the northwest corner of the intersection at Richmond Avenue and Victory Boulevard, within a C1-2 (R3X) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 6, 1970 when, under BSA Cal. No. 141-69-BZ, the Board granted a variance authorizing the premises to be occupied by an automotive service station with accessory uses for a term of fifteen years; and

WHEREAS, on December 10, 2002, under the subject calendar number, the variance was reinstated to permit the legalization of the existing automotive service station for a term of ten years from the date of the grant, to expire December 10, 2012; a condition of the grant was that a new certificate of occupancy be obtained by December 10, 2006; and

WHEREAS, most recently, on January 13, 2009, the Board granted an extension of time to obtain a certificate of occupancy and amended the grant to permit the conversion of a portion of the service building to an accessory convenience store, and to permit other minor site modifications; and

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

WHEREAS, the applicant represents that delays resulting from the need to legalize the accessory convenience store at the Department of Buildings (“DOB”) prevented the owner from obtaining a new certificate of occupancy within the prescribed time frame; and

WHEREAS, based upon its review of the record, the Board finds that the requested six-month 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 December 10, 2002, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to January 28, 2010; *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 January 28, 2010;

THAT all signage shall comply with C1 zoning district regulations;

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. 500459764)

Adopted by the Board of Standards and Appeals July 28, 2009.

322-05-BZ

APPLICANT – Eric Palatnik, P.C., for Queens Jewish Community Council, owner.

SUBJECT – Application June 8, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for an enlargement of a single family home and the change in use from Residential to Community Use Facility (Queens Jewish community Council), located in an R4B zoning district, which will expire on March 7, 2010.

PREMISES AFFECTED – 69-69 Main Street, Main Street and 70th Avenue, Block 6642, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, this is a reopening and an extension of time to complete construction of an enlargement of an existing single-family home and its change in use from

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residential to community facility use, which expires on March 7, 2010; and

WHEREAS, a public hearing was held on this application on July 14, 2009, after due notice by publication in *The City Record*, and then to decision on July 28, 2009; and

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

WHEREAS, the subject site is located on the northeast corner of the intersection of Main Street and 70th Avenue; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 7, 2006 when, under the subject calendar number, the Board granted a variance to permit the enlargement of an existing two-story plus cellar single-family home and the change in use from residential to community facility; and

WHEREAS, substantial construction is to be completed by March 7, 2010, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that construction has been delayed since the date of the Board's grant, and that the owner expects to commence construction within the 2010 calendar year; 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 7, 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 expiration of the previous grant, to expire on March 7, 2014; *on condition*:

THAT substantial construction shall be completed by March 7, 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. 402213993)

Adopted by the Board of Standards and Appeals, July 28, 2009.

441-31-BZ

APPLICANT – Ian Peter Barnes, IPB Associates, for Gurdev Singh Kang, owner.

SUBJECT – Application April 24, 2009 – Extension of Term/waiver for a Gasoline Service Station with accessory

convenience store in a C2-2/R5 zoning district which expired on April 26, 2007.

PREMISES AFFECTED – 7702 Flatlands Avenue, southeast corner of Flatlands Avenue and East 77th Street, Block 8014, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Ian Peter Barnes.

ACTION OF THE BOARD – Laid over to August 18, 2009, at 10 A.M., for continued hearing.

271-81-BZ

APPLICANT – Mitchell S. Ross, Esq., for Pamela Equities Corporation, owners; New York Health and Racquet Club, lessees.

SUBJECT – Application June 4, 2009 – Extension of Term (§73-11) to reopen waive the rules and amend special permit for a term of ten years for physical culture establishment.

PREMISES AFFECTED – 110/112 West 56th Street, Block 1008, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Laid over to August 25, 2009, at 10 A.M., for continued hearing.

826-86-BZ, 827-86-BZ and 828-86-BZ

APPLICANT – Eric Palatnik, P.C. for North Shore Tower Apartments, Incorporated, owner; Continental Communications, lessee.

SUBJECT – Application April 3, 2009 – Extension of Term for a Special Permit (73-11), in an R3-2 zoning district, to permit the non-accessory radio towers and transmitting equipment on the roof of an existing thirty-three story multiple dwelling (North Shore Towers) which expired on March 28, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on March 6, 2003; waiver of the rules and an Amendment to eliminate the condition that a new Certificate of Occupancy be obtained.

PREMISES AFFECTED – 269-10, 270-10, 271-10 Grand Central Parkway, Northeast corner of 26th Street. Block 8489, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik, Mike Littman and Errol Brett. For Opposition: Barbara Leonardi and Dianne Stromfeld.

ACTION OF THE BOARD – Laid over to September 15, 2009, at 10 A.M., for continued hearing.

55-97-BZ

APPLICANT – Sheldon Lobel, P.C. for Baker Tripi Realty, owner.

SUBJECT – Application March 18, 2009 – Extension of

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term filed pursuant to §11-411 of the Zoning Resolution requesting an extension of the term of a variance previously granted by the Board of Standards and Appeals and an extension of time to obtain a certificate of occupancy allowing the continued operation of an automotive repair shop (Use Group 16) located in a C2-2/R3-2 zoning district.

The previous term expired on September 23, 2007.
PREMISES AFFECTED – 76-36 164th Street, southwest corner of the intersection formed by 164th Street and 76th Road. Block 6848, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to August 18, 2009, at 10 A.M., for continued hearing.

246-01-BZ

APPLICANT – Eric Palatnik, P.C., for Bodhi Fitness Center, Inc., owner.

SUBJECT – Application January 29, 2009 – Extension of Term for a previously granted special permit (§73-36) which permitted the operation of Physical Culture Establishment (Bodhi Fitness Center) within a M1-1/C2-2 zoning district.

The application seeks to reflect the new owner/operator of the site. The term of the previous grant expired on June 1, 2008.

PREMISES AFFECTED – 35-11 Prince Street, between 35th Avenue and Northern Boulevard, Block 4958, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 11, 2009, at 10 A.M., for adjourned hearing.

128-04-BZ

APPLICANT – Marvin B. Mitzner, Esq., for Park East Day School, Incorporated, owner.

SUBJECT – Application June 24, 2009 – Extension of Time to Complete Construction and to obtain a Certificate of Occupancy/waiver to a previously granted Variance for the enlargement of an existing school, in an R8B zoning district, which expired on December 14, 2008.

PREMISES AFFECTED – 162-168 East 68th Street, south side of East 68th Street, 100' west of Third Avenue, Block 1402, Lots 41 & 42, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Marvin Mitzner.

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

18, 2009, at 10 A.M., for decision, hearing closed.

197-05-BZ

APPLICANT – Marvin Mitzner, Esq., for B&E 813 Broadway Realty, owner.

SUBJECT – Application April 17, 2009 – Reopening for an amendment to the resolution for full commercial coverage on the ground floor and commercial FAR of 0.82. Zoning District C6-1.

PREMISES AFFECTED – 813/815 Broadway, west side of Broadway, 42' south of East 12th Street, Block 563, Lots 33 & 34, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Marvin Mitzner.

ACTION OF THE BOARD – Laid over to August 25, 2009, at 10 A.M., for continued hearing.

23-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Kehilat Sephardim of Ahavat Achim, owners.

SUBJECT – Application April 7, 2009 – Extension of Time/waiver to Complete Construction (which expired on July 2, 2008) and to obtain a Certificate of Occupancy (which expired on January 2, 2009) of a previously granted Variance (§72-21) for the expansion of an existing three story synagogue with accessory Rabbi's apartment in an R-4 zoning district.

PREMISES AFFECTED – 150-62 78th Road, southeast corner of the intersection formed by 78th Road and 153rd Street, Block 6711, Lot 84, Borough of Queens.

COMMUNITY BOARD #8Q

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 August 18, 2009, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

22-09-A

APPLICANT – Gary D. Lenhart for The Breezy Point Cooperative, Incorporated, owner; Maura Roche, lessee.

SUBJECT – Application February 10, 2009 – Reconstruction and enlargement of an existing single family home located partially in the bed of a mapped street and the upgrade of an existing non complying private disposal system contrary to General City Law Section 35 and

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contrary to Department of Buildings Policy. R4 Zoning. PREMISES AFFECTED – 663 Highland Place, East side of Highland Place partially in the bed of mapped Beach 202nd Street. Block 16350, Lot 300, Borough of Queens

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary D. 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 February 5, 2009, and acting on Department of Buildings Application No. 410199002 reads, in pertinent part:

- “A1- The existing building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35.
- A2- The 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 Article3, 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;” and
- A3- The proposed upgraded private disposal system is in the bed of the mapped street and /or service lane is contrary to Department of Buildings’ policy;” and

WHEREAS, a public hearing was held on this application on June 23, 2009, after due notice by publication in the *City Record*, with a continued hearing on July 28, 2009, and then to closure and decision on the same date; and

WHEREAS, by letter dated March 9, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated March 2, 2009, the Department of Environmental Protection (“DEP”) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated June 23, 2009, 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 February 5, 2009, acting on Department of Buildings Application No. 410199002, is modified by the power vested in the Board by Sections 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 February 10, 2009” – 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, July 28, 2009.

55-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Mary Kay Rail and William Kahaly, lessees.

SUBJECT – Application April 9, 2009 – Proposed reconstruction and enlargement of an existing single family dwelling partially in the bed of a mapped street is contrary to Article 3, Section 35 of the General City Law and the proposed upgrade of an existing no conforming private disposal system in the bed of the service road contrary to Department of Buildings policy. R4 Zoning District.

PREMISES AFFECTED – 1 Kildare Walk, southeast corner of Kildare Walk and 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, 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 3, 2009, and acting on Department

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of Buildings Application No. 410230664 reads, in pertinent part:

“A1- 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.

A2 - The proposed upgraded private disposal system is in the bed of the mapped street 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 July 28, 2009, 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, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated April 17, 2009, the Department of Environmental Protection (“DEP”) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated June 15, 2009, 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 April 3, 2009 acting on Department of Buildings Application No. 410230664, is modified by the power vested in the Board by Sections 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received April 9, 2009 ” – 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, July 28, 2009.

165-09-A

APPLICANT – Law Office of Howard Goldman, for 13 Hendricks LLC, owner.

SUBJECT – Application April 30, 2009 – Appeal seeking a determination that the owner has acquired common law vested rights for a development commenced under the prior R4 district regulations. R3 Zoning district.

PREMISES AFFECTED – 150 Hendricks Avenue, between Jersey Street and Bismark Avenue, Block 44, Lot 15, Borough of Staten Island.

COMMUNITY BOARD #1SI

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 Montanez

Negative:.....5

THE RESOLUTION –

WHEREAS, this is an appeal requesting a Board determination that the owner of the premises has obtained the right to complete a proposed three-story residential building under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on July 14, 2009 after due notice by publication in *The City Record*, and then to decision on July 28, 2009; and

WHEREAS, the site was inspected by Commissioner Montanez; and

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

WHEREAS, the applicant proposes to develop the subject site with a three-story, 11-unit residential building; and

WHEREAS, the subject premises was formerly located partially within an R4 zoning district and partially within an R5 zoning district, within the Special Hillside Preservation District; and

WHEREAS, however, on October 25, 2006 (hereinafter, the “Rezoning Date”), the City Council voted to adopt the Stapleton Rezoning, which rezoned the R4 portion of the site to R3A; and

WHEREAS, the applicant represents that the building complies with the former R4 and R5 district parameters, specifically the floor area of approximately 6,575 sq. ft., and the use as an 11-unit multiple dwelling was permitted; and

WHEREAS, because the site is now partially within an R3A district, the proposed building does not comply with the maximum permitted floor area of approximately 5,175 sq. ft. or the restriction to use as a one- or two-family detached home; 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, New Building Permit No. 500483256 was issued by DOB on July 21, 2003 (the “Permit”), permitting the

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construction of the subject building, prior to the Rezoning Date; and

WHEREAS, a DOB submission further states that the Permit was lawfully issued; and

WHEREAS, the Board notes that as of the Rezoning Date the owner had obtained a permit for the development and had completed 100 percent of its foundation, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (“DOB”) to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain 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 of the proposed building was completed, but a certificate of occupancy was not obtained within two years of the Rezoning 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 NB Permit pursuant to ZR § 11-332 before the deadline of November 26, 2008 and is therefore requesting additional time to complete construction under the common law and obtain a certificate of occupancy; 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, Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) stands for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner’s rights under the prior ordinance are deemed vested “and will not be disturbed where enforcement [of new zoning requirements] would cause ‘serious loss’ to the owner,” and “where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance;” and

WHEREAS, however, notwithstanding this general framework, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that “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 Board

notes that DOB determined that the applicant had completed 100 percent of its foundation prior to the Rezoning Date, such that the right to continue construction had vested pursuant to ZR § 11-331; and

WHEREAS, the applicant states that aside from completing the foundation, as of the Rezoning Date all work on the proposed building was complete except for interior finishes; and

WHEREAS, the applicant states that since DOB vested the Permit under ZR § 11-331, the owner has completed all of the interior finishes for the proposed building and applied for a certificate of occupancy in July 2008; and

WHEREAS, on July 10, 2008, DOB issued a Certificate of Occupancy Inspection Work Order Form (“CO Inspection Order”) listing all remaining objections to be addressed prior to the issuance of a certificate of occupancy; however, the two year time frame to obtain a certificate of occupancy expired on October 26, 2008, before the issues were addressed; and

WHEREAS, in support of the assertion that the owner has undertaken substantial construction, the applicant submitted the following evidence: photographs of the site prior to the lapse of the Permit; a construction timeline, an affidavit of the project manager; invoices; and check details; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress has been made, and that said work 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

WHEREAS, the applicant states that the owner has expended \$1,302,904, including hard and soft costs and irrevocable commitments, out of \$1,326,904 budgeted for the entire project, and that the remaining costs for the project are soft costs associated with obtaining the certificate of occupancy; and

WHEREAS, as proof of the expenditures, the applicant has submitted invoices, check details, and an affidavit from the project manager; 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, such a determination may be based in part upon a showing that certain of the expenditures

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could not be recouped if the development proceeded under the new zoning; and

WHEREAS, the applicant states that the floor area that would result if vesting is not permitted would be reduced from 6,560 sq. ft. to 5,160 sq. ft.; and

WHEREAS, the applicant states that this would lead to serious loss because, in order to comply with the rezoning, at a minimum the owner would have to eliminate the entire third floor of the completed three story building; and

WHEREAS, the applicant further states that the subject building is an 11-unit multiple dwelling and that the R3A zoning district restricts use of the building to a one- or two-family detached home; and

WHEREAS, the applicant contends that in order to comply with this restriction, the entire building would have to be demolished, resulting in a complete loss of all project costs to date, or \$1,302,904; and

WHEREAS, the applicant further contends that the inability to develop the proposed building would require the owner to re-design the development and incur significant costs associated with constructing a complying building; and

WHEREAS, the Board agrees that the need to redesign, the expense of demolition and reconstruction, and the \$1,302,904 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 Building had accrued to the owner.

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of DOB Permit No. 500483256, 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, July 28, 2009.

172-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Inc., owner; Susan & Brett Flynn, lessees.

SUBJECT – Application May 19, 2009 – Reconstruction and enlargement of an existing single family dwelling not fronting on a legally mapped street contrary to General City Law Section 36. The proposed upgrade of the existing non complying private disposal located partly in the bed of the service road is contrary to Department of Building Policy. R4 zoning district.

PREMISES AFFECTED – 10 Gotham Walk, west side of Gotham Walk, 105.46’ south of mapped Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated May 7, 2009, and acting on Department of Buildings Application No. 410233929, reads in pertinent part:

“A-1 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 Article 3, Section 36 of the General City Law.

B) The existing dwelling to be reconstructed and enlarged does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.

A-2 The proposed upgraded private disposal system is partially in the bed of the Service road contrary to Building Department Policy;” and

WHEREAS, a public hearing was held on this application on July 28, 2009, after due notice by publication in the *City Record*, then to closure and decision on the same date; and

WHEREAS, by letter dated June 4, 2009, 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 May 7, 2009, acting on Department of Buildings Application No 410233929, 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 19, 2009” – 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

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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 28, 2009.

191-09-A

APPLICANT – Michael T. Cetera, AIA, for Devorah Halberstam, owner.

SUBJECT – Application June 16, 2009 – Appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced prior to the text amendment of April 30, 2008. R2 zoning district.

PREMISES AFFECTED – 1291 Carroll Street, north side, 60’ west of the intersection of Brooklyn Avenue and Carroll Street, Block 1284, Lot 48, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES – None.

ACTION OF THE BOARD – Appeal granted.

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 an enlargement of a single-family home under the common law doctrine of vested rights; and

WHEREAS, a public hearing was held on this application on July 14, 2009 after due notice by publication in *The City Record*, and then to decision on July 28, 2009; and

WHEREAS, the site was inspected by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 9, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site has a lot area of 2,180 sq. ft. and is on the north side of Carroll Street, 60 feet west of the intersection with Brooklyn Avenue, within an R2 zoning district; and

WHEREAS, the site is occupied by a single-family home, which the applicant represents was constructed in approximately 1919; and

WHEREAS, the applicant proposes to enlarge the home at the rear for a width of 15 feet, with portions of the garage roof, second and third floors built within 30 feet of the rear lot line (the “Rear Enlargement”); the noted construction is part of a larger construction plan, which includes the

reconstruction and renovation of portions of the existing home and the construction of a rooftop dormer; and

WHEREAS, the portions of the Rear Enlargement located within the 30-ft. rear yard include: a roof terrace above the reconstructed garage, with parapets at a required minimum height of 4’-0”;

portions of the basement, first and second floors, including the north façade and an encroachment to a depth of 3’-6 ½” on the first floor between the garage and the home; and the entire second-floor den and portions of the new second-floor kitchen and a new third-floor bedroom; and

WHEREAS, the applicant represents that the construction not associated with the Rear Enlargement complies with the zoning at the time of the issuance of the permits and now; and

WHEREAS, the applicant notes that the reconstructed garage, built on the footprint of the prior garage, is a permitted obstruction in the rear yard, however it was required to be reconstructed in order to support the roof terrace and den located on the second floor; and

WHEREAS, accordingly, the applicant included the work and the expenditures associated with the reconstruction of the garage in the discussion of work completed and expenditures made towards the portions of the Rear Enlargement which would not be permitted if the applicant were not able to vest the permits; and

WHEREAS, prior to a zoning amendment, construction, such as the Rear Enlargement, was permitted within the rear yard of buildings within 100 feet of the corner; and

WHEREAS, however, on April 30, 2008 (hereinafter, the “Enactment Date”), the City Council voted to adopt an amendment to ZR §§ 23-541, 23-44, and other related yard sections which eliminated R2 zoning districts from the list of zoning districts within which properties within 100 feet of an intersection are exempt from the rear yard requirement; and

WHEREAS, because the site is now within a zoning district that requires a rear yard with a minimum depth of 30 feet, the Rear Enlargement does not comply with yard regulations; and

WHEREAS, the applicant represents that the home complies with the version of the ZR in effect at the time the permits were issued and work proceeded, and seeks no other relief; 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 DOB approved the building plans on June 28, 2007, pursuant to DOB App. No. 302327328; and

WHEREAS, the applicant states that on July 11, 2007, DOB issued Permit No. 302327328 (the “Alteration Permit”), permitting all construction on the home, including the Rear Enlargement, prior to the Enactment Date; and

WHEREAS, the Board finds that the record for the case contains sufficient evidence to make the finding that the applicant had a validly issued permit prior to the Enactment

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Date; and

WHEREAS, the applicant states that the initial work performed included demolition, excavation, and foundation work; and

WHEREAS, because more than a year elapsed between the Enactment Date and DOB's issuance of a Stop Work Order, documentation of construction progress, which the applicant, unaware of the text change, did not realize would become relevant, was lost; and

WHEREAS, the Board notes that the text change affected all low density residential zoning districts citywide, unlike a rezoning which affects an isolated neighborhood and that DOB examiners and architects practicing within a specific area may have been more alerted to; and

WHEREAS, the applicant represents that on November 5, 2007, all excavation and foundation work was completed and construction of the Rear Enlargement was commenced and, on or about December 25, 2007, the applicant represents that masonry work had been completed; and

WHEREAS, by March 21, 2008, the third floor of the Rear Enlargement was completed, plywood sub floors installed in the rear extension and rough plumbing had been commenced and by April 1, 2008, exterior walls, sub floors, and roofing had been installed on the Rear Enlargement; and

WHEREAS, the applicant represents that on the Enactment Date, the structure for the Rear Enlargement had been completed, rough plumbing work had been installed, and all that remained was the installation of exterior doors, windows, and interior finishes; and

WHEREAS, on June 13, 2008, DOB audited the building plans and issued a notice of objections for matters related to other construction at the home and unrelated to the Rear Enlargement; and

WHEREAS, the applicant states that it was not aware of the amendment to the zoning resolution and it was also not the subject of DOB's review, so DOB did not evaluate the Rear Enlargement; and

WHEREAS, in the intervening months, the applicant represents that it worked to resolve zoning issues associated with other construction on the home, which has progressed in conjunction with the Rear Enlargement; and

WHEREAS, on March 23, 2009, the Alteration Permit expired during DOB's audit and review process and a Stop Work Order was ultimately issued; and

WHEREAS, the applicant represents that as of the issuance of the Stop Work Order, 95 percent of the work on the Rear Enlargement had been completed; and

WHEREAS, on June 3, 2009, DOB issued audit review objections, which stated that the construction in the rear yard was contrary to ZR § 23-44, as of the Enactment Date; and

WHEREAS, the applicant represents that no work has been performed at the site since March 23, 2009; and

WHEREAS, the Alteration Permit lapsed by operation of law on the Enactment Date because the plans did not comply with the new ZR § 23-44 as modified by ZR § 23-541 and DOB did not visit the site on the Enactment Date to evaluate

the construction; and

WHEREAS, the Board notes that when work proceeds under a valid permit, 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, the Board cites to Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner's rights under the prior ordinance are deemed vested "and will not be disturbed where enforcement [of new zoning requirements] would cause 'serious loss' to the owner," and "where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance;" and

WHEREAS, however, notwithstanding this general framework, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that "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 Enactment Date, the owner had completed the structure for the Rear Enlargement, rough plumbing work had been installed, and all that remained was the installation of exterior doors, windows, and interior finishes; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: photographs of the site prior to the Enactment Date; affidavits from the architect and contractor; construction contracts; invoices; and cancelled checks; and

WHEREAS, the Board concludes that given the scale of the construction involving a single-family home, and based upon a comparison of the type and amount of work completed in the instant case with the type and amount of work found by New York State courts to support a positive vesting determination, a significant amount of work was performed at the site prior to the rezoning; and

WHEREAS, the Board has reviewed the representations as to the amount and type of work completed and the supporting documentation and agrees that it establishes that significant progress was made prior to the Enactment Date, and that said work 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

WHEREAS, in its written statements and testimony, the applicant represents that as of the Enactment Date,

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substantial construction had been completed and substantial expenditures were made after the issuance of the Alteration Permit; and

WHEREAS, more specifically, the applicant represents that: (1) the owner of the site will suffer serious economic harm without the right to build under the Alteration Permit, as the entire north façade would need to be re-designed and rebuilt; (2) substantial construction had occurred by the Enactment Date because: (i) all portions of the existing building not intended to be incorporated into the enlarged and altered building had been removed and (ii) excavation was complete; and (3) substantial expenditures had been made by the time of the Enactment because significant sums had been either expended or committed through irrevocable contracts; and

WHEREAS, the applicant states that prior to the Enactment Date, the owner expended \$66,900 on construction and \$20,490 on architecture, design, and project management for the Rear Enlargement; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, invoices, and cancelled checks; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid a total of \$87,390 for architecture fees, design, project management, and construction; and

WHEREAS, the Board directed the applicant to remove certain costs associated with the garage since the garage would be permitted to remain under the current zoning and its value would not be lost; and

WHEREAS, accordingly, the applicant subtracted \$8,450 in garage costs associated with masonry work, which could remain; the applicant maintained the costs for the garage footing, underpinning, and roof assembly, because they would not have been required for the basic reconstruction of the garage but were required to support the additional construction above the garage; and

WHEREAS, the total expenses, less the garage masonry, are \$78,940; and

WHEREAS, the applicant represents that the property owner has made irrevocable commitments for other services associated with the Rear Enlargement, including that for \$61,000 in custom kitchen cabinets, which would be lost if demolition were required; 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 expenses expected for such development; and

WHEREAS, again, the Board's consideration is guided by the percentages of expenditure cited by New York courts considering how much expenditure is needed to vest rights under a prior zoning regime; and

WHEREAS, as to the serious loss that the owner would incur if required to demolish the Rear Enlargement and eliminate any construction, other than the garage within the required 30-ft. rear yard, the applicant states that the

home would need to be redesigned, including the reconfiguration of the kitchen, which includes plumbing lines and would compromise the integration of the new construction and the existing home; and

WHEREAS, the Board notes that a serious loss determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning; and

WHEREAS, the applicant submitted a proposal estimating that the costs associated with redesigning and reconstructing the Rear Enlargement for a complying development would be approximately \$57,250; \$29,900 would be required if the applicant were required to demolish the Rear Enlargement and another \$27,350 would be required to rebuild the rear of the home subsequent to the demolition; and

WHEREAS, the Board notes that the \$57,250 figure would be in addition to the expenditures for the enlargement, noted above, which would be lost; and

WHEREAS, the Board agrees that the building would have to be redesigned at significant cost, and that the prior architectural and engineering costs related to the plans accepted by DOB could not be recouped; and

WHEREAS, the Board notes that its conclusion that serious loss would occur includes consideration of the costs related to the need to demolish portions of the Rear Enlargement, revise the plans, and rebuild the rear of the home at the first, second, and third floors; 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 had accrued to the owner of the premises as of the Enactment Date; and

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a rescission of the Stop Work Order and a reinstatement of DOB Permit No. 302327328, 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, July 28, 2009.

83-08-A

APPLICANT – NYC Department of Buildings, for H. Patel, P.M. – Purvi Enterprises, LLC, owner.

SUBJECT – Application April 9, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 301279319 issued on January 17, 2007 as it was issued in error due to failure to comply with ZR §62-711 requiring waterfront certification and the failure to comply with ZR §12-10(d) in the formation of the zoning lot R5 SP Sheepshead Bay District.

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PREMISES AFFECTED – 3218 Emmons Avenue, Emmons Avenue between Bringham Street, and Bragg Street, Block 8815, Lot 590, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: None.

ACTION OF THE BOARD – Laid over to December 15, 2009, at 10 A.M., for postponed hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING
TUESDAY AFTERNOON, JULY 28, 2009
1:30 P.M.

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

ZONING CALENDAR

18-09-BZ

CEQR #09-BSA-068M

APPLICANT – Stuart A. Klein, for Ascot Properties, Ltd., owner; Gold’s Gym, lessee.

SUBJECT – Application February 6, 2008 – Special Permit (§73-36) to allow the legalization of an existing physical culture establishment on the first, second and third floors in an existing twelve-story building. The proposal is contrary to ZR § 32-10. C6-5, C6-7 and Special Midtown Districts. PREMISES AFFECTED – 250 West 54th Street, between Broadway and 8th Avenue, Block 1025, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Stuart Klein.

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 February 4, 2009, acting on Department of Buildings Application No. 110405491, reads in pertinent part:

“Proposed adult physical culture establishment requires BSA special permit as per ZR 33-21, 73-36 and publication in the city record;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in a C6-5 zoning district within the Special Midtown District, the legalization of a physical culture establishment (PCE) on the first, second, and third floors of a 12-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 23, 2009 after due notice by publication in *The City Record*, and then to decision on July 28, 2009; and

WHEREAS, Community Board 5, Manhattan, has no objection to this application; and

WHEREAS, the subject site is located on the south side of West 54th Street between Broadway and Eighth

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Avenue, in a C6-5 zoning district within the Special Midtown District; and

WHEREAS, the site is occupied by a 12-story commercial building; and

WHEREAS, the PCE has a total floor area of 22,900 sq. ft., which includes 4,800 sq. ft. on the first floor, 10,500 sq. ft. on the second floor, and 7,600 sq. ft. on in the third floor; and

WHEREAS, the PCE is operated as Gold's Gym; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 5:00 a.m. to 12:00 a.m.; Saturday, from 8:00 a.m. to 10:00 p.m.; and Sunday, from 8:00 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 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 November 1, 2001, 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 November 1, 2001 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. 09BSA068M, dated February 6, 2009; 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 C6-5 zoning district within the Special Midtown District, the legalization of a physical culture establishment on the first, second, and third floors of an existing 12-story commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 28, 2009"- One (1) sheet and "Received June 15, 2009"- Four (4) sheets and *on further condition:*

THAT the term of this grant shall expire on November 1, 2011;

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

THAT 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, July 28, 2009.

30-09-BZ CEQR #09-BSA-097Q

APPLICANT – Sheldon Lobel, P.C., for 136-33 37th Avenue Realty, LLC, owner.

SUBJECT – Application February 23, 2009 – Special

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Permit pursuant to §73-44 to reduce the amount of required parking spaces for commercial and medical offices uses from 153 to 97 spaces. C4-3 zoning district.

PREMISES AFFECTED – 136-33 37th Avenue, north side of 37th Avenue, between Main Street and Union Street, Block 4977, Lot 95, 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, the decision of the Queens Borough Superintendent, dated July 24, 2009, acting on Department of Buildings Application No. 410044287, reads in pertinent part:

“Proposed new building with commercial retail, offices and community facilities (Use Groups 6 and 4) provides 102 valet parking spaces which is less than the requirement of ZR 36-21;” and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03, to permit, within a C4-3 zoning district, a reduction in the required number of accessory parking spaces for a proposed ten-story mixed-use building with retail, ambulatory diagnostic or treatment facility and commercial office uses (Use Groups 4 and 6) from 165 to 102, contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on May 19, 2009, after due notice by publication in *The City Record*, with a continued hearing on June 23, 2009, and then to decision on July 28, 2009; 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 north side of 37th Avenue, between Main Street and Union Street, and has a lot area of approximately 13,782 sq. ft.; and

WHEREAS, the site is currently occupied by an eating and drinking establishment, which will be demolished to permit construction of the proposed building; and

WHEREAS, specifically, the applicant proposes to construct a 66,144 sq. ft. (4.8 FAR), ten-story mixed-use building with retail, ambulatory diagnostic or treatment facility and commercial office uses, and with 102 accessory parking spaces located in a cellar and sub-cellar garage; and

WHEREAS, the applicant represents that the development and use of the site, other than the proposed parking, complies and conforms with all zoning district

regulations; and

WHEREAS, accordingly, the Board’s review was limited to the request for a parking reduction from 165 spaces to 102 spaces, pursuant to the special permit; and

WHEREAS, pursuant to ZR § 73-44, the Board may, in the subject C4-3 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 listed in Use Group 4 and 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 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 ambulatory diagnostic and treatment facility and office use at the site is 165; and

WHEREAS, the applicant represents that the site cannot accommodate 165 accessory parking spaces and that the contemplated development of the site does not require 165 accessory parking spaces; and

WHEREAS, the proposed ambulatory diagnostic and treatment facility and commercial office uses (Use Groups 4 and 6) will occupy 50,446 sq. ft. of the 66,144 sq. ft. of total floor area in the proposed building, and under the special permit authorized by ZR § 73-44 the number of parking spaces could be reduced to 102 for the proposed use; and

WHEREAS, the applicant proposes to provide a total of 102 attended parking spaces and 12 reservoir spaces for vehicles entering the garage; and

WHEREAS, ZR § 73-44 requires that the Board must determine that the ambulatory diagnostic or treatment facilities listed in Use Group 4 and the Use Group 6 use in the B1 parking category are contemplated in good faith; and

WHEREAS, the applicant has submitted an affidavit from the property owner stating that floors three through ten of the proposed building will contain ambulatory diagnostic or treatment facility and commercial office uses and that the owner will not change the uses on floors three through ten to any use in parking requirement category B unless additional off-street parking spaces sufficient to meet such additional requirements are provided on the site or within the permitted off-site radius; 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 maintaining the proposed use at the site; and

WHEREAS, the applicant’s original proposal provided 97 spaces, based on a parking calculation which indicated that 153 spaces were required for the subject building; and

MINUTES

WHEREAS, at hearing, the Board questioned the applicant's exclusion of elevator and stairwell floor area from the building's parking calculation; and

WHEREAS, in response, the applicant revised its parking calculation to include the elevator and stairwell floor area, thus reflecting that 165 spaces are required for the building and 102 spaces are permitted under the special permit; and

WHEREAS, at hearing, the Board raised concerns about the operational plan of the proposed parking garage; and

WHEREAS, in response, the applicant submitted a narrative of the operational plan, describing the circulation pattern for the garage; and

WHEREAS, at hearing, the Board also questioned whether the operation of the parking garage would interfere with loading activity due to the location of the garage's reservoir spaces; and

WHEREAS, in response, the applicant agreed to limit the hours of loading activity at the subject site to between the hours of 7:00 p.m. and 7:00 a.m., when parking activity is at a minimum, and submitted an off-hours cellar floor plan reflecting the location of five off-hours reservoir spaces to accommodate the few vehicles that utilize the garage during that time; 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 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. 09-BSA-097Q, dated February 27, 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") review of archaeological sensitivity models and historic maps indicates a potential for

the recovery of remains from 19th Century residential occupation and portions of the Friends Cemetery on the subject site; and

WHEREAS, accordingly, the applicant has agreed to conduct an archaeological documentary study to clarify these initial findings and to adhere to all requirements for archaeological identification, investigation and mitigation, pursuant to a Restrictive Declaration ("RD") executed on July 23, 2009 and recorded against the subject property on July 27, 2009; 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 C4-3 zoning district, a reduction in the required number of accessory parking spaces for a proposed ten-story mixed-use building with ambulatory diagnostic or treatment facility and commercial office uses (Use Groups 4 and 6) from 165 to 102, 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 June 9, 2009"-(11) sheets and *on further condition*:

THAT there shall be no change in ownership of the site or the building without prior application to and approval from the Board;

THAT a minimum of 102 parking spaces shall be provided in the accessory parking garage 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 the issuance of any grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance shall be conditioned on the issuance of either a Notice of No Objection, a Notice to Proceed, a Notice of Satisfaction, or a Final Notice of Satisfaction, as applicable, from the LPC;

THAT the issuance of a Certificate of Occupancy shall be conditioned on the issuance of a Final Notice of Satisfaction or a Notice of No Objection by the LPC;

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

MINUTES

garage and loading berths shall be as reviewed and approved by the Department of Buildings;

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, July 28, 2009.

169-08-BZ

APPLICANT – James Chin & Associates, LLC, for Jeffrey Bennett, owner.

SUBJECT – Application June 24, 2008 – Variance (§72-21) to allow the residential redevelopment of an existing five-story commercial building. Six residential floors and six (6) dwelling units are proposed; contrary to use regulations (§42-00 & §111-104 (e)). M1-5 (TMU- Area B-2) district. PREMISES AFFECTED – 46 Laight Street, north side of Laight Street, 25’ of frontage on Laight Street, Block 220, Lot 35, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Ivan Khoury and Alexander Harrow.

ACTION OF THE BOARD – Laid over to August 25, 2009, at 1:30 P.M., for continued hearing.

241-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Devonshire Enterprises, Inc., owner.

SUBJECT – Application September 25, 2008 – Variance (§72-21) to permit a one-story commercial building (Use Group 6) on a vacant lot. The proposal is contrary to ZR § 32-10. R3-1 district.

PREMISES AFFECTED – 546 Midland Avenue, a/k/a 287 Freeborn Street, southwest corner of the intersection of Freeborn Street and Midland Avenue, Block 3803, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #2SI

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 September 22, 2009, at 1:30 P.M., for decision, hearing closed.

260-08-BZ

APPLICANT – Eric Palatnik, for Moisei Tomshinsky, owner.

SUBJECT – Application October 21, 2008 – Special Permit (§73-622) for the In-Part Legalization and enlargement of a single family home. This application seeks to vary floor area (§23-141) in an R3-1 zoning district.

PREMISES AFFECTED – 148 Oxford Street, between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 25, 2009, at 1:30 P.M., for continued hearing.

9-09-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Gerry Kaplan/Marlene Realty Co., for Force Fitness LLC, lessee.

SUBJECT – Application January 22, 2009 – Special Permit (§73-36) to allow a physical culture establishment in an existing one-story building. The proposal is contrary to ZR Section 42-10. M1-1 district.

PREMISES AFFECTED – 63-03 Fresh Pond Road, east side of Fresh Pond Road, 269.8’ south of Metropolitan Avenue and Fresh Pond Road, Block 3608, Lot 14, Borough of Queens.

COMMUNITY BOARD #5Q

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 25, 2009, at 1:30 P.M., for decision, hearing closed.

23-09-BZ

APPLICANT – Eric Palatnik, P.C., for Alla Simirnov, owner.

SUBJECT – Application February 12, 2009 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a single family home. This application seeks to vary open space, lot coverage and floor area (23-141(b)) and rear yard (23-47) in an R3-1 zoning district.

PREMISES AFFECTED – 114 Amherst Street, west side of Amherst Street between Hampton Avenue and Oriental Boulevard, Block 8732, Lot 71, Borough of Brooklyn.

MINUTES

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to August 25, 2009, at 1:30 P.M., for continued hearing.

53-09-BZ

APPLICANT – Harold Weinberg, P.E., for David Salamon, owner.

SUBJECT – Application April 6, 2009 – Variance (§72-21) for the construction of a three-family home on a vacant undersized lot. This application seeks to vary floor area (§23-141); front yard (§23-45) side yard (§23-461) and parking (§25-161) in an R5 zoning district.

PREMISES AFFECTED – 540 Schenck Avenue, southwest corner of Dumont Avenue, between Schenck Avenue and Hendrix Street, Block 4075, Lot 118, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

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

For Opposition: Deborah Nance, Meville Thorne, Eliza Butler, Liz Maria Mendez and Pearl C.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 1:30 P.M., for continued hearing.

161-09-BZ

APPLICANT – Rizzo Group, for 25 Garfield Sparta, LLC, owner.

SUBJECT – Application April 23, 2009 – Variance (§72-21) for the development of two residential buildings (20 dwelling units) contrary to bulk regulations (ZR §23-533, §23-145, §23-711, §23-861). R6B District.

PREMISES AFFECTED – 580 Carroll Street (25 Garfield Place) Carroll Street/Garfield Place, between Fourth and Fifth Avenue, Block 951, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Steve Rizzo, Patrick Mahon, Gil Shulman, Robert Pauls and Stephan Rizzo.

For Opposition: Nina Jones, Liza Borge, Matthew Lawrence, Kimberly Boyle, Patricia Tessier, Daniel Abramson, Byron Woollen and Johnny Werbe.

ACTION OF THE BOARD – Laid over to September 15, 2009, at 1:30 P.M., for continued hearing.

176-09-BZ

APPLICANT – Bryan Cave LLP/Margery Purlmutter, for City of New York, owner.

SUBJECT – Application May 25, 2009 – Special Permit pursuant to §73-64 to waive height and setback regulations (ZR §33-432) for a community facility building (Fashion Institute of Technology). C6-2 District.

PREMISES AFFECTED – 220-236 West 28th Street, south

side of West 28th Street, between Seventh and Eighth Avenues, Block 777, Lots 1, 18, 37, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Margery Perlmutter, Lisa Wager, Chris Hall
For Opposition: Lori Buchbiden.

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 September 15, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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August 20, 2009

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DOCKETS

New Case Filed Up to August 11, 2009

236-09-BZ

140-148 West 28th Street, South side of West 28th Street between 6th Avenue and 7th Avenue., Block 803, Lot(s) 62,65, Borough of **Manhattan, Community Board: 5.** Variance to allow a mixed use development, contrary to use regulations. M1-6 district.

237-09-A

81 Archwood Avenue, East side of Archwood Avenue, 198.25ft. North of Amboy Road., Block 6321, Lot(s) 152, Borough of **Staten Island, Community Board: 3.** Construction within a bed of a mapped street, contrary to Section 35 of the General City Law. R3X(SRD) district.

238-09-A

85 Archwood Avenue, East side of Archwood Avenue, 120 ft. north of Amboy Road, Block 6321, Lot(s) 151, Borough of **Staten Island, Community Board: 3.** Construction within a bed of a mapped street, contrary to Section 35 of the General City Law. R3X(SRD) district.

239-09-BZ

238 Thompson Street, Block bounded by Thompson and West 3rd Streets, Laguardina Place, Washington Square South., Block 538, Lot(s) 27, Borough of **Manhattan, Community Board: 2.** Variance (72-21) to develop a five-story (plus penthouse). R7-2,R7-2/C1-5 district.

239-09-BZ

238 Thompson Street, Block bounded by Thompson and West 3rd Streets, Laguardina Place, Washington Square South., Block 538, Lot(s) 27, Borough of **Manhattan, Community Board: 2.** Variance (72-21) to develop a five-story (plus penthouse). R7-2,R7-2/C1-5 district.

240-09-BZ

454 City Island Avenue, Fronts the east side of City Island Avenue and is bound by Browne Street to the north., Block 5646, Lot(s) 3, Borough of **Bronx, Community Board: 10.** Special Permit (73-30) to allow the a non-accessory radio tower on the rooftop of an existing building. C2-2/R3-A/CD 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 25, 2009, 10:00 A.M.

APPEALS CALENDAR

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 11, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

416-87-BZ

APPLICANT – Slater & Beckerman, LLP for Trustees of Columbia University in the City of New York, owners.

SUBJECT – Application June 29, 2009 – Extension of Term of a previously granted Variance (72-21) for the continued UG16 automobile repair shop in an R7-2/C6-1 zoning district, which expired on June 27, 2009 and an Extension of Time to obtain a Certificate of Occupancy which expired on February 26, 2009.

PREMISES AFFECTED – 547-551 West 133rd Street, interior lot north side of 133rd Street, between Broadway and Amsterdam Avenue, Block 1987, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #9M

194-97-BZ

APPLICANT – Sheldon Lobel, P.C., for Auto Service Management Corporation, owner.

SUBJECT – Application April 22, 2009 – Extension of Term to permit the continued operation of an automotive repair facility (UG 16B) (164th Street Auto Service), granted pursuant to §72-21, which expired on November 29, 2007. The application also seeks an Extension of Time to obtain a certificate of occupancy which expired on December 22, 1999. The subject application is located within a R4B zoning district.

PREMISES AFFECTED – 84-12 164th Street, northwest corner of 84th Road and 164th Street, Block 9792, Lot 31,137, Borough of Queens.

COMMUNITY BOARD #8Q

159-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLC, for 2nd Street Development Corp., owner.

SUBJECT – Application April 16, 2009 – Proposed construction of a single family home located within the bed of a mapped street (Doane Avenue) contrary to General City Law Section 35. R2 zoning district.

PREMISES AFFECTED – 85 Woodland Avenue, 175' east of the intersection of Colon Avenue and Woodland Avenue, Block 5442, Lot 44, Borough of Staten Island.

COMMUNITY BOARD #3SI

178-09-A

APPLICANT – Marvin B. Mitzner, Esq., for 120 St. Marks LLC, owner;

O. Moscovich, D.V.M., P.C., lessee.

SUBJECT – Application June 1, 2009 – Appeal contesting an Order of Closure issued by the Department of Buildings that the use of the cellar at the subject premises as a Veterinarian's Office (UG6) constitutes an illegal use in a residential district pursuant to Administrative Code Section 28-212.1. R8B Zoning district.

PREMISES AFFECTED – 120 St. Marks Place (East 8th street), south side of St. Marks Place, Block 435, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #3M

CALENDAR

AUGUST 25, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 25, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

37-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Shirley Ades and Moshe Ades, owners.

SUBJECT – Application March 3, 2009 – Special Permit (§73-622) for the In-Part Legalization and enlargement of an existing single family home. This application seeks to vary floor area, open space and lot coverage (ZR §23-141(b)); side yard (ZR §23-461(a)) & (ZR §23-48); rear yard (ZR §23-47) and increases the degree of non-compliance to perimeter wall height in an R3-2 zoning district.

PREMISES AFFECTED – 3950 Bedford Avenue, Bedford Avenue between Avenue R and Avenue S, Block 6830, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #15BK

54-09-BZ

APPLICANT – Juan D. Reyes, III/Riker Danzig et al, for Lord Shivas Properties, LLC, owner; Gab & Aud, Inc., lessee.

SUBJECT – Application April 8, 2009 – Special Permit (§73-36) to allow a physical culture establishment on the cellar level of a four-story mixed-use building. The proposal is contrary to ZR §42-10. M1-5B district.

PREMISES AFFECTED – 150 Mercer Street (aka 579 Broadway) Mercer Street between Prince and Houston in SoHo, block 512, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #2M

166-09-BZ

APPLICANT – Slater & Beckerman, for Harry J. Brainum, Jr., Inc., owner.

SUBJECT – Application May 4, 2009 – Special Permit (§75-53) to permit the enlargement of a manufacturing building contrary to floor area and height and setback regulations (§43-12, §43-43). M1-1 District.

PREMISES AFFECTED – 360-366 McGuinness Boulevard and 237 Freeman Street, northeast corner of Freeman Street and McGuinness Boulevard, Block 2506, Lots 2, 4, 5, 52, Borough of Brooklyn.

COMMUNITY BOARD #1BK

Jeff Mulligan, Executive Director

MINUTES

REGULAR MEETING TUESDAY MORNING, AUGUST 11, 2009 10:00 A.M.

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

SPECIAL ORDER CALENDAR

853-53-BZ

APPLICANT – Walter T. Gorman, P.E., for Knapp LLC, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application March 4, 2009 – Extension of Term to permit the continued operation of a gasoline service station (*Mobil*) which expires on October 23, 2009. R3-2/C2-2 zoning district.

PREMISES AFFECTED – 2402/16 Knapp Street, south west corner of Avenue Z, Block 7429, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Cindy 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 a reopening and an extension of term for the continued use of a gasoline service station, which expires on October 23, 2009; and

WHEREAS, a public hearing was held on this application on July 21, 2009, after due notice by publication in *The City Record*, and then to decision on August 11, 2009; and

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

WHEREAS, the site is located on the southwest corner of Knapp Street and Avenue X, in a C2-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 22, 1954 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, the grant was extended on July 22, 2008 for a term of ten years from the expiration of the prior grant, to expire on October 23, 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, 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 June 22, 1954, so that as amended this portion of the resolution shall read: “to extend the term for ten years from October 23, 2009, to expire on October 23, 2009; *on condition* that all use and operations shall substantially conform to plans filed with this application marked “Received May 15, 2009”– (4) sheets and “Received July 27, 2009”–(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on October 23, 2019;

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

THAT a new certificate of occupancy shall be obtained by February 11, 2010;

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. 310091708)

Adopted by the Board of Standards and Appeals August 11, 2009.

336-98-BZ & 337-98-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP for 312 Flatbush Avenue LLC, owner; AGT Crunch, lessee.

SUBJECT – Application December 31, 2008 – Extension of Term of a special permit (§73-36) authorizing a physical culture establishment (*Crunch Fitness*), Amendment to include additional area in the cellar and on the first floor and a change in operator; and Extension of Time to obtain a certificate of occupancy. C2-4 zoning district.

PREMISES AFFECTED – 312/18 and 324/34 Flatbush Avenue, 157' west of the northwest corner of the intersection of Flatbush Avenue and Sterling Place, Block 1057, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

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 of a previously granted special permit for a physical culture establishment (“PCE”), which expired on November 23, 2009, an extension of time to obtain a certificate

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of occupancy, and an amendment to reflect an extension of the PCE use and a change in the operators of the PCE; and

WHEREAS, a public hearing was held on this application on March 17, 2009, after due notice by publication in *The City Record*, with a continued hearing on April 7, 2009 and July 14, 2009, and then to decision on August 11, 2009; and

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

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application; and

WHEREAS, the PCE is located on the northwest corner of the intersection of Flatbush Avenue and Sterling Place; and

WHEREAS, the site consists of two adjacent lots – Lot 19 (324/34 Flatbush Avenue) and Lot 14 (312/18 Flatbush Avenue) within a C4-2 (R7A) zoning district; and

WHEREAS, the site is located in portions of the cellar and on the first floor and second floors of a two-story commercial building; and

WHEREAS, the PCE has a total floor area of 16,135 sq. ft., with an additional 2,697 sq. ft. of space in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 23, 1999 when, under the subject calendar numbers, the Board granted special permits for each address, to expire on November 23, 2009; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years and to extend the time to obtain a new certificate of occupancy ; and

WHEREAS, the applicant seeks an amendment to reflect the legalization of the use of the cellar space and the extension of the PCE use on the first floor from 629 sq. ft. of floor area to 2,515 sq. ft. of floor area at 324/34 Flatbush Avenue; 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 Crunch Fitness; 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 to obtain a certificate of occupancy, and amendment to the previous grant 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 23, 1999, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years, to expire on November 23, 2019, and to extend the time to obtain a certificate of occupancy to February 11, 2010, *on condition* that the use and operation of the site shall substantially conform to approved plans dated “Received December 31, 2008”-(5) sheets and “Received July 28, 2009”-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on November

23, 2019;

THAT a certificate of occupancy shall be obtained by February 11, 2010;

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 DOB shall review egress for compliance with all relevant 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. 300740063)

Adopted by the Board of Standards and Appeals, August 11, 2009.

719-56-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Victory Service Station Incorporated, lessee.

SUBJECT – Application July 14, 2009 – Extension of Time to obtain a certificate of occupancy for a Gasoline Service Station (*Mobil*), which expires on November 10, 2009. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2525 Victory Boulevard, northwest corner Willowbrook Road, Block 1521, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Cindy Bachan.

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 September 15, 2009, at 10 A.M., for decision, hearing closed.

395-60-BZ

APPLICANT – Sheldon Lobel, P.C., for Ali A. Swati, owner.

SUBJECT – Application December 22, 2006 – Extension of Term (§11-411, §11-413) for change of use from a gasoline service station (UG16) to automotive repair establishment (UG16), which expired on December 9, 2005; Amendment to reduce the size of the subject lot and to request a UG6 designation for the convenience store; and an Extension of Time to obtain a certificate of occupancy which expired on January 19, 2000. R5 zoning district

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PREMISES AFFECTED – 2557-2577 Linden Boulevard, north side of Linden Boulevard between Euclid Avenue and Pine Street, Block 4461, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 10 A.M., for continued hearing.

198-66-BZ

APPLICANT – Eric Palatnik, P.C., for 300 East 74 Owners Corporation, owner.

SUBJECT – Application June 8, 2009 – Extension of Time to complete substantial construction of an existing plaza for a residential building which expires on July 28, 2009. C1-9 zoning district.

PREMISES AFFECTED – 300 East 74th Street, between first and Second Avenues, Block 1448, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #8M

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 August 25, 2009, at 10 A.M., for decision, hearing closed.

261-98-BZ

APPLICANT – Sheldon Lobel, P.C. for Steve Steigelfest, owner.

SUBJECT – Application May 29, 2009 – Extension of Term of a variance (§72-21) for a UG16A warehouse for HVAC related uses in a residential district which expired on April 20, 2009; Amendment for the addition of a mezzanine level within the existing building. R6B zoning district.

PREMISES AFFECTED – 193 20th Street, North side of 20th Street, between 4th and 5th Avenues. Block 637, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Richard Lobel and Steve Steigelfest.

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 September 15, 2009, at 10 A.M., for decision, hearing closed.

269-98-BZ

APPLICANT – Mothiur Rahman, for Mothiur Rahman, owner.

SUBJECT – Application September 15, 2008 – Extension of Time to complete construction of a variance (§72-21) for a two story building for commercial use (UG 6) in a residential district. 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to August 25, 2009, at 10 A.M., for decision, hearing closed.

203-00-BZ

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for Sunset Warehouse Condominium, owners.

SUBJECT – Application April 29, 2009 – Amendment of variance (§72-21) which allowed conversion of upper floors of building from commercial to residential. Amendment would permit the conversion of the second floor from commercial to residential use. M1-5 zoning district.

PREMISES AFFECTED – 603 Greenwich Street, aka 43 Clarkson Street, northeast intersection of Greenwich and Clarkson Streets, Block 601, Lots 1201-1212, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Jay Segal.

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 25, 2009, at 10 A.M., for decision, hearing closed.

246-01-BZ

APPLICANT – Eric Palatnik, P.C., for Bodhi Fitness Center, Inc., owner.

SUBJECT – Application January 29, 2009 – Extension of Term/Waiver for a previously granted special permit (§73-36) which expired on June 1, 2008 for the operation of Physical Culture Establishment (*Bodhi Fitness Center*). M1-1/C2-2 zoning district.

PREMISES AFFECTED – 35-11 Prince Street, between 35th Avenue and Northern Boulevard, Block 4958, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

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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 August 25, 2009, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

179-09-A

APPLICANT – Eric Palatnik, P.C., for Zaki Turkieh, owner.
SUBJECT – Application June 1, 2009 – Proposed construction of a one-story extension to an existing commercial building not fronting on a mapped street, contrary to General City Law, Section 36. M1-1 zoning district.

PREMISES AFFECTED – 252-02 Rockaway Boulevard, corner of First Street and Rockaway Boulevard, Block 1392, Lot 69, 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, the decision of the Queens Borough Commissioner, dated May 20, 2009 and acting on Department of Buildings Application No. 41011211, reads in pertinent part:

“The proposed extension in the rear of the existing building which is not fronting on a mapped street shall comply with General City Law Section #36;”
and

WHEREAS, a public hearing was held on this application on July 21, 2009, after due notice by publication in the *City Record*, and then to decision on August 11, 2009; and

WHEREAS, this application requests permission to build an extension in the rear to an existing commercial structure which does not front on an officially mapped street, contrary to General City Law Section 36; and

WHEREAS, by letter dated June 16, 2009, 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 May 20, 2009, acting on Department of Buildings Application No. 41011211, is

modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received July 27, 2009”–one (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

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

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

THAT the Department of Buildings shall review construction and the proposed plans to ensure compliance with all applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant 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 11, 2009.

45-09-A

APPLICANT – Eric Palatnik, P.C., for Kevin Yang, owner.
SUBJECT – Application March 11, 2009 – Appeal for a common law vested right to continue construction commenced under the prior R7-1/C1-2 zoning district. R7B/C1-3 zoning district.

PREMISES AFFECTED – 142-19 Cherry Avenue, northeast corner of Cherry Avenue and Bowne Street, Block 5186, Lot 51, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik and Victor Peng.

ACTION OF THE BOARD – Laid over to August 25, 2009, at 10 A.M., for continued hearing.

62-08-A

APPLICANT – Eric Palatnik, P.C. for Benny Ulloa, owner
SUBJECT – Application March 27, 2009 – Proposed construction not fronting on a legally mapped street, contrary to General City Law, Section 36. R1-2 zoning district.

PREMISES AFFECTED – 398 Nugent Street, Nugent Street, North of Saint George Road, Block 2284, Lot 25, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Carol Donovan, Kathleen Meaghan and Helen Kravetz.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 10 A.M., for continued hearing.

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167-09-A

APPLICANT – Harold Weinberg, P.E., for Yi Fu Rong, owner.

SUBJECT – Application May 5, 2009 – Appeal challenging Department of Building’s determination that the reconstruction of non-complying building must be done in accordance with §54-41 and be required to provide a 30 foot rear yard. M1-2 zoning district.

PREMISES AFFECTED – 820 39th Street, south side, 150’ east of 8th Avenue, Block 916, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Harold Weinberg, Frank Sellitto, Sinclair Yung, Janet Huang and YFI Rong.

For Administration: Amandos Derr, DOB.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 10 A.M., for continued hearing.

196-09-BZY

APPLICANT – Ping C. Moy, for 174 Clermont Avenue, LLC, owner.

SUBJECT – Application June 24, 2009 – Application to complete construction of a minor development (§11-332) commenced under the prior R6 zoning district. R6B zoning district.

PREMISES AFFECTED – 174 and 176 Clermont Avenue, west side of Clermont Avenue, Block 2074, Lots 37 and 39, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Ping C. Moy.

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 25, 2009, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, AUGUST 11, 2009
1:30 P.M.**

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

ZONING CALENDAR

139-07-BZ

APPLICANT – Agusta & Ross, for 328 Realty Holding, LLC, owner.

SUBJECT – Application May 25, 2007 – Variance (§72-21) to permit the development of a two-story and cellar, two-family residence on a vacant lot, contrary to use regulations (§42-10). M1-2 zoning district.

PREMISES AFFECTED – 328 Jackson Avenue, easterly side of Jackson Avenue, 80’ northerly of East 141st Street, Block 2573, Lot 5, Borough of Bronx.

COMMUNITY BOARD #1BX

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 Bronx Borough Commissioner, dated April 30, 2007, acting on Department of Buildings Application No. 201105909, reads in pertinent part:

“This new residential use is not permitted in an M1-2 district unless built under the conditions outlined in ZR 52-21. The applicant must provide proof of a prior existence.”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site within an M1-2 zoning district, a two-story residential building with two dwelling units, which is contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on June 9, 2009, after due notice by publication in the *City Record*, with a continued hearing on July 14, 2009, and then to decision on August 11, 2009; and

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

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

WHEREAS, the subject site is located on the east side of Jackson Avenue, 80 feet north of East 141st Street, within an M1-2 zoning district; and

WHEREAS, the site has a width of 20 feet, a depth of 80 feet, and a lot area of 1,600 sq. ft.; and

WHEREAS, the site is adjacent to residential buildings

on either side and part of a block of similar row houses occupied by residential use; and

WHEREAS, the applicant states that the site was formerly occupied by a residential building, which was demolished; the site has been vacant since then, and has never been occupied by an industrial or manufacturing use; and

WHEREAS, the applicant proposes to construct a two-story residential building, with two dwelling units, a street wall height of 21 feet, a total height of 25 feet, a total residential floor area of 1,948 sq. ft., a total residential FAR of 1.22, and a rear yard with a depth of 20 feet; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site’s small size does not allow for the creation of a viable conforming industrial building with floor plates sufficient for modern manufacturing uses; (2) the site is vacant and adjacent to residential buildings; and (3) the history of residential use at the site; and

WHEREAS, specifically, the applicant states that due to the lot’s small size, an interior loading bay can not be accommodated, which constrains the viability for commercial or industrial use; and

WHEREAS, further, the applicant states that the interior width of 18 feet for a proposed building is insufficient to accommodate a conforming use; and

WHEREAS, additionally, the applicant notes that although the as of right FAR of 2.0 for a conforming use would generate multiple floors of floor area, such a building design would be constrained due to the inefficient movement of deliveries and other materials between floors; and

WHEREAS, the applicant states that the use of even a single floor would be constrained because it would be long and narrow and unable to accommodate modern manufacturing needs; and

WHEREAS, the Board agrees that the size of the site inhibits the development of a conforming manufacturing building, because the floor plates in a conforming building would be of insufficient size and impractical layout, and therefore not suitable for a modern conforming user; and

WHEREAS, as to the adjacency to residential buildings, the Board acknowledges that this may not always be, in of itself, a basis for a claim of unnecessary hardship, but it may contribute to a hardship claim, when other factors are present; and

WHEREAS, as to the history of residential use at the site, the Board notes that the site is within a longstanding row of two-story residential row houses and was historically occupied by such use, until the residential building was demolished; and

WHEREAS, as to the uniqueness of the noted conditions, the applicant notes that all of the sites occupied by conforming uses are much larger and that there are three other vacant lots within a 400-ft. radius of the site and within the subject zoning district; and

WHEREAS, based on the prevalence of residential use on sites similar to the subject site, the applicant asserts that no recent new construction of industrial buildings has occurred on such small lots in this area; and

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WHEREAS, the Board confirmed on site and neighborhood visits that the site is one of the few similarly-sized vacant sites within the subject zoning district; and

WHEREAS, accordingly, the Board finds that the site's small size, its location on a solidly residential block, and the history of residential use at the site create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant submitted a feasibility study analyzing (1) a conforming three-story commercial building and (2) the proposed two-family two-story building; and

WHEREAS, the applicant concluded that only the proposed would result in a reasonable return; and

WHEREAS, the applicant also states that the owner's marketing attempts for conforming use were unsuccessful; and

WHEREAS, based upon the above, 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 submitted a land use map, which reflects that approximately 75 percent of the subject block within the M1-2 zoning district is occupied by pre-existing residential use, similar in scale to the proposed and to the residential building that formerly occupied the site; and

WHEREAS, the applicant also notes that the western portion of Jackson Avenue across the street from the site is within an R6 zoning district and is occupied by residential use; and

WHEREAS, the applicant concludes, and the Board agrees, that the area is best characterized as mixed-use, given both the proximity of residential units and the fact that a majority of the lots in the study area are occupied by residential use; and

WHEREAS, based upon the above, the Board finds that the introduction of two dwelling units on this street will not impact nearby conforming uses nor change the character of the neighborhood; and

WHEREAS, as to bulk, the applicant represents that the proposed building's roof line will match the height of the two adjacent residential buildings; and

WHEREAS, the Board observes that both adjacent buildings are two stories and that most of the residential buildings in the area have similar heights; and

WHEREAS, as to the rear yard, the applicant proposes to provide a rear yard with a depth of 20 feet; and

WHEREAS, the Board notes that a rear yard is not required for a residential use within the subject zoning district, but that a rear yard with a depth of 20 feet is compatible with adjacent residential uses; and

WHEREAS, therefore, the Board finds that this action will not alter the essential character of the surrounding neighborhood nor impair the use or development of adjacent

properties, nor will it be detrimental to the public welfare; and

WHEREAS, the Board notes that the case is predicated on the small size of the lot and its adjacency to buildings with active or historical residential use, and the inability to develop the site in way that would be both viable and useful to a modern conforming user; and

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

WHEREAS, as to minimum variance, in a prior iteration of the proposal, the applicant proposed a rear yard with a depth of 12 feet and a floor area of 2,268 sq. ft.; and

WHEREAS, at the Board's direction, the applicant increased the rear yard to a depth of 20 feet, which would be the requirement for a conforming development and is more compatible with the requirements for residential use; and

WHEREAS, the modifications to the building associated with the provision of a rear yard with a depth of 20 feet resulted in the reduction of the floor area to 1,948 sq. ft.; and

WHEREAS, in conclusion, because the applicant proposes a use change that will facilitate the construction of a two-story residential building comparable in bulk and height to the adjacent and other area buildings, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

WHEREAS, based upon the above, the Board has determined that the evidence in the record supports the findings required to be made under ZR § 72-21; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA054X, dated February 12, 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 Department of Environmental Protection's Office of Environmental Planning and Assessment has reviewed the following submissions from the Applicant: February 12, 2008 Environmental Assessment Statement, December 2009 Phase II Investigation Report; 2009 Remedial Action Plan (RAP) and Construction Health & Safety Plan (CHASP), and December 2008 Air Quality submission; and

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

WHEREAS, DEP finds the RAP & CHASP acceptable and request that the applicant submit a P.E.-certified Remedial

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Closure Report to DEP at the conclusion of the construction activities on the subject site; the Remedial Closure Report should contain documentation that all measures described in the RAP have been implemented and that remediation on the site has been completed; 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 M1-2 zoning district, a two-story residential development with two dwelling units, which is contrary to ZR § 42-10, on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 10, 2009"-One (1) sheet and "Received August 4, 2009"-One (1) sheet; and on further condition:

THAT the following shall be the bulk parameters of the proposed building: two stories; two dwelling units; a residential and total FAR of 1.22; a street wall height of 21 feet; a total height of 25 feet; and a rear yard with a minimum depth of 20 feet;

THAT substantial construction 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 issuance of building permits shall be conditioned on the submission of a DEP Notice to Proceed;

THAT the applicant shall submit a P.E.-certified Remedial Closure Report to DEP at the conclusion of the construction activities on the subject site;

THAT issuance of a permanent certificate of occupancy shall be conditioned on DEP's issuance of a Notice of Satisfaction;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant 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 11, 2009.

229-08-BZ

APPLICANT – Sheldon Lobel, P.C. for Edward Haddad, owner.

SUBJECT – Application September 3, 2008 – Variance (§72-21) for the construction of a new single family home, contrary to floor area (§23-141), side yards (§23-461) and

off street parking (§25-62) regulations. R2X zoning district. PREMISES AFFECTED – 866 East 8th Street, West side of East 8th Street, north of Avenue I, and adjacent to railroad, Block 6510, Lot 25, 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, the decision of the Brooklyn Borough Superintendent, dated June 16, 2009, and acting on Department of Buildings Application No. 310163729 reads, in pertinent part:

“Proposed floor area and floor area ratio exceed maximum permitted pursuant to ZR Section 23-141.

Proposed side yards are less than the minimum required pursuant to ZR Section 23-461;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R2X zoning district within the Special Ocean Parkway District, the construction of a new single-family home that exceeds the permitted floor area and floor area ratio (“FAR”), and does not provide the required side yards, contrary to ZR §§ 23-141 and 23-461; and

WHEREAS, a public hearing was held on this application on February 24, 2009, after due notice by publication in *The City Record*, with continued hearings on March 31, 2009, April 28, 2009, May 19, 2009 and July 14, 2009, and then to decision on August 11, 2009; and

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

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

WHEREAS, the site is located on the west side of East 8th Street, approximately 450 feet north of Avenue I, abutting a fenced right-of-way of the New York, Brooklyn and Manhattan Beach Railroad Company; and

WHEREAS, the site has a width of 25'-0", a depth of 120'-6", and a total lot area of approximately 3,013 sq. ft., and is located in an R2X zoning district within the Special Ocean Parkway District; and

WHEREAS, the site is currently occupied by a two-story single-family home, which is proposed to be demolished; and

WHEREAS, the applicant has submitted evidence establishing that the subject lot was owned separately and apart from all adjacent lots on October 13, 1991, the date the R2X zoning district was established, as well as on the date of the application; and

WHEREAS, the applicant proposes to construct a two-story single-family home with the following parameters: a floor area of 3,073 sq. ft. (3,073 sq. ft. is the maximum permitted); an FAR of 1.02 (1.02 FAR with an attic bonus is the maximum

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permitted); a side yard of 4'-4 1/4" along the southern lot line; and no side yard along the northern lot line (two side yards with a minimum width of 2'-0" each and a total width of 10'-0" are required); and

WHEREAS, the applicant notes that although the as-of-right floor area for the site is 3,073 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 the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying zoning regulations: (i) the site has a narrow width; (ii) the existing home is obsolete for living purposes; and (iii) the site is adjacent to a railroad; and

WHEREAS, the applicant states that the lot has a width of 25'-0"; and

WHEREAS, the applicant states that any new development on the site would be limited to 15'-0" in width; therefore, the applicant requires a side yard waiver to allow for a new home with a one-story portion that is 16'-0" in width and a two-story portion that is 20'-7 3/4" in width to provide a floor plate that results in a habitable home; and

WHEREAS, as to the uniqueness of the narrow width of lots, the applicant provided an analysis of the surrounding blocks which indicated that out of 100 lots, only six lots including the subject lot have a width of 25'-0" or less and that three of those lots are occupied by semi-detached homes which each only proved one side yard; and

WHEREAS, the applicant represents that 92 percent of lots in the surrounding area have widths of 30'-0" or larger, and that homes on these lots could enlarge or redevelop with complying side yards and still have a home with a width of 20'-0"; the requested side yard waiver would therefore provide a home with a width similar to that of other homes in the surrounding area; and

WHEREAS, the applicant states that the existing home has a floor area of 1,591 sq. ft. (0.52 FAR), which is approximately half the size of what is permitted as-of-right; and

WHEREAS, the applicant further states that the existing home has a width of only 16'-3", including exterior walls; and

WHEREAS, the applicant represents that the existing home cannot be suitably enlarged since any horizontal enlargement would have to provide complying side yards with a total width of 10'-0", thereby limiting the width of the enlargement to 15'-0", and any vertical expansion would be limited to the existing narrow width of the home; therefore, enlarging the existing home is not feasible under the underlying zoning regulations; and

WHEREAS, the applicant states that neither the existing home, nor a new building that complies with the zoning regulations, is habitable as compared to other homes in the area; and

WHEREAS, the analysis provided by the applicant indicates that 95 percent of the lots within the subject R2X district have floor areas in excess of 3,000 sq. ft. and existing homes on such lots could enlarge to approximately 3,340 sq. ft.

or larger by special permit under ZR § 73-621; and

WHEREAS, the applicant notes that the existing zoning allows for a home with a floor area of 3,073 sq. ft. (1.02 FAR with attic bonus), and represents that the floor area waiver allows the applicant to utilize the 20 percent attic floor area bonus it would be permitted as-of-right if not for the narrow width of the lot, and is necessary to develop a habitable home, and; and

WHEREAS, the applicant further notes that an enlargement of the existing home to an FAR of 1.02 would fit within the FAR parameters set forth for such enlargement pursuant to ZR § 73-621; therefore, the requested floor area waiver would allow the development of the site with a home that is comparable in size to homes allowed within the district either as-of-right or by special permit; and

WHEREAS, the applicant represents that the adjacent railroad further reduces the marketability of the existing home; and

WHEREAS, as to the uniqueness of the site's location next to the railroad, the applicant submitted a radius diagram indicating that only three other homes within the subject R2X district are similarly situated adjacent to the railroad; and

WHEREAS, the applicant represents that the floor area waiver provides for a home that is comparable to other homes in the area and offsets any disadvantage due to its location adjacent to the railroad; and

WHEREAS, the applicant concludes that the requested waivers of floor area, FAR and side yard 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 notes that the proposed bulk is compatible with nearby residential development and that the height complies with zoning regulations; and

WHEREAS, the applicant notes that the requested side yard waiver has no impact on the surrounding neighborhood because it applies only to the side yard adjacent to the railroad while the other side yard complies with the underlying zoning requirements; 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 20'-0"; and

WHEREAS, the analysis provided by the applicant indicates that at least seven homes on the subject and adjacent block exceed the as-of-right FAR of 1.02 and exceed floor areas of 4,000 sq. ft.; thus, the proposed floor area of 3,073 sq. ft. (1.02 FAR) is consistent with the size of other homes in the

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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 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, the existing obsolete home, and the site's adjacency to the railroad; and

WHEREAS, the applicant initially proposed a home with a floor area of approximately 3,934 sq. ft. (1.30 FAR), and with off-street parking located in the front yard, contrary to ZR § 25-62; and

WHEREAS, in response to concerns raised by the Board regarding the bulk of the proposed home, the applicant submitted revised plans reducing the requested floor area to 3,073 sq. ft. (1.02 FAR); and

WHEREAS, the applicant also revised its plans to eliminate the parking waiver and provide a complying parking space; 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, in an R2X zoning district within the Special Ocean Parkway District, the construction of a two-story single-family home that exceeds the permitted floor area and FAR and does not provide the required side yards, contrary to ZR §§ 23-141 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 July 23, 2009"-(11) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum floor area of 3,073 sq. ft. (1.02 FAR); and a side yard of with a minimum width of 4'-4 1/4" along the southern lot line, as per the BSA-approved plans;

THAT DOB shall review the open masonry landing and stairs in the side yard for compliance with the Zoning Resolution;

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, August 11, 2009.

234-08-BZ

CEQR #09-BSA-025K

APPLICANT – Eric Palatnik, P.C., for 1702 Avenue Z, Inc., owner.

SUBJECT – Application September 9, 2008 – Special Permit (§73-36) to allow proposed Physical Culture Establishment at the cellar and a portion of the first and second floors in a seven-story mixed-use building. C4-2 zoning district.

PREMISES AFFECTED – 1702 Avenue Z, southeast of the corner formed by Avenue Z and East 17th Street, Block 7462, Lot 1, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standard and Appeals, August 11, 2009.

266-08-BZ

APPLICANT – Lewis E. Garfinkel R.A., for Harold Willig, owner.

SUBJECT – Application October 28, 2008 – Special Permit (§73-621) for the enlargement of an existing single family home, contrary to FAR (§23-141(b)). R-4 zoning district.

PREMISES AFFECTED – 2007 New York Avenue, east side of New York Avenue between Avenue K and Avenue L, Block 7633, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Lewis E. Garfinkel.

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 October 3, 2008, acting on Department of Buildings Application No. 310199772, reads, in pertinent part:

"1. Proposed plans are contrary to ZR 23-141(b) in that the proposed Floor Area Ratio (FAR) exceeds that permitted."; and

WHEREAS, this is an application under ZR §§ 73-621

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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 ratio, contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on March 31, 2009, after due notice by publication in *The City Record*, with a continued hearing on April 28, 2009, May 19, 2009, July 21, 2009, and then to decision on August 11, 2009; and

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

WHEREAS, Community Board 18, Brooklyn, recommends approval of the application; and

WHEREAS, the subject site is located on the east side of New York Avenue, between Avenue K and Avenue L; and

WHEREAS, the subject site has a total lot area of 2,000 sq. ft., and is occupied by a single-family home with a floor area of approximately 1,401 sq. ft. (0.70 FAR); and

WHEREAS, the applicant seeks an increase in the floor area from 1,401 sq. ft. (0.70 FAR), to 1,977 sq. ft. (0.99 FAR); the maximum floor area permitted is 1,800 sq. ft. (0.90 FAR); and

WHEREAS, the applicant represents that the proposed floor area exceeds the maximum permitted floor area by ten percent; and

WHEREAS, the applicant proposes to provide 56 percent open space and a lot coverage of 43 percent (55 percent open space is the minimum required and 45 percent lot coverage is the maximum permitted); and

WHEREAS, the Board notes that 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 and lot coverage, the Board notes that the proposal reflects lot coverage and open space that are within the parameters permitted as of right in the subject zoning district; and

WHEREAS, as to floor area ratio, the Board notes that the proposed 0.99 FAR reflects 110 percent of the maximum permitted FAR of 0.90, which is the maximum permitted under the special permit; and

WHEREAS, accordingly, the Board has determined that the proposed enlargement satisfies all of the relevant requirements of ZR § 73-621; and

WHEREAS, during the hearing process, the Board directed the applicant to (1) revise the building plans so that the proposal does not exceed the building envelope permitted within the R4 zoning district and (2) to modify the building design, specifically the roof line so that it is more compatible with the streetscape; and

WHEREAS, in response, the applicant set the attic

floor back and increased the pitch of the roof; and

WHEREAS, additionally, the applicant provided axonometric drawings which reflect that the proposal, as modified, fits within the R4 building envelope; 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 R4 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received March 26, 2009"–(3) sheets and "Received July 1, 2009"–(11) sheets; and *on further condition*:

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth in the certificate of occupancy;

THAT the following shall be the bulk parameters of the building: a maximum floor area of 1,976.76 sq. ft. (0.99 FAR) and a maximum lot coverage of 43 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 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, August 11, 2009.

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42-09-BZ

APPLICANT – Francis R. Angelino, Esq., for Arrow Linen Supply Company, Inc., owner.

SUBJECT – Application March 6, 2009 – Special Permit (§11-411 & §11-412) for re-instatement of a variance (expired July 12, 1992) which allowed the extension of a legal non conforming commercial laundry use (*Arrow Linen Supply*) within a residential zoning district. The application seeks an amendment to allow for a one-story enlargement. R5B zoning district.

PREMISES AFFECTED – 441-477 Prospect Avenue, between Eight Avenue and Prospect Park West, Block 1113, Lot 73, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Francis R. Angelino and Frank Park.

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 October 28, 2008, acting on Department of Buildings Application No. 310203026, reads in pertinent part:

“Extension of the term of variance previously granted by the BSA pursuant to Cal. No. 58-51-BZ Vol. II under Section 21 of the Zoning Resolution, for existing non-conforming commercial use in R5B district permitted by BSA before which expired on July 12, 1992. It is also proposed one-story enlargement of approximately 770 sq. ft. in rear for such non-conforming use which requires BSA approval pursuant to Section 11-411 and 11-412 of the Zoning Resolution;” and

WHEREAS, this is an application pursuant to ZR §§ 11-411 and 11-412 for a reinstatement of a prior Board approval permitting the extension of a legal non-conforming commercial laundry use within a residential zoning district, and for an amendment to the approved plans to legalize a one-story enlargement of 763 sq. ft. in the rear of the lot for additional storage for the commercial laundry; and

WHEREAS, a public hearing was held on this application on April 21, 2009, after due notice by publication in the *City Record*, with a continued hearing on May 19, 2009, after which the hearing was closed and the application was set for decision on June 16, 2009; and

WHEREAS, on June 16, 2009, the hearing was reopened to allow additional submissions and testimony by the parties, with a continued hearing on July 14, 2009, and then to decision on August 11, 2009; 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 7, Brooklyn, recommends approval of this application; and

WHEREAS, certain members of the community testified in support of the application; and

WHEREAS, other members of the community provided written and oral testimony in opposition to the application (the “Opposition”); and

WHEREAS, the Opposition’s assertions include that (1) the commercial laundry use is not appropriate in a residential zoning district; (2) there are air pollution emissions from the laundry; (3) noise from the laundry exceeds city regulations; and (4) there is double parking of the laundry trucks outside the yard and problems with the entry of the trucks into the yard; and

WHEREAS, the site is located on the north side of Prospect Avenue, between Eighth Avenue and Prospect Park West, within an R5B zoning district; and

WHEREAS, the subject zoning lot has two frontages on Prospect Avenue: a 132-ft. frontage with a 171-ft. depth occupied by commercial laundry buildings and a yard (the “East Portion”); and a 150-ft. frontage with an approximately 150-ft. depth with a one-story building and an enclosed 36-ft. wide loading platform and shed (the “West Portion”); there is also a 153-ft. by 55-ft. rear portion which connects the two frontages and is occupied by a laundry building (the “Rear Portion”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 29, 1951 when, under BSA Cal. No. 58-51-BZ, the Board granted a variance to permit the erection of a 20,806 sq. ft. garage building on the West Portion in addition to the approximately 40,000 sq. ft. of existing laundry buildings on the East Portion and Rear Portion, and the extension of an existing garage to be used as part of the existing commercial laundry; and

WHEREAS, the applicant states that the approved 20,806 sq. ft. garage building on the West Portion was never constructed; and

WHEREAS, on May 28, 1963, the Board approved a one-story garage building, a one-story office building and a modified off-street loading platform on the West Portion of the site, in addition to the approximately 40,000 sq. ft. of existing laundry buildings on the East Portion and Rear Portion; and

WHEREAS, the applicant states that the approved one-story garage building on the West Portion was never constructed; and

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

WHEREAS, most recently, on September 25, 1984, the Board permitted minor modifications to the site and extended the term of the grant for ten years, to expire July 12, 1992; and

WHEREAS, although the term expired, the applicant represents that the use of the site as a commercial laundry has been continuous; and

WHEREAS, the applicant now proposes to reinstate the prior grant; and

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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, the applicant also seeks to legalize an enlargement of 763 sq. ft. for laundry storage use on the West Portion; and

WHEREAS, pursuant to ZR § 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 occupied or utilized by the use on December 15, 1961, and that no extensions shall be authorized for a new non-conforming use authorized under ZR § 11-413; and

WHEREAS, at hearing, the Board raised concerns that the resolution dated May 21, 1951, under BSA Cal. No. 58-51-BZ, permitted a building of 20,806 sq. ft., while the site currently has a floor area of approximately 45,484 sq. ft.; and

WHEREAS, in response, the applicant states that the original grant permitted a 20,806 sq. ft. garage building on the West Portion, in addition to the existing laundry buildings of approximately 40,000 sq. ft. located on the East Portion and Rear Portion of the site; and

WHEREAS, in support of this statement the applicant submitted a BSA-approved drawing dated November 12, 1950, reflecting the existing laundry buildings in the East Portion and Rear Portion of the site; and

WHEREAS, the applicant further states that the one-story garage building permitted under the original grant was never constructed; and

WHEREAS, the applicant represents that as of December 15, 1961, there was approximately 40,000 sq. ft. of floor area on the East Portion and Rear Portion of the zoning lot, and approximately 4,200 sq. ft. of floor area on the West Portion of the zoning lot, for a total of 44,200 sq. ft.; and

WHEREAS, because the proposed enlargement of 763 sq. ft. is less than 50 percent of the floor area occupied on December 15, 1961, the applicant asserts that ZR § 11-412 permits the proposed enlargement of the subject building; and

WHEREAS, during the course of the hearing the Opposition raised several issues that are discussed below; and

WHEREAS, the Opposition testified that the commercial laundry facility is not an appropriate use in a residential zoning district; and

WHEREAS, in response, the applicant states that the subject commercial laundry is a legal non-conforming use that has been in continuous occupancy at the site for nearly 100 years; and

WHEREAS, the applicant further states that the laundry facility employs 180 people and is an asset to the community and the city; and

WHEREAS, the Opposition raised concerns about air pollution emissions from the commercial laundry use; and

WHEREAS, in response, the applicant states that no violations have been issued for the site's exhaust system and

submitted a New York State Department of Environmental Conservation, Air Facility Registration Certificate, dated June 1, 2004, indicating that the commercial laundry is required to operate in accordance with all Federal and State laws and regulations applicable to air pollution control; and

WHEREAS, the applicant also submitted an Energy Star Award, dated October 26, 2005, in recognition of the site's significant pollution reduction and energy efficiency qualities; and

WHEREAS, the Opposition asserts that the noise from the laundry exceeds city regulations; and

WHEREAS, in response, the applicant states that no noise violations have been issued to the site, and submitted evidence that a sound containment wall was installed around the site's combined heat and power system, and a decibel meter was installed at the property line to monitor the system's compliance with sound regulations; and

WHEREAS, the Opposition testified that the double parking of laundry trucks outside the East Portion of the site while waiting entry to the yard, and problems with the entry of the trucks into the yard creates a significant amount of noise and is unsafe for pedestrians; and

WHEREAS, in response, the applicant submitted a memorandum distributed to all of its truck drivers, stating that: (1) no radio playing is allowed while trucks are unloading in the East Portion's yard; (2) no motor idling of any trucks is permitted outside of the site while waiting to unload into the East Portion's yard; and (3) a helper must guide a driver while a truck is backing into the East Portion's yard; and

WHEREAS, the applicant states that there will be a change in operations in an attempt to have trucks returning to the site arrive at more staggered intervals; 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 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 permitting the extension of a legal non-conforming commercial laundry use within a residential zoning district, and for an amendment to the approved plans to legalize a one-story enlargement of 763 sq. ft. in the rear of the lot for additional storage for the commercial laundry, within an R5B zoning district, *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 May 5, 2009"-(4) sheets; and *on further condition*:

THAT this grant shall be for a term of ten years, to expire on August 11, 2019;

THAT all mechanical and ventilation equipment shall comply with the Administrative Code;

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

THAT a new certificate of occupancy shall be

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obtained by February 11, 2010;

THAT an acoustical wall with a height of eight feet shall be installed along the western lot line, 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 approved plans shall 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 11, 2009.

50-09-BZ

CEQR #09-BSA-103M

APPLICANT – Eric Palatnik, P.C., for Roni Mova, owner; Warrior Fitness, lessee.

SUBJECT – Application March 26, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Warrior Fitness Boot Camp*) on the third floor in a twelve-story building. M1-6 zoning district.

PREMISES AFFECTED – 29 West 35th Street, West 35th Street and Fifth Avenue, Block 837, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated March 12, 2009, acting on Department of Buildings Application No. 110197199, reads in pertinent part:

“ZR 42-10. Proposed ‘physical culture establishment’ is not permitted as-of-right;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-6 zoning district, the legalization of a physical culture establishment (PCE) on the third floor of a 12-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on June 9, 2009, after due notice by publication in the *City Record*, with a continued hearing on July 14, 2009, and then to decision on August 11, 2009; and

WHEREAS, Community Board 5, Manhattan, has no

objection to this application; and

WHEREAS, the subject site is located on the north side of West 35th Street between Fifth Avenue and Avenue of the Americas, in an M1-6 zoning district; and

WHEREAS, the site is occupied by a 12-story commercial building; and

WHEREAS, the PCE has a total floor area of 5,785 sq. ft. on the third floor of the building; and

WHEREAS, the PCE is operated as Warrior Fitness; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 5:30 a.m. to 9:30 p.m.; Saturday, from 9:00 a.m. to 3:00 p.m.; and will be closed on Sunday; 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 12, 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 12, 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. 09BSA103M, dated June 1, 2009; 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

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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 M1-6 zoning district, the legalization of a physical culture establishment on the third floor of an existing 12-story commercial building, contrary to ZR § 42-10; on condition that all work shall substantially conform to drawings filed with this application marked "Received June 3, 2009"- Three (3) sheets and on further condition:

THAT the term of this grant shall expire on May 12, 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 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 11, 2009.

177-09-BZ

CEQR #09-BSA-113Q

APPLICANT – Raymond H. Levin, Esquire Wachtel Masyr, LLP, for FTC Residential Company III, L.P., owner.

SUBJECT – Application May 29, 2009 – Special Permit (§73-66) to allow six-story residential building, contrary to height regulations around airports (ZR §61-21). R6/C4-2 zoning district.

PREMISES AFFECTED – 40-22 College Point Boulevard, west side of College Point Boulevard, between Roosevelt Avenue and 40th Road, Block 5066, Lots 1 and 100 (tent.

9001, 9002 and 9100), Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Raymond H. Levin.

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 Queens Borough Commissioner, dated May 20, 2009, acting on Department of Buildings Application Nos. 402192702 and 402191711, read in pertinent part:

"Building is contrary to zoning resolution ZR 61-

21. Special permit is required from BSA;" and

WHEREAS, this is an application under ZR §§ 73-66 and 73-03, to permit, within a C4-2 zoning district, the increase in height for six buildings in proximity to LaGuardia Airport, contrary to ZR § 61-21; and

WHEREAS, a public hearing was held on this application on July 14, 2009, after due notice by publication in *The City Record*, and then to decision on August 11, 2009; 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 7, Queens, recommends approval of this application, with the condition that the Board follow the Port Authority's determination; and

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

WHEREAS, the subject site is bounded by College Point Boulevard, Roosevelt Avenue, 40th Road, and the Flushing River; and

WHEREAS, the site is proposed to be occupied by a six-building development called Sky View Parc (formerly known as Flushing Town Center) and has a lot area of 13.4 acres; and

WHEREAS, each of the six buildings will include a three-story commercial/parking base, with residential use on the floors above; and

WHEREAS, the site is currently under construction with the commercial/parking base nearing completion and three of the six residential towers at full height; 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

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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 proposed 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 each 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 near and to the east of LaGuardia Airport, it falls within the area regulated by the FAA; and

WHEREAS, the applicant represents that it filed applications with the FAA in 2005 for review and approval of all buildings at the site, including a seventh building that is not currently part of the proposal, and issued a series of reports approving the proposed buildings, which became effective January 20, 2006; and

WHEREAS, pursuant to the FAA's approvals, DOB issued two new building permits for the proposed development; and

WHEREAS, the applicant has commenced construction and the project will be completed in phases; and

WHEREAS, the applicant states that a significant portion of the first phase, which includes the commercial/parking base and Towers 1, 2, and 3 (FAA approved Buildings A, B, and C), is completed; the second phase, which includes Towers 6, 7, and 8 (FAA approved Buildings E, F, and G), will be constructed at a later date; and

WHEREAS, the proposed heights for the buildings range from 204.94 feet above Average Mean Sea Level (AMSL) for Tower 2 (B) to 226 feet AMSL for Towers 7 and 8 (F and G); and

WHEREAS, the maximum heights approved by the FAA range from 205 feet above AMSL for Tower 2 (B) to 229 feet for Tower 8 (G); and

WHEREAS, the Board notes that the approved heights include all appurtenances to the buildings; and

WHEREAS, accordingly, the Board notes that the proposed building heights are equal to or below those within the range 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 two no objection letters, dated August 10, 2006 and January 20, 2009, the PA approves of the project and references the FAA reports; and

WHEREAS, the applicant represents that the development and use of the site, other than the proposed height, complies and conforms with all zoning district regulations; and

WHEREAS, accordingly, the Board's 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 applicant acknowledges that the FAA reports state that there is a requirement that the FAA be notified ten days prior to the start of construction (Part I) and five days after reaching the greatest height of each building (Part II); and

WHEREAS, the applicant states that it has performed the required Part I notification for the first phase of its construction for Towers 1 through 8 (A through G), which have all commenced construction; the applicant has submitted Part II notification for Towers 1, 2, and 3 (A, B, and C) as these buildings have reached their greatest heights; and

WHEREAS, the applicant states that Part II notification for Towers 5 through 8 (D through G) is forthcoming as those buildings reach their greatest height during the second phase of construction at the site; 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. 09-BSA-113Q, dated May 14, 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

MINUTES

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 increase in height for six buildings in proximity to LaGuardia Airport, contrary to ZR § 61-21; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received June 23, 2009"-(12) sheets and *on further condition*:

THAT the maximum heights, including all appurtenances, shall be as follows: Tower 1 (A) - 208.11 feet, Tower 2 (B) - 204.94 feet, Tower 3 (C) - 210.61 feet, Tower 6 (E) - 217 feet, Tower 7 (F) - 226 feet, and Tower 8 (G) - 226 feet;

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, August 11, 2009.

195-07-BZ

APPLICANT – Greenberg Traurig by Deirdre A. Carson, for Bond Street Partners LLC (as to lot 64) c/o Convermat, owner.

SUBJECT – Application August 9, 2007 – Variance (§72-21) to allow hotel and retail uses below the floor level of the second story, contrary to use regulations (§42-14(d)(2)). M1-5B zoning district.

PREMISES AFFECTED – 8-12 Bond Street, Northwest corner of Bond and Lafayette Streets, Block 530, Lot 62 & 64, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Diedra Carson, Alan Popel and Jack Freeman.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for continued hearing.

256-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP for Hayden Rester, owner.

SUBJECT – Application November 5, 2007 – Variance (§72-21) to permit a three-story, five-unit residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 1978 Atlantic Avenue, Southern side of Atlantic Avenue, 180 feet west of the intersection of Atlantic and Ralph. Block 1339, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD # 8BK

APPEARANCES –

For Applicant: Adam Rothkrug and Todd Dale.

ACTION OF THE BOARD – Laid over to September 15, 2009, at 1:30 P.M., for continued hearing.

63-08-BZ

APPLICANT – Eric Palatnik for Royal Palace, lessee. Manton Holding, owner

SUBJECT – Application March 27, 2008 – Special Permit (§73-244) to legalize an eating and drinking establishment with entertainment and a capacity of more than 200 persons with dancing. C4-2 zoning district.

PREMISES AFFECTED – 116-33 Queens Boulevard, Between 77th and 78th Avenues, Block 2268, Lot 23, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO REOPEN HEARING –

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

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 September 15, 2009, at 1:30 P.M., for decision, hearing closed.

MINUTES

314-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 437-51 West 13th Street, LLC, owner.

SUBJECT – Application December 22, 2008 – Variance (§72-21) to allow for the construction of a 12-story commercial building (office and UG10 retail), contrary to FAR, height and setback and rear yard regulations (§43-12, §43-43, §43-26) and use regulations (§42-12). M1-5 zoning district.

PREMISES AFFECTED – 437-447 West 13th Street, 862-868 Washington Street, southeast portion, block bounded by West 13th, West 14th and Washington Streets, Tenth Avenue, Block 646, Lots 19, 20, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Gary Tarnoff, and Jamie Barr, Jack Freeman and Jeff Rusin.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 1:30 P.M., for continued hearing.

7-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sandra Zigelbaum and Yechiel Zigelbaum, owners.

SUBJECT – Application January 20, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141), side yards (§23-461) and rear yard (§23-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 1082 East 26th Street, East 26th Street, between Avenue J and Avenue K, Block 7607, Lot 85, Borough of Brooklyn.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: Michael A. Colin, Lois S. Colin and Sanford Goldhabst.

ACTION OF THE BOARD – Laid over to September 15, 2009, at 1:30 P.M., for continued hearing.

46-09-BZ

APPLICANT – Eric Palatnik, P.C., for Igor Orak, owner.

SUBJECT – Application March 23, 2009 – 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)), side yards (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 122 Oxford Street, between Shore Boulevard and Oriental Avenue, Block 8757, Lot 92, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to September 15, 2009, at 1:30 P.M., for continued hearing.

51-09-BZ

APPLICANT – Eric Palatnik, P.C., for Shiranian Nizi, owner.

SUBJECT – Application April 3, 2009 – Special Permit (§73-622) for the legalization of an enlargement to an existing single family home, contrary to side yard requirements (§461). R-5 zoning district.

PREMISES AFFECTED – 2032 East 17th Street, East 17th Street and Avenue T, Block 7321, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Joseph Bonsignore.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 1:30 P.M., for continued hearing.

168-09-BZ

APPLICANT – Lewis E. Garfinkel R.A., for Yaakov Miller, owner.

SUBJECT – Application May 7, 2009 – Special Permit (§73-622) to combine two semi-attached homes to create one single family home, contrary to floor area and open space (ZR §23-141(a)), and rear yard (ZR §23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1435 & 1437 East 26th Street, east side of East 26th Street, 292' south of Avenue N, Block 7680, Lots 34 and 35, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lewis E. Garfinkel.

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 September 15, 2009, at 1:30 P.M., for decision, hearing closed.

183-09-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 1400 5th Commercial LLC, owner; TSI West 115th Street LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application June 4, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*NY Sports Club*) on a portion of the ground floor and cellar in an eight-story mixed-use building. C4-5X zoning district.

PREMISES AFFECTED – 1400 5th Avenue, Northeast corner of 5th Avenue and West 115th Street. Block 1599, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #10M

APPEARANCES –

For Applicant: Fredrick A. Becker.

MINUTES

ACTION OF THE BOARD – Laid over to September 15, 2009, at 1:30 P.M., for continued hearing.

184-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Annie Daniel and Elliot Daniel, owners.

SUBJECT – Application June 4, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space, lot coverage and floor area (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R3-2 zoning district.

PREMISES AFFECTED – 4072 Bedford Avenue, west side of Bedford Avenue, between Avenue S and Avenue T, Block 7303, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to September 25, 2009, at 1:30 P.M., for continued hearing.

195-09-BZ

APPLICANT – Mark Levine, Esq., Herrick, Feinstein LLP, for Brooklyn Academy of Music, Incorporated, owner.

SUBJECT – Application June 24, 2009 – Variance (§72-21) for a community facility building (*Brooklyn Academy of Music*), contrary to required rear yard (§33-26). C6-1 zoning district.

PREMISES AFFECTED – 321 Ashland Place, east side of Ashland Place between Lafayette Avenue and Hanson Place, Block 2111, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Mark Levine, Jamel Gaines, Nigel Capbell, Council Member James, Doly Gicliano and other.

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 September 15, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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DIRECTORY

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CHRISTOPHER COLLINS, *Vice-Chair*

DARA OTTLEY-BROWN

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Commissioners

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241-09-BZY

87-26 175th Street, West side of 75th Street, north of corner of 89th Avenue & 175th Street., Block 9830, Lot(s) 41, Borough of **Queens, Community Board: 12.** Extension of Time (11-332) to extend the time and obtain certificate of occupancy. R4-1 district.

242-09-A

75 First Avenue, corner lot on the west side of First Avenue between East 4th Street and East 5th Street., Block 446, Lot(s) 29,32, Borough of **Manhattan, Community Board: 3.** Appeal for common law vested rights to continue development under the prior zoning. R7A/C2-5 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

SEPTEMBER 15, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 15, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

590-76-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Cinfiors Limited, owners.

SUBJECT – Application September 15, 2009 – Extension of Term of a previously granted Variance (72-01(b)) for an existing illuminated sign that exceeds the permitted height above curb level. C2-8 zoning district.

PREMISES AFFECTED – 243 East 59th Street, northwest corner of 59th Street and Second Avenue, Block 1414, Lot 120, Borough of Manhattan.

COMMUNITY BOARD #8M

1259-79-BZ

APPLICANT – Sheldon Lobel, P.C., for Arabara, LLC, owner.

SUBJECT – Application August 13, 2009 – Extension of Time to complete construction and obtain a certificate of occupancy and Waiver of the Rules of a previously granted Variance (72-21) for the conversion of all floors above the first floor from manufacturing lofts into residential dwellings which expired on October 6, 1984.

M1-6 zoning district.

PREMISES AFFECTED – 29 West 26th Street, north side of West 26th Street, 350' east of Sixth Avenue, Block 826, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #5M

297-99-BZ

APPLICANT – Walter T. Gorman, P.E., for Bell & Northern Bayside Company, LLC, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application June 1, 2009 – Extension of Term and Waiver of the Rules for the continued use of a Gasoline Service Station (Mobil) which expires on September 19, 2010. C2-2/R-6B zoning district.

PREMISES AFFECTED – 45-05 Bell Boulevard, east side blockfront between Northern Boulevard and 45th Road, Block 7333, Lot 201, Borough of Queens.

COMMUNITY BOARD #11Q

239-07-BZ

APPLICANT – New York City Board of Standards and Appeals

YHA New York Inc.

SUBJECT – Application for dismissal for lack of prosecution – Extension of Term/Waiver (32-31 & 73-36) to reopen and extend the term for a Physical Cultural Establishment.

PREMISES AFFECTED – 57-38 Waldron Street, Block 1959, Lot 27, Borough of Queens.

COMMUNITY BOARD # 4Q

APPEALS CALENDAR

38-09-A

APPLICANT – Benjamin Lam, for Lee Zhen Xiang, owner.

SUBJECT – Application March 6, 2009 – Proposed construction of a 3 family home located within the bed of mapped street contrary to General City Law, Section 35. R-5 Zoning district.

PREMISES AFFECTED – 72-45 43rd Avenue, corner of 43rd Avenue and 74th Street, Block 1353, Lot 46, Borough of Queens.

COMMUNITY BOARD #4Q

170-09-A

APPLICANT – NYC Department of Buildings

OWNER - Kenbridge Realty Corporation

SUBJECT – Application April 3, 2009 – An appeal filed by the Department of Buildings seeking to amend the Certificate of Occupancy No. 400942655 issued on May 2, 2002 to remove the reference to "Adult" Establishment "use on the second floor. M1-5/R-9 Special Mixed Use.

PREMISES AFFECTED – 24-03 Queens Plaza North, northeast corner of Queens Plaza North and 24th Street, Block 414, Lot 5, Borough of Queens.

COMMUNITY BOARD #1Q

181-09-A

APPLICANT – Fire Department of New York, for Koppelman Management, owner; Alexander and Sons Upholstery, lessees.

SUBJECT – Application June 1, 2009 – Appeal from the Fire Department seeking a Modification of Certificate of Occupancy No. 79367 to require an approved Automatic Wet Sprinkler system throughout the cellar and first floor of a commercial use. R8 Zoning District.

PREMISES AFFECTED – 410 East 64th Street, Block 1458, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #8M

Jeff Mulligan, Executive Director

CALENDAR

SEPTEMBER 15, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 15, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

186-08-BZ

APPLICANT – Petrus Fortune, P.E., for Kevin Mast, Chairman, Followers of Jesus Mennonite Church, owner.
SUBJECT – Application July 10, 2008 – Special Permit (§73-19) to allow the legalization and enlargement of a school in a former manufacturing building. The proposal is contrary to ZR Section 42-10, M1-1 district.
PREMISES AFFECTED – 3065 Atlantic Avenue, northwest corner of Atlantic Avenue and Shepherd Avenue, Block 3957, Lot 45, Borough of Brooklyn.
COMMUNITY BOARD #5BK

187-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation and Yeshiva Machzikei Hadas, Inc., owner.
SUBJECT – Application July 11, 2008 – Variance (§72-21) to permit the construction of a six-story community facility building. The proposal is contrary to ZR Section 42-00. M2-1 zoning district.
PREMISES AFFECTED – 1247 38th Street, east side of 38th Street, between 13th and 12th Avenue, Block 5295, Lot 52, Borough of Brooklyn.
COMMUNITY BOARD #12BK

198-09-BZ

APPLICANT – Eric Palatnik, P.C., for Chelsea Lofts Corp., owner; Personal Training Institute, lessee.
SUBJECT – Application June 29, 2009 – Special Permit (§73-36) to allow the operation of the proposed physical culture establishment on the first floor of an eight-story building. C6-3A zoning district.
PREMISES AFFECTED – 143 West 19th Street, between Sixth and Seventh Avenues, Block 795, Lot 14, Borough of Manhattan.
COMMUNITY BOARD #4M

226-09-BZ

APPLICANT – Mitchell S. Ross, Esq., for Fraydun Enterprises, LLC, owner; New York Health and Racquet Club, lessee.
SUBJECT – Application June 19, 2009 – Special Permit (73-36) to allow the legalization of a physical culture establishment on the cellar through second floors of a six-story mixed-use building. C6-1 zoning district.
PREMISES AFFECTED – 24 East 13th Street, south side of East 13th Street, 142'-2 & 3/4" west of University Place, Block 570, Lot 17, Borough of Manhattan.
COMMUNITY BOARD #2M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, AUGUST 18, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

709-55-BZ

APPLICANT – Walter T. Gorman, P.E., for LMT Realty Company, owner; ExxonMobil Oaks Corporation, lessee.
SUBJECT – Application May 21, 2009 – Extension of Time to obtain a certificate of occupancy for a Gasoline Service Station (*Mobil*) which expired on March 24, 2009. C1-2/R4 zoning district.

PREMISES AFFECTED – 2000 Rockaway Parkway, northwest corner of Seaview Avenue, Block 8299, Lots 68 and 63, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Cindy 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.....5
Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening and an extension of term for the continued use of a gasoline service station, which expires on February 2, 2010; and

WHEREAS, a public hearing was held on this application on July 21, 2009, after due notice by publication in *The City Record*, and then to decision on August 18, 2009; and

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application on the condition that there not be overnight parking, a lubritorium, or a tire shop at the site; and

WHEREAS, the site is located on the northwest corner of Rockaway Parkway and Seaview Avenue, in a C1-2 (R4) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 2, 1960 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 20 years; and

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

WHEREAS, most recently, the grant was extended on January 9, 2001 for a term of ten years from the expiration of the prior grant, to expire on February 2, 2010; and

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

WHEREAS, at hearing, the Board directed the applicant to revise the site plans to reflect a no parking sign on the Seaview Avenue frontage and to revise the sign analysis to include all promotional signs; and

WHEREAS, in response, the applicant revised the site plan and sign analysis to reflect the noted conditions; and

WHEREAS, the Board notes that the sign analysis reflects complying signage; 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 February 2, 1960, so that as amended this portion of the resolution shall read: “to extend the term for ten years from February 2, 2010, to expire on February 2, 2020; *on condition* that all use and operations shall substantially conform to plans filed with this application marked “Received August 3, 2009” – (6) sheets; and *on further condition*:

THAT the term of the grant shall expire on February 2, 2020;

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

THAT a new certificate of occupancy shall be obtained by February 18, 2010;

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. 320020240)

Adopted by the Board of Standards and Appeals August 18, 2009.

12-94-BZ

APPLICANT – New York City Board of Standards and Appeals

S. Kilgor for Mario KoKKonis

SUBJECT – Application for dismissal for lack of prosecution – Extension of Term and Extension of Time to obtain a Certificate of Occupancy for a special permit (§73-36) for a physical cultural establishment (*American Physique*), which expired on July 19, 2004. C2-2/R4 zoning district.

PREMISES AFFECTED – 245-13 Jamaica Avenue, north side of Jamaica Avenue and 245th Street, Block 8659, Lot 1, Borough of Queens.

COMMUNITY BOARD # 13Q

APPEARANCES – None.

ACTION OF THE BOARD – Application dismissed.
THE VOTE TO DISMISS –

MINUTES

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

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application requesting 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 physical culture establishment within a C2-2 (R4) zoning district; and

WHEREAS, on July 19, 1994, under the subject calendar number, the Board granted a special permit under ZR § 73-36, to permit a physical culture establishment in the cellar and on the first floor of an existing one-story commercial building, which expired on July 19, 2004; and

WHEREAS, on June 3, 2008, the applicant filed the subject application for an extension of the expired term and an extension of time to obtain a certificate of occupancy; and

WHEREAS, on August 11, 2008, Board staff issued a Notice of Comments; and

WHEREAS, in August 2008 the applicant contacted Board staff to discuss the Notice of Comments; and

WHEREAS, however, the Board did not receive any subsequent response from the applicant; and

WHEREAS, in December 2008, Board staff contacted the applicant to request a response to the Notice of Comments; and

WHEREAS, in March 2009, Board staff again contacted the applicant to discuss the deficiencies of the application; and

WHEREAS, the Board did not receive any additional information; and

WHEREAS, on April 22, 2009, Board staff issued a Dismissal Notice stating that if the applicant failed to fully respond to the Notice of Comments within 30 days, it would schedule a dismissal hearing; and

WHEREAS, the applicant failed to submit any additional information; and

WHEREAS, accordingly, the Board placed the subject case on the August 18, 2009 dismissal calendar; and

WHEREAS, on July 17, 2009, the Board sent the applicant a letter stating that the case had been placed on the August 18, 2009 dismissal calendar; and

WHEREAS, the applicant failed to submit any additional information; and

WHEREAS, the applicant failed to appear at the August 18, 2009 hearing; and

WHEREAS, accordingly, because of the applicant's failure to prosecute this application, it must be dismissed in its entirety.

Therefore it is Resolved that the application filed under BSA Cal. No. 12-94-BZ is hereby dismissed for lack of prosecution.

Adopted by the Board of Standards and Appeals, August 18, 2009.

384-03-BZ

APPLICANT – New York City Board of Standards and Appeals.

Anthony Somefun.

SUBJECT – Application for dismissal for lack of prosecution – To be withdrawn and filed as a special permit for parking for parking reduction pursuant to (§73-44) for the second and third floors of a commercial space.

PREMISES AFFECTED – 804-816 East 138th Street, south side of East 138th Street, 155.82' east of corner formed by East 138th Street and Willow Avenue, Block 2589, Lot 16, Borough of Bronx.

COMMUNITY BOARD #1BX

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, August 18, 2009.

128-04-BZ

APPLICANT – Marvin B. Mitzner, Esq., for Park East Day School, Incorporated, owner.

SUBJECT – Application June 24, 2009 – Extension of Time to complete construction; Extension of Time to obtain a certificate of occupancy; and Waiver of the Rules for a previously granted Variance (§72-21) for the enlargement of an existing school which expired on December 14, 2008. R8B zoning district.

PREMISES AFFECTED – 162-168 East 68th Street, south side of East 68th Street, 100' west of Third Avenue, Block 1402, Lots 41 & 42, Borough of Manhattan.

COMMUNITY BOARD #8M

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 Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and extension of time to complete construction and obtain a certificate of occupancy for the enlargement of an existing school (the Park East Day School); and

WHEREAS, a public hearing was held on this application on July 28, 2009, after due notice by publication in *The City Record*, and then to decision on August 18, 2009; and

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

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WHEREAS, the site is located on the south side of East 68th Street, between Lexington Avenue and Third Avenue, within an R8B zoning district; and

WHEREAS, the subject site comprises two tax lots (Lots 41 and 42); and

WHEREAS, on February 20, 1973, under BSA Cal. No. 658-72-BZ, the Board granted a variance to permit the construction of an eight-story building on Lot 42, which resulted in non-compliances as to lot coverage, rear yard, and sky exposure plane requirements of the then applicable C1-8 (R8) zoning district regulations; and

WHEREAS, on December 14, 2004, under the subject calendar number, the Board granted a variance to permit an enlargement of the existing school building (Use Group 3) onto Lot 41, which resulted in non-compliances as to height and setback, floor area, lot coverage, and rear yard setback; and

WHEREAS, substantial construction was to be completed by December 14, 2008, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that construction has been delayed since the date of the Board's grant, and that the owner expects to commence construction in approximately 18 months; and

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

WHEREAS, based upon its review of the record, the Board finds that the proposed extension of time to complete construction and obtain a certificate of occupancy 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 December 14, 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 from the date of this grant, to expire on August 18, 2013; *on condition*:

THAT substantial construction shall be completed by February 18, 2013;

THAT a Certificate of Occupancy shall be obtained by August 18, 2013;

THAT all conditions from the prior resolution not specifically waived by the Board shall 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. 103412807)

Adopted by the Board of Standards and Appeals, August 18, 2009.

23-06-BZ

APPLICANT – Sheldon Lobel, P.C., for Kehilat Sephardim of Ahavat Achim, owners.

SUBJECT – Application April 7, 2009 – Extension of Time to Complete Construction, which expired on July 2, 2008, Extension of Time to obtain a certificate of occupancy, which expired on January 2, 2009, and Waiver of the Rules for a previously granted Variance (§72-21) for the expansion of an existing three story synagogue with accessory Rabbi's apartment. R-4 zoning district.

PREMISES AFFECTED – 150-62 78th Road, southeast corner of the intersection formed by 78th Road and 153rd Street, Block 6711, Lot 84, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Elizabeth Safian.

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 time to complete construction of and obtain a certificate of occupancy for an enlargement to a three-story synagogue (Use Group 4), which expired on January 2, 2009; and

WHEREAS, a public hearing was held on this application on May 12, 2009, after due notice by publication in *The City Record*, with continued hearings on June 9, 2009, June 23, 2009, and July 28, 2009, and then to decision on August 18, 2009; 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 southwest corner of 78th Road and 153rd Street, in an R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 2, 2007 when, under the subject calendar number, the Board granted a variance to permit the legalization of an enlargement of an existing three-story residential building and its conversion to a Use Group 4 synagogue, which resulted in non-compliances as to front and side yards; and

WHEREAS, substantial construction was to be completed within nine months of the date of the grant (by July 2, 2008) and a new certificate of occupancy to be obtained within 15 months of the date of the grant (by January 2, 2009); and

WHEREAS, the applicant represents that DOB issued a partial vacate order and would not issue any work permits until the applicant has secured additional time to complete construction and obtain a certificate of occupancy; and

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WHEREAS, thus, the applicant requests a one-year extension of time to complete construction and an additional six months to obtain a certificate of occupancy; and

WHEREAS, the Board directed the applicant to provide a timeframe, including a description of all work to be performed and copies of agreements with contractors; and

WHEREAS, the Board also requested details about the installation of the required fire safety mechanisms and asked if a public assembly permit was required; and

WHEREAS, in response, the applicant provided (1) a letter from the project expediter who estimates that the remaining work, including filing applications, obtaining approvals and permits, and filing a public assembly application can be completed within ten to twelve months; (2) a letter from the project contractor stating that the remaining work, including shed removal, wall removal, façade repair, and plantings, will be completed within twelve months; and (3) a letter from another expediter confirming that it has been retained to resolve all outstanding violations against the building, which it expects to be completed in eight to ten months; and

WHEREAS, as to fire safety measures, the applicant submitted a Certificate of Fitness from Briscoe Protective Systems, Inc. certifying that on July 10, 2009, the electronic interconnected fire alarm and smoke detection was inspected and all devices were in operating condition; and

WHEREAS, additionally, the applicant provided a contract executed with Briscoe, which reflects services for equipment and extinguisher inspection, and repair; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of time to complete construction and 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 October 2, 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 one year from the date of this grant, to expire on August 18, 2010 and to obtain a certificate of occupancy by February 18, 2011; *on condition*:

THAT construction shall be completed by August 18, 2010;

THAT a certificate of occupancy be obtained by February 18, 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. 410221433)

Adopted by the Board of Standards and Appeals, August 18, 2009.

441-31-BZ

APPLICANT – Ian Peter Barnes, IPB Associates, for Gurdev Singh Kang, owner.

SUBJECT – Application April 24, 2009 – Extension of Term/waiver for a Gasoline Service Station with accessory convenience store in a C2-2/R5 zoning district which expired on April 26, 2007.

PREMISES AFFECTED – 7702 Flatlands Avenue, southeast corner of Flatlands Avenue and East 77th Street, Block 8014, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Ian Peter Barnes.

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 September 15, 2009, at 10 A.M., for decision, hearing closed.

32-91-BZ

APPLICANT – Walter T. Gorman, P.E., for Fulvan Realty Corporation, owner; Fulton Auto Repair Incorporated, lessee.

SUBJECT – Application May 5, 2009 – Extension of Term and waiver of a Special Permit for a (UG16) Gasoline Service Station (Coastal) in a C2-4/R7A zoning district which expired on May 19, 2007.

PREMISES AFFECTED – 838/846 Fulton Street, south east corner of Vanderbilt Avenue, Block 2010, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Cindy Bachan.

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 October 6, 2009, at 10 A.M., for decision, hearing closed.

55-97-BZ

APPLICANT – Sheldon Lobel, P.C. for Baker Tripi Realty, owner.

SUBJECT – Application March 18, 2009 – Extension of term filed pursuant to §11-411 of the Zoning Resolution requesting an extension of the term of a variance previously granted by the Board of Standards and Appeals and an extension of time to obtain a certificate of occupancy allowing the continued operation of an automotive repair shop (Use Group 16) located in a C2-2/R3-2 zoning district.

MINUTES

The previous term expired on September 23, 2007.
PREMISES AFFECTED – 76-36 164th Street, southwest corner of the intersection formed by 164th Street and 76th Road. Block 6848, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

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 September 15, 2009, at 10 A.M., for decision, hearing closed.

327-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Beth Gavriel Bukharian Congregation, owner.

SUBJECT – Application June 5, 2009 – Extension of Time to Complete Construction and Extension of Time to obtain a Certificate of Occupancy of a previously granted Variance (72-21) for the enlargement of an existing Synagogue and School (Beth Gavriel), in an R1-2 zoning district, which expired on June 7, 2009.

PREMISES AFFECTED – 66-35 108th Street, east side of 108th Street, east side of 108th Street, between 66th Road and 67th Avenue, Block 2175, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

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 September 15, 2009, at 10 A.M., for decision, hearing closed.

5-96-BZ

APPLICANT – New York City Board of Standards and Appeals.

Sheldon Lobel, P.C.

SUBJECT – Application for dismissal for lack of prosecution – Extension of Time/Waiver of Term & Time (11-411) reopen, waive and extend the time of 10 years.

PREMISES AFFECTED – 564/92 St. John's Place, South side of Saint John's Place approximately 334' west of Classon Avenue, Block 1178, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 10 A.M., for continued hearing.

APPEALS CALENDAR

318-08-A

APPLICANT – Joseph A. Sherry, for Ralph Richardson, owner.

SUBJECT – Application December 31, 2008 – Proposed enlargement of a commercial use located within the bed of a mapped street contrary to General City Law Section 35. C8-1 zoning district.

PREMISES AFFECTED – 1009 Beach 21st Street, north west corner of Cornaga Avenue, Block 15705, Lot 1, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: 11:00A.M.

REGULAR MEETING

TUESDAY AFTERNOON, AUGUST 18, 2009

1:30 P.M.

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

ZONING CALENDAR

288-08-BZ

CEQR #09-BSA-045R

APPLICANT – Jeffrey Geary, for Vincent Passarelli, owner; Roland Costanzo, lessee.

SUBJECT – Application November 21, 2008 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Costanzo's Martial Arts Studio*) on the second floor of a two-story commercial building. M1-1 zoning district.

PREMISES AFFECTED – 2955 Veterans Road West, Cross Streets, Tyrellian Avenue and West Shore Parkway, Block 7511, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Jeffrey Geary.

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

MINUTES

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated June 3, 2009, acting on Department of Buildings Application No. 510031831, reads in pertinent part:

“ZR 42-10. Obtain BSA special permit per ZR 73-36 for operation of physical culture establishment;”
and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-1 zoning district, the legalization of a physical culture establishment (PCE) on the second floor of a two-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on June 16, 2009 after due notice by publication in *The City Record*, with a continued hearing on July 21, 2009, and then to decision on August 18, 2009; and

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

WHEREAS, the subject site is located on the south side of Veterans Road West between West Shore Parkway and Tyrellan Avenue, within an M1-1 zoning district; and

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

WHEREAS, the PCE has a total floor area of 2,640 sq. ft. on the second floor of the subject building; and

WHEREAS, the PCE is operated as Costanzo’s Martial Arts; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 9:00 a.m. to 7:00 p.m.; and Saturday and Sunday, from 9:00 a.m. to 1:00 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 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 May 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. 09BSA054R, dated June 9, 2009; 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 an M1-1 zoning district, the legalization of a physical culture establishment on the second floor of an existing two-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received July 21, 2009”- Two (2) 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 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

MINUTES

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 18, 2009.

13-09-BZ

CEQR #09-BSA-060K

APPLICANT – Moshe M. Friedman, P.E., for 5621 21st Avenue LLC, for Congregation Tehilos Yitzchok, owner.
SUBJECT – Application January 26, 2009 – Variance (§72-21) to permit a synagogue contrary to front yard, side yard and lot coverage regulations (§24-34, §24-35, §24-11). R5 zoning district.

PREMISES AFFECTED – 5611 21st Avenue, 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: Moshe 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 Montanez.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 1, 2009, acting on Department of Buildings Application No. 302065011, reads in pertinent part:

“Proposed synagogue and rectory (UG 4) in an R5 district is contrary to:

ZR 24-34 Front Yard

ZR 24-35 Side Yard

ZR 24-11 Lot Coverage

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 construction of a three-story community facility building to be occupied by a synagogue (Use Group 4) and accessory Rabbi’s residence, which does not comply with front yard, side yard, and lot coverage requirements for community facilities, contrary to ZR §§ 24-34, 24-35 and 24-11; and

WHEREAS, a public hearing was held on this application on June 16, 2009, after due notice by publication in *The City Record*, with a continued hearing on July 21, 2009, and then to decision on August 18, 2009; and

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

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

WHEREAS, certain members of the community provided testimony in opposition to the proposal, raising concerns about

potential parking demand and traffic generated by the proposed building; and

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

WHEREAS, the subject premises 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 approximately 2,325 sq. ft.; and

WHEREAS, the subject site is currently vacant; and

WHEREAS, the site was part of a parcel of land that was subdivided into a residential development which was approved by the Department of Buildings (“DOB”) for 13 three-family homes on separate zoning lots; and

WHEREAS, only 12 of the 13 three-family homes were built and the subject lot remains vacant; and

WHEREAS, the proposal provides for a synagogue building with the following parameters: 4,224 sq. ft. of floor area (4,651 sq. ft. is the maximum permitted); an FAR of 1.82 (2.0 is the maximum permitted), a lot coverage of 66 percent (55 percent is the maximum permitted); a front yard of 5’-0” (a front yard of 10’-0” is required); side yards of 4’-0” each along the eastern and western lot lines, respectively, and no side yard along the southern lot line (three 8’-0” side yards are required); and

WHEREAS, the proposal provides for the following uses: (1) offices, a library, and a mikvah at the cellar level; (2) a synagogue on the first floor; (3) a synagogue balcony and Rabbi’s study on the second floor; and (3) an accessory Rabbi’s residence 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 the current congregation of approximately 35 members, and the future growth in the congregation’s membership; (2) to provide separate and private entrances to the Synagogue for men and women; and (3) to provide a residence for the Synagogue’s Rabbi; and

WHEREAS, the applicant further states that the congregation currently worships in the Rabbi’s home in the above-mentioned residential development, which is inadequate to serve the current congregation and cannot be expanded; and

WHEREAS, the applicant represents that the congregation expects its membership to grow to 86 people, based on projected increases in family sizes and new members that are anticipated to join the congregation; and

WHEREAS, the applicant states that Jewish Law requires the Synagogue to have separate, private entrances for the men and women of the congregation; and

WHEREAS, the applicant represents that the proposed building can accommodate the religious services and programs of the Synagogue and will better accommodate the size of its congregation; 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

MINUTES

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 applicant provided a submission briefing the prevailing New York State case law on religious deference; and

WHEREAS, the Board notes that under well-established precedents of the courts, a Rabbi's residence on the site of a religious institution is construed to be a religious use entitled to deference by a zoning board (see Jewish Recon. Syn. v. Vill. of Roslyn, 38 N.Y.2d 283 (1975)); and

WHEREAS, the applicant states that, in addition to its programmatic needs, the following unique physical condition creates practical difficulties and unnecessary hardship in developing the subject site in compliance with underlying district regulations: the site's irregular shape; and

WHEREAS, the applicant states that the proposed floor area, which complies with zoning district regulations, cannot be accommodated within the as-of-right yard and lot coverage parameters and allow for efficient floor plates that would accommodate the Synagogue's programmatic needs, thus necessitating the requested waivers of these provisions; and

WHEREAS, specifically, the subject site has a width of 28'-8 1/2", a depth of 98'-3 1/2" along the eastern lot line, and a depth of 64'-8" along the western lot line; and

WHEREAS, the applicant states that side yards with minimum widths of eight feet would be required along the eastern and western lot lines for a complying community facility building in the subject zoning district; and

WHEREAS, the applicant represents that due to the side yard requirements, a complying community facility building would have a width of 12'-6", which is too narrow to accommodate more than 22 congregants, and would not provide reasonable space for the Rabbi's residence on the second floor; and

WHEREAS, the applicant states that a front yard with a depth of ten feet and a side yard with a width of eight feet along the southern lot line would also be required for a complying community facility building on the subject site; and

WHEREAS, the applicant represents that due to the yard requirements, a complying community facility building would provide space for a maximum of 38 congregants, and therefore could not accommodate the future growth of the congregation; and

WHEREAS, therefore, the applicant represents that the requested waivers are necessary to enable the Synagogue to develop a building with viable floor plates; and

WHEREAS, based upon the above, the Board finds that the aforementioned physical conditions, 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 and floor area are permitted in the subject zoning district; and

WHEREAS, the applicant further states that the two side yards along the eastern and western lot lines have widths of four feet each, which is consistent with a complying residential development, as per ZR § 23-146; and

WHEREAS, the applicant further states that the subject site's eastern lot line is adjacent to open space occupied by a cemetery; and

WHEREAS, the applicant submitted a 400-foot radius diagram establishing that the bulk and height of the proposed Synagogue are consistent with the bulk and height of the homes in the surrounding neighborhood, which have heights ranging between one and four stories; and

WHEREAS, at hearing, members of the community raised concerns that the Synagogue will generate increased vehicular traffic and that no off-street parking spaces are provided in the proposal; and

WHEREAS, as to traffic and parking impacts, the applicant noted that the impacts would be minimal as the entire congregation lives within three-quarters of a mile from the subject site and would walk to services, specifically to worship services on Fridays and Saturdays when they are not permitted to drive; and

WHEREAS, the applicant further notes that the Synagogue is located in an R5 zoning district, and a waiver pursuant to ZR § 25-33 is permitted if fewer than ten spaces are required; and

WHEREAS, the applicant represents, and the Board agrees, that based on the applicable formula and the rated capacity of the largest room of assembly, four parking spaces would be required, thereby qualifying the Synagogue for a waiver under ZR § 25-33; thus, the Synagogue is not required to provide any off-street parking; 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, the applicant further states that the subject lot was created as part of a residential development for 13 three-family homes filed and approved by DOB as

MINUTES

per ZR § 23-146; and

WHEREAS, in support of this statement, the applicant submitted the New Building applications approved by DOB for all 13 homes, including one on the subject site, and a zoning lot certification documenting that the subject lot is both a tax lot and a zoning lot; and

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

WHEREAS, the Board notes that the development of the proposed Synagogue is entirely as-of-right, with the exception of the non-compliant front yard, side yards and lot coverage; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue 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 an Unlisted action pursuant to 6 NYCRR Part 617.12 (aj) 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 R5 zoning district, the construction of a three-story community facility building to be occupied by a synagogue, which does not comply with front yard, side yard, and lot coverage requirements for community facilities, contrary to ZR §§ 24-34, 24-35 and 24-11, *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 7, 2009"–(13) sheets; and *on further condition*:

THAT the building parameters shall be: a floor area of 4,224 sq. ft.; an FAR of 1.82; a front yard with a depth of 5'-0"; and two side yards with widths of 4'-0" along the eastern and western lot lines;

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;

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 18, 2009.

171-09-BZ

CEQR #09-BSA-110M

APPLICANT – James Chin & Associates, LLC, for Chong Duk Chung, owner.

SUBJECT – Application May 15, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Integree Spa & Beauty*) on a portion of the first floor in an existing 42-story mixed-use building. C5-2 zoning district.

PREMISES AFFECTED – 325 Fifth Avenue, east side of 5th Avenue, 64.3' from the corner of East 32nd and 5th Avenue, Block 862, Lot 7503, Borough of Manhattan.

COMMUNITY BOARD #5M

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 Montanez.....5
Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Manhattan Borough Superintendent, dated August 12, 2009, acting on Department of Buildings Application No. 110444163, reads in pertinent part:

“Physical culture establishment is not permitted as of right in C5-2 district and is contrary to ZR 32-31. Apply to BSA for issuance of a special permit pursuant to ZR 32-30. BSA special permit for ‘physical culture establishment’ 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 C5-2 zoning district, the legalization of a physical culture establishment (PCE) on the first floor of a 42-story mixed-use commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on July 21, 2009 after due notice by publication in *The City Record*, and then to decision on August 18, 2009; and

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

WHEREAS, the subject site is located on the east side of Fifth Avenue between East 32nd Street and East 33rd Street, in a C5-2 zoning district; and

WHEREAS, the site is occupied by a 42-story mixed-use commercial/residential building; and

MINUTES

WHEREAS, the PCE has a total floor area of 1,760 sq. ft. on the first floor; and

WHEREAS, the PCE is operated as Integree Spa & Beauty; and

WHEREAS, the proposed hours of operation are: Monday through Saturday, from 8:00 a.m. to 10:00 p.m.; and Sunday, from 9:30 a.m. to 8:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for the practice of massage; 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 November 1, 2007 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 November 1, 2007 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. 09BSA110M, dated July 8, 2009; 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 C5-2 zoning district, the legalization of a physical culture establishment on the first floor of an existing 42-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 "August 17, 2009"- One (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on November 1, 2017;

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, August 18, 2009.

220-07-BZ

APPLICANT – Moshe M. Friedman, P.E., for Relly Bodansky, owner.

SUBJECT – Application September 25, 2007 – Variance (§72-21) to allow the erection of a new 4-story residential building containing 4 dwelling units on a site containing an existing legal, nonconforming 3-story multiple dwelling which is proposed to be razed; contrary to use regulations (§42-10). M1-1 district.

PREMISES AFFECTED – 847 Kent Avenue, east side of Kent Avenue, 300' north of intersection of Kent Avenue and Myrtle Avenue, Block 1898, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Moshe Friedman.

ACTION OF THE BOARD – Laid over to

MINUTES

September 22, 2009 at 1:30 P.M., for deferred decision.

100-08-BZ & 101-08-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) for the construction of a two story with basement, single family residence on a irregularly shaped vacant lot that extends into a mapped, unbuilt street which is contrary to General City Law Section 35. This application seeks to vary front yard (§23-45) in an R3-2 zoning district.

PREMISES AFFECTED – 205 Wolverine Street, northwest of intersection of Wolverine Street and Thomas Street, Block 4421, Lot 167, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Todd Dale.

For Opposition: Carol Donovan and Harold McGough.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for continued hearing.

220-08-BZ

APPLICANT – Moshe M. Friedman, for Samuel Jacobowitz, owner.

SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the renovation and enlargement of a non-conforming one-family dwelling. The proposal is contrary to ZR Section 42-10. M1-1 district.

PREMISES AFFECTED – 95 Taaffe Place, east side, 123'-3.5" south of intersection of Taaffe Place and Park Avenue, Block 1897, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

ACTION OF THE BOARD – Laid over to October 27, 2009, at 1:30 P.M., for continued hearing.

249-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Gee Jay Real Estate Development Company, owner.

SUBJECT – Application October 6, 2008 – Variance (§72-21) for the construction of a single family dwelling which seeks to vary the required floor area and open space (§23-141); does not provide the required front yard (§23-45), rear yard (v23-47), side yard (§23-46) and the required off street parking (§25-622) in an R2 (LDGM) zoning district.

PREMISES AFFECTED – 130 Adelaide Avenue, west side of Adelaide Avenue, 497' south of intersection with Guyon Avenue, Block 4705, Lot 151, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Todd Dale.

For Opposition: Michael Scagnelli.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 1:30 P.M., for continued hearing.

29-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chabad Israeli Center, owner.

SUBJECT – Application February 23, 2009 – Variance (§72-21) to permit the use of the existing structure for a synagogue on the first floor and the enlargement of the existing detached garage for an accessory mikvah. The variance requests are for lot coverage, front yards, side yards, and parking. R3X district.

PREMISES AFFECTED – 44 Brunswick Street, northwest corner of Brunswick Street and Richmond Hill Road, Block 2397, Lot 212, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Fredrick A. Becker, Nahman Segal.

For Opposition: Anny Chan.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: 3:00 P.M.

BULLETIN

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203-00-BZ 603 Greenwich Street, Manhattan
246-01-BZ 35-11 Prince Street, Queens
271-81-BZ 110/112 West 56th Street, Manhattan
416-87-BZ 547-551 West 133rd Street, Manhattan
8-96-BZ 175-22 Horace Harding Expressway, Queens
194-97-BZ 84-12 164th Street, Queens
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196-09-BZY 174 and 176 Clemont Avenue, Brooklyn
140-08-BZY 1016 East 13th Street, Brooklyn
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9-09-BZ 63-03 Fresh Pond Road, Queens
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23-09-BZ 114 Amherst Street, Brooklyn
37-09-BZ 3950 Bedford Avenue, Brooklyn
49-09-BZ 1323 East 32nd Street, Manhattan
54-09-BZ 150 Mercer Street, Manhattan
164-09-BZ 124 Irwin Street, Brooklyn
166-09-BZ 360-366 McGuinness Boulevard, Brooklyn

DOCKETS

New Case Filed Up to August 25, 2009

243-09-BZY

87-12 175th Street, "0" Feet from corner of 175th Street and Warwick Cres., Block 9830, Lot(s) 32, Borough of **Queens, Community Board: 12.** Extension of Time (11-332) to complete construction under the prior zoning district. R4-1 district.

244-09-BZY

175 Vanderbilt Avenue, East side of Vanderbilt Avenue approximately 91' south of the intersection of Vanderbilt Avenue and Myrtle Avenue., Block 1901, Lot(s) 19,20, Borough of **Brooklyn, Community Board: 2.** Extension of Time (11-332) to complete construction under the prior district. R6B/C2-4 district.

245-09-BZY

120 Adelphi Street, West side of Adelphi Street approximately 252' north of the intersection of Adelphi Street and Myrtle Avenue., Block 2044, Lot(s) 74,75, Borough of **Brooklyn, Community Board: 2.** Extension of Time (11-332) to complete construction under the prior zoning district. R6B district.

246-09-BZ

636 Louisiana Avenue, Western side of Louisiana Avenue at its intersection with Twin Pines Drives, Block 8235, Lot(s) 140, Borough of **Brooklyn, Community Board: 18.** Variance to allow a four-story assisted living facility that exceeds the applicable floor area, contrary to use regulations. 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 22, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 5, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

115-53-BZ

APPLICANT – Eric Palatnik, P.C., for Theodoras Zorbas, owner.

SUBJECT – Application July 8, 2009 – Extension of Term and Waiver of the Rules for the continued use of a Gasoline Service Station (Mobil) which expired on July 11, 2008. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 252-02 Union Turnpike, southwest corner of Little Neck Parkway, Block 8565, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

191-53-BZ

APPLICANT – Walter T. Gorman, P.E. for ExxonMobil Corporation, owner; Mobil Service Station, lessee.

SUBJECT – Application August 17, 2009 – Extension of Time and Waiver of the Rules to obtain a certificate of occupancy for a Gasoline Service Station (Mobil) which expired on September 21, 2001. C2-2/R7-1 zoning district.

PREMISES AFFECTED – 42-02/18 Queens Boulevard, south side blockfront from 42nd Street to 43rd Street, Block 169, Lot 22, Borough of Queens.

COMMUNITY BOARD #2Q

613-74-BZ

APPLICANT – Greenberg Traurig LLP by Jay Segal, for NY-1095 Avenue of the Americas, LLC, owner; Metropolitan Life Insurance Company, lessee.

SUBJECT – Application July 24, 2009 – Amendment to a previously granted Variance (§72-21) to permit the relocation of the illuminated signage (Metlife) from the North facade to the East façade of the existing 42 story commercial building. C6-6, C5-3, C6-7, C5-2.5/Special Midtown District/Theater Subdistrict.

PREMISES AFFECTED – 1095 Avenue of the Americas, between 42nd Street and 41st Street, Block 994, Lot 1001-1011, Borough of Manhattan.

COMMUNITY BOARD #5M

272-07-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Amsterdam & 76th Associates, LLC, owner; Equinox 76th Street, Inc., lessee.

SUBJECT – Application November 28, 2007 – Amendment of a Special Permit (§73-36) to allow an enlargement of 14,814 square feet for a Physical Culture Establishment. C2-7A and C4-6A districts.

PREMISES AFFECTED – 344 Amsterdam Avenue, aka 205 W. 76th Street aka 204 W. 77th Street, west side of Amsterdam Avenue, between West 76th and West 77th Streets, Block 1168, Lots 1001, 1002, 30, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEALS CALENDAR

188-09-A

APPLICANT – John Natoli, for Michael Ortega, owner.

SUBJECT – Application June 10, 2009 – Legalization of a one story enlargement to an existing home located within the bed of a mapped street (Noel Road) contrary to General City Law Section 35. R3-2 Zoning District.

PREMISES AFFECTED – 214 Noel Road, south side of Noel Road and East side of 103rd Street, Block 15459, Lot 9, Borough of Queens.

COMMUNITY BOARD #14Q

217-09-A

APPLICANT – Marvin B. Mitzner, Esq., for 514-516 East 6th Street, owner.

SUBJECT – Application July 7, 2009 – An appeal seeking to vary the applicable provisions under the Multiple Dwelling Law as it applies to the enlargement of non-fireproof tenement buildings. R7-2 Zoning District.

PREMISES AFFECTED – 514-516 East 6th Street, south side of East 6th Street, between Avenue A and B, Block 401, Lots 17 and 18, Borough of Manhattan.

COMMUNITY BOARD #3M

CALENDAR

SEPTEMBER 22, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 22, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

214-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 3210 Riverdale Associates, LLC, owner.

SUBJECT – Application September 18, 2007 – Variance to allow a public parking garage and increase above the maximum permitted floor area in a mixed residential and community facility building, contrary to sections 22-10 and 24-162 of the zoning resolution. R6 zoning district.

PREMISES AFFECTED – 3217 Irwin Avenue, aka 3210 Riverdale Avenue, north side of West 232nd Street, Block 5759, Lots 356, 358, 362, Borough of Bronx.

COMMUNITY BOARD #8BX

28-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for 133 Equity Corp., owner.

SUBJECT – Application February 17, 2009 – Variance (§72-21) to permit a four-story residential building on a vacant lot. The proposal is contrary to ZR Section 42-10. M1-1 district.

PREMISES AFFECTED – 133 Taaffe Place, east side of Taaffe Place, 142’-2.5” north of intersection of Taaffe Place and Myrtle Avenue, Block 1897, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #3BK

214-09-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for LAL Astor Avenue Management Co., LLC, owner.

SUBJECT – Application June 29, 2009 – Special Permit pursuant to (§73-125) to allow for a 9,996 sq ft ambulatory diagnostic or treatment center which exceeds the 1,500 sq ft maximum allowable floor area set forth in ZR22-14. R4-1 zoning district.

PREMISES AFFECTED – 1464 Astor Avenue, south side of Astor Avenue, 100’ east of intersection with Fenton Avenue, Block 4389, Lot 26, 45, Borough of Bronx.

COMMUNITY BOARD #11BX

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, AUGUST 25, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

198-66-BZ

APPLICANT – Eric Palatnik, P.C., for 300 East 74 Owners Corporation, owner.

SUBJECT – Application June 8, 2009 – Extension of Time to complete substantial construction of an existing plaza for a residential building which expires on July 28, 2009. C1-9 zoning district.

PREMISES AFFECTED – 300 East 74th Street, between first and Second Avenues, Block 1448, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction of a modification to an existing plaza of a residential building, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on July 14, 2009 after due notice by publication in *The City Record*, with a continued hearing on August 11, 2009, and then to decision on August 25, 2009; and

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

WHEREAS, the subject site is located on the southeast corner of Second Avenue and East 74th Street, within a C1-9 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 3, 1966 when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a 36-story mixed-use commercial/residential building at the site; and

WHEREAS, on April 19, 2005, under the subject calendar number, the Board granted an amendment to permit modifications to the size, configuration and design of the existing plaza for the 36-story building; and

WHEREAS, on June 19, 2007 and again on October 28,

2008, the Board extended the time to complete construction of the modification of the existing plaza, and extended the time to obtain a certificate of occupancy; and

WHEREAS, a condition of the most recent grant was that work be completed by July 28, 2009, and a certificate of occupancy be obtained by January 28, 2010; and

WHEREAS, the applicant states that work has not been completed and a certificate of occupancy will not be obtained within the noted timeframe; and

WHEREAS, accordingly, the applicant now requests an extension of time to complete the remaining construction; and

WHEREAS, in support of the assertion that work is proceeding at the site, the applicant initially submitted photographs of the construction; and

WHEREAS, the Board directed the applicant to provide more details as to which construction had been completed and what remains and to include contracts entered into with those performing the construction work; and

WHEREAS, in response, the applicant provided a contract with a construction company, which details the scope of work remaining; and

WHEREAS, the list of proposed work includes: removing any temporary railings and temporary site protection; and installing stone walls, gates, guardrail, plantings, water fountain, electricity, plumbing, irrigation, gates; and

WHEREAS, the Board directed the applicant to avoid delay and to work diligently to complete construction within the timeframe set forth in this grant so that it will be in compliance with the original grant; and

WHEREAS, as to the certificate of occupancy requirement, the applicant states that due to the fact that on a continuous basis, there are open DOB applications for construction within the 36-story building on the site, the property owner is prevented from obtaining a certificate of occupancy, which is only possible when all work in the building has been completed; and

WHEREAS, accordingly, the Board directed the applicant to obtain a sign-off from DOB, which reflects that the subject work has been completed, notwithstanding the absence of a revised certificate of occupancy; 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 3, 1966, so that as amended this portion of the resolution shall read: “to grant a six-month extension of time to complete construction, to expire on February 25, 2010; *on condition:*

THAT construction shall be substantially complete by February 25, 2010;

THAT written verification from DOB as to the completion of the subject construction shall be obtained by April 25, 2010;

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

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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) and/or configuration(s) not related to the relief granted.”

(DOB Application No. 103595012)

Adopted by the Board of Standards and Appeals, August 25, 2009.

269-98-BZ

APPLICANT – Mothiur Rahman, for Mothiur Rahman, owner.

SUBJECT – Application September 15, 2008 – Extension of Time to complete construction of a variance (§72-21) for a two story building for commercial use (UG 6) in a residential district. 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 – 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 waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to complete construction and obtain a certificate of occupancy for a two-story commercial building; and

WHEREAS, a public hearing was held on this application on August 11, 2009, after due notice by publication in the *City Record*, and then to decision on August 25, 2009; 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 (UG 6) in an R8 zoning district; and

WHEREAS, on April 13, 2004, the Board reopened and amended the resolution to permit an extension of time to complete construction and obtain a certificate of occupancy, which expired on April 13, 2006; and

WHEREAS, on August 15, 2006, the Board reopened and amended the resolution to permit an extension of time to complete construction and obtain a certificate of occupancy, which expired on August 15, 2008; and

WHEREAS, the applicant represents that construction was delayed due to financing issues which have been resolved; and

WHEREAS, the applicant further states that construction is now nearly complete; and

WHEREAS, thus, the applicant requests an extension of time to complete construction and 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 *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated January 11, 2000, 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 two years from the date of this resolution, to expire on August 25, 2011; *on condition*:

THAT substantial construction shall be completed by February 25, 2011;

THAT a Certificate of Occupancy shall be obtained by August 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. 200483422)

Adopted by the Board of Standards and Appeals, August 25, 2009.

203-00-BZ

APPLICANT – Jay A. Segal, Greenberg Traurig, LLP, for Sunset Warehouse Condominium, owners.

SUBJECT – Application April 29, 2009 – Amendment of variance (§72-21) which allowed conversion of upper floors of building from commercial to residential. Amendment would permit the conversion of the second floor from commercial to residential use. M1-5 zoning district.

PREMISES AFFECTED – 603 Greenwich Street, aka 43 Clarkson Street, northeast intersection of Greenwich and Clarkson Streets, Block 601, Lots 1201-1212, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Randall Minor.

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 amendment to a previously granted variance which permitted

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the conversion of the upper three stories of a five-story mini-storage facility from manufacturing to residential use and the construction of a new residential penthouse, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on July 21, 2009, after due notice by publication in *The City Record*, with a continued hearing on August 11, 2009, and then to decision on August 25, 2009; 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, recommends approval of this application; and

WHEREAS, the subject site is located at the northeast corner of the intersection of Greenwich Street and Clarkson Street, within an M1-5 zoning district; 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 variance pursuant to ZR § 72-21, which permitted the conversion of the upper three stories of a five-story mini-storage facility from manufacturing to residential use and the construction of a new residential penthouse, contrary to ZR § 42-00; and

WHEREAS, a condition of the Board's grant was that the number of residential units in the building be limited to six; and

WHEREAS, the applicant now seeks to amend the grant to permit the further conversion of the three commercial units on the second floor to residential use, thereby increasing the total number of residential units permitted in the building from six to nine; and

WHEREAS, the applicant represents that the original variance did not seek to allow residential use at the second floor because members of the entity that developed the building, which is managed and controlled principally by the owners of the residential units in the building, planned to use the three commercial units on the second floor as office space for their small businesses; and

WHEREAS, the applicant states that in the years since the variance was granted, the owners of two of the units on the second floor ceased their business operations and have had difficulty finding long-term replacement tenants; and

WHEREAS, the applicant represents that converting the second floor to residential use is necessary to provide a reasonable return because the owners are unlikely to find commercial tenants for the second floor units for the following reasons: (1) the building is in an area that is not marketable for general office use; (2) the physical structure of the building limits the flexibility of the space for prospective tenants; (3) access issues associated with the shared elevator for the building make the second floor units undesirable for general office use; and (4) there is a lack of demand for commercial uses above the first floor in buildings with residential use; and

WHEREAS, as to the location, the applicant provided the economic analysis filed in connection with the original variance application, which states that the subject area is only suitable for non-corporate space or boutique office space users,

and is not attractive as general office space; and

WHEREAS, as to the physical structure of the building, the applicant states that the building has small floor plates and that two 16-inch concrete structural walls separate each floor into three units, which are further divided by a row of columns down the center of each unit, spaced at 7'-2" intervals, leaving the space only viable for small boutique businesses; and

WHEREAS, the Board notes that the unique building conditions, which support the findings for the original variance for the third, fourth and fifth floors, namely that those floors were not viable for a conforming use due to the building's inadequate loading area and floor plates, also apply to the second floor; and

WHEREAS, as to the access issues, the applicant states that the building only has one elevator that services both the commercial units on the second floor and the residential units above, and that this shared elevator access reduces the general market viability of the second floor commercial units because it affects customers' access to the commercial space; and

WHEREAS, the applicant further states that if the second floor units were able to be leased to businesses that have no relationship to the businesses on the first floor, then the existing internal stairs would be removed from the two units that have them, and the only access to the second floor units would be the single elevator in the building; in such circumstance, the applicant states that the residential occupants of the building would be concerned about security issues associated with the shared elevator access; and

WHEREAS, as to the lack of demand for commercial uses above the first floor in buildings with residential use, the applicant submitted a Sanborn map reflecting that of the 22 buildings in the surrounding area with a residential use above the first floor, only one other building also has a commercial use above the first floor; and

WHEREAS, the applicant states that the paucity of commercial use above the first floor in buildings with residential use is reflective of the weak demand for such space in the surrounding area; and

WHEREAS, as further evidence of the owners' inability to find commercial tenants for the second floor units, the applicant submitted a letter from one of the owners describing the unsuccessful marketing efforts that have been undertaken to lease the commercial units; and

WHEREAS, the letter states that the brokers with whom the owner consulted indicated that even if a tenant could be found, the owner could not expect to receive a monthly rental greater than \$25.00 per square foot; and

WHEREAS, the applicant notes that in 2000, when the original variance was applied for, the economic analysis assumed that an office rental of \$30.00 per square foot would be the minimum necessary to generate a reasonable return; and

WHEREAS, thus, the applicant concludes that an office rental of \$25.00 per square foot in 2009, even assuming no inflation, is not sufficient to provide a reasonable return; and

WHEREAS, the applicant submitted a financial report reflecting the commercial vacancy in the area, which indicated that the current market rate in the surrounding area is approximately \$48.00 per square foot; and

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WHEREAS, the applicant states that the estimated \$23.00 per square foot discount for the subject site is primarily due to conditions that pertain uniquely to the site and the building; and

WHEREAS, the applicant also submitted a letter from a real estate broker which states that an extended marketing effort for the second floor units in the current environment would prove futile; 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 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 February 13, 2001, so that as amended this portion of the resolution shall read: “to permit the noted modification to the plans to reflect the conversion of the second floor from manufacturing to residential use, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings filed with this application and marked “Received April 29, 2009”-(4) sheets; and *on further condition*:

THAT no more than nine residential units shall occupy the subject building;

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

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

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

(DOB Application No. 102084520)

Adopted by the Board of Standards and Appeals, August 25, 2009.

246-01-BZ

APPLICANT – Eric Palatnik, P.C., for Bodhi Fitness Center, Inc., owner.

SUBJECT – Application January 29, 2009 – Extension of Term for a special permit (§73-36) which expired on June 1, 2008 for the operation of a Physical Culture Establishment (*Bodhi Fitness Center*); Waiver of the Rules. M1-1/C2-2 zoning district.

PREMISES AFFECTED – 35-11 Prince Street, between 35th Avenue and Northern Boulevard, Block 4958, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES – 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
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 special permit for a physical culture establishment (“PCE”), which expired on June 1, 2008, and an amendment to reflect a change in the owner and operator of the PCE; and

WHEREAS, a public hearing was held on this application on June 23, 2009, after due notice by publication in *The City Record*, with continued hearings on July 28, 2009 and August 11, 2009, and then to decision on August 25, 2009; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

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

WHEREAS, the PCE is located on the east side of Prince Street between 35th Avenue and Northern Boulevard, partially within an M1-1 zoning district and partially within a C2-2 zoning district; and

WHEREAS, the site is located on a portion of the first floor of a one-story commercial building; and

WHEREAS, the PCE has a total floor area of 8,962 sq. ft. on the first floor; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 11, 2002 when, under the subject calendar number, the Board granted a special permit to legalize a physical culture establishment in the subject building for a term of ten years, to expire on June 1, 2008; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years; 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 Bodhi Fitness; 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 hours of operation for the PCE will be Monday through Friday, 24 hours per day, and Saturday and Sunday, from 7:00 a.m. to 12:00 a.m.; 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 11, 2002, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from June 1, 2008, to expire on June 1, 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 May 20, 2009”-(4) sheets; and *on further condition*:

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THAT the term of this grant shall expire on June 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 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. 401213156)

Adopted by the Board of Standards and Appeals, August 25, 2009.

271-81-BZ

APPLICANT – Mitchell S. Ross, Esq., for Pamela Equities Corporation, owners; New York Health and Racquet Club, lessees.

SUBJECT – Application June 4, 2009 – Extension of Term for a special permit (§73-36) which expired on October 6, 2006 for the operation of a Physical Culture Establishment (*New York Health and Racquet Club*); Amendment to legalize incidental alterations made to the interior layout; Extension of Time to obtain a Certificate of Occupancy which expired on October 31, 2001 and Waiver of the Rules. C6-6 zoning district.

PREMISES AFFECTED – 110/112 West 56th Street, Block 1008, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #5M

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 September 15, 2009, at 10 A.M., for decision, hearing closed.

416-87-BZ

APPLICANT – Slater & Beckerman, LLP for Trustees of Columbia University in the City of New York, owners.

SUBJECT – Application June 29, 2009 – Extension of Term of a Variance (§72-21) for a automobile repair shop (UG16) which expired on June 27, 2009 and an Extension of Time to obtain a Certificate of Occupancy which expired on February 26, 2009. R7-2/C6-1 zoning district.

PREMISES AFFECTED – 547-551 West 133rd Street, interior lot north side of 133rd Street, between Broadway and Amsterdam Avenue, Block 1987, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #9M

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 September 22, 2009, at 10 A.M., for decision, hearing closed.

8-96-BZ

APPLICANT – Walter T. Gorman, P.E., for Motiva Enterprises LLC, owner; Shell Service Station, lessee.

SUBJECT – Application April 20, 2009 – Extension of Term for the continued use of a gasoline service station (*Shell*) which expired on July 16, 2006; Extension of Time to obtain a Certificate of Occupancy which expired on July 16, 2000; Amendment to legalize modification to the building; Waiver of the Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 175-22 Horace Harding Expressway, southwest corner of Utopia Parkway, Block 6891, Lot 32, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Cindy Bachan.

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 September 15, 2009, at 10 A.M., for decision, hearing closed.

194-97-BZ

APPLICANT – Sheldon Lobel, P.C., for Auto Service Management Corporation, owner.

SUBJECT – Application April 22, 2009 – Extension of Term for a Variance (§72-21) for an automotive repair facility (UG 16B), which expired on November 29, 2007; Extension of Time to obtain a certificate of occupancy which expired on December 22, 1999; Waiver of the Rules. R4B zoning district.

PREMISES AFFECTED – 84-12 164th Street, northwest corner of 84th Road and 164th Street, Block 9792, Lot 31,137, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 10 A.M., for continued hearing.

MINUTES

197-05-BZ

APPLICANT – Marvin Mitzner, Esq., for B&E 813 Broadway Realty, owner.

SUBJECT – Application April 17, 2009 – Amendment to a variance (§72-21) to allow full commercial coverage on the ground floor and an increase in commercial FAR in a mixed use building. Zoning District C6-1.

PREMISES AFFECTED – 813/815 Broadway, west side of Broadway, 42’ south of East 12th Street, Block 563, Lots 33 & 34, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 15, 2009, at 10 A.M., for an adjourned hearing.

APPEALS CALENDAR

196-09-BZY

APPLICANT – Ping C. Moy, for 174 Clermont Avenue, LLC, owner.

SUBJECT – Application June 24, 2009 – Application to complete construction of a minor development (§11-332) commenced under the prior R6 zoning district. R6B zoning district.

PREMISES AFFECTED – 174 and 176 Clermont Avenue, west side of Clermont Avenue, Block 2074, Lots 37 and 39, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES – None.

ACTION OF THE BOARD – Application granted.

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 August 11, 2009, after due notice by publication in *The City Record*, and then to decision on August 25, 2009; and

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

WHEREAS, the subject site is located on the west side of Clermont Avenue, between Myrtle Avenue and Willoughby Avenue, in a C4-1 zoning district; and

WHEREAS, the subject site has a frontage of approximately 50’-0” and a depth of 75’-11”, with an irregular 24’-4” by 19’6” plot at the northern portion of the rear of the site, and a total lot area of 4,263 sq. ft.; and

WHEREAS, the site is proposed to be developed with a six-story nine-unit residential building (the “Building”); and

WHEREAS, the site was initially proposed to be

developed with a six-story ten-unit residential building, however, on December 23, 2008, the Department of Buildings (“DOB”) approved a post-approval amendment to the original plans; the only change to the plans was the reduction in the number of total units from ten to nine; and

WHEREAS, the Building is proposed to have a total floor area of 12,755 sq. ft. (3.0 FAR); and

WHEREAS, the development complies with the former R6 zoning district parameters as to floor area and building height; and

WHEREAS, on June 11, 2007, New Building Permit No. 302296076-01-NB (hereinafter, the “New Building Permit”) was issued by the Department of Buildings (“DOB”) permitting construction of the Building; and

WHEREAS, however, on July 25, 2007 (hereinafter, the “Enactment Date”), the City Council voted to adopt the Fort Greene/Clinton Hill Rezoning, which rezoned the site from R6 to R6B; and

WHEREAS, as of that 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

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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 July 15, 2009, DOB stated that the New Building 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 New Building 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 July 25, 2009 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes the completion and enclosure of the structure, the completion of roofing, the installation of windows, and the near completion of drywalling, plumbing and sprinkler systems, and electrical systems; and

WHEREAS, the applicant further states that only minor finishing work remains on the proposed building; and

WHEREAS, in support of this statement the applicant

has submitted the following: a construction contract, construction documents indicating the work completed and work remaining; a breakdown of the construction costs by line item and percent complete; an affidavit from the vice president of the construction company enumerating the completed work; copies of cancelled checks; and photographs of the building’s interior and exterior; 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 July 25, 2009; and

WHEREAS, the Board notes that, based on visual inspections, a substantial amount of physical construction has been completed; and

WHEREAS, as to costs, the applicant represents that the total expenditures and irrevocable commitments for the development to date are \$2,893,755, or approximately 96 percent of the \$3,001,005 cost to complete; and

WHEREAS, as noted, the applicant has submitted financial records, a construction contract, 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. 302296076-01-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 25, 2011.

Adopted by the Board of Standards and Appeals, August 25, 2009.

140-08-BZY

APPLICANT – Eric Palatnik, P.C., for 1016 East 13th Realty, LLC, owner.

SUBJECT – Application April 5, 2008 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 zoning district. R5 zoning district.

PREMISES AFFECTED – 1016 East 13th Street, between Avenue J and K, Block 6714, Lot 11, Borough of Brooklyn.

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COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 20, 2009, at 10 A.M., for an adjourned hearing.

147-08-BZY

APPLICANT – Hui-Li Xu, for Beachway Equities, Inc., owner.

SUBJECT – Application May 23, 2008 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior zoning district. R5 zoning district.

PREMISES AFFECTED – 95-04 Allendale Street, between Atlantic Avenue and 97th Avenue, Block 10007, Lot 108, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 24, 2009, at 10 A.M., for an adjourned hearing.

317-08-A

APPLICANT – Margaret R. Garcia, AIA, for Block 17 Lot 112 LLC, owner.

SUBJECT – Application December 23, 2009 – Proposed construction of a four-story dwelling located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED – 124 Montgomery Avenue, west side of Montgomery Avenue, 140' north of Victory Boulevard, Block 17, Lot 112, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Margaret R. Garcia.

For Administration: Anthony Scaduto, 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 September 15, 2009, at 10 A.M., for decision, hearing closed.

45-09-A

APPLICANT – Eric Palatnik, P.C., for Kevin Yang, owner.

SUBJECT – Application March 11, 2009 – Appeal for a common law vested right to continue construction commenced under the prior R7-1/C1-2 zoning district. R7B/C1-3 zoning district.

PREMISES AFFECTED – 142-19 Cherry Avenue, northeast corner of Cherry Avenue and Bowne Street, Block 5186, Lot 51, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik, Victor, Jon Yang.

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 September 22, 2009, at 10 A.M., for decision, hearing closed.

159-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLC, for 2nd Street Development Corp., owner.

SUBJECT – Application April 16, 2009 – Proposed construction of a single family home located within the bed of a mapped street (Doane Avenue), contrary to General City Law Section 35. R2 zoning district.

PREMISES AFFECTED – 85 Woodland Avenue, 175' east of the intersection of Colon Avenue and Woodland Avenue, Block 5442, Lot 44, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 10 A.M., for continued hearing.

178-09-A

APPLICANT – Marvin B. Mitzner, Esq., for 120 St. Marks LLC, owner;

O. Moscovich, D.V.M., P.C., lessee.

SUBJECT – Application June 1, 2009 – Appeal contesting an Order of Closure issued by the Department of Buildings that the use of the cellar at the subject premises as a Veterinarian's Office (UG6) constitutes an illegal use in a residential district pursuant to Administrative Code Section 28-212.1. R8B zoning district.

PREMISES AFFECTED – 120 St. Marks Place (East 8th street), south side of St. Marks Place, Block 435, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner and Ian Rasmussen.

For Administration, Juliet Mercer.

ACTION OF THE BOARD – Laid over to October 20, 2009, at 10 A.M., for continued hearing.

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**REGULAR MEETING
TUESDAY AFTERNOON, AUGUST 25, 2009
1:30 P.M.**

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

ZONING CALENDAR

203-07-BZ

CEQR #08-BSA-014Q

APPLICANT – Sheldon Lobel, P.C., for Gastar, Inc., owner.

SUBJECT – Application August 17, 2007 – Variance (§72-21) to allow a new 13-story mixed-use building containing 20 dwelling units, ground floor retail and community facility (medical) uses; contrary to bulk and parking regulations (§35-311 & §36-21). R6/C2-2 zoning district.

PREMISES AFFECTED – 137-35 Elder Avenue (a/k/a 43-49 Main Street) located at the northwest corner of Main Street and Elder Avenue, Block 5140, Lot 40, Borough of Queens.

COMMUNITY BOARD #7Q

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 Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 23, 2009, acting on Department of Buildings Application No. 402635403, reads, in pertinent part:

- “1. Residential Floor Area Ratio (F.A.R.) is contrary to ZR 23-142;
2. Residential Open Space is contrary to ZR 23-142 . . .”; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within an R6 zoning district and partially within an R6/C2-2 zoning district, the construction of a 12-story and cellar mixed-use commercial/community facility/residential building with an FAR of 4.67 and an open space of 18 percent, which is contrary to ZR § 23-142; and

WHEREAS, the applicant initially proposed to construct a 13-story 5.02 FAR building with retail use on the first floor, parking in the cellar and on the second floor, medical offices on the third and fourth floors, recreation space on the fifth floor, and residential use on the sixth through thirteenth floors; the proposal required waivers for community facility floor area and parking; and

WHEREAS, in response to issues raised by the Board, the applicant revised the proposal to reflect a 4.79 FAR

building, which included a reduction in the amount of medical office floor area, which eliminated the need for a community facility floor area and total floor area waiver, the second floor was redesigned to include parking and medical offices, and the third floor was to be occupied by recreational space; residential use remained on the upper floors; the proposal required waivers for residential floor area, open space, and parking; and

WHEREAS, the final iteration of the proposal reflects a 12-story 4.67 FAR (3.46 FAR for residential use) building with retail on the first floor, medical offices and parking on the second floor, and residential use on the third through twelfth floors; the proposal requires waivers for residential floor area and open space; the applicant reduced the amount of medical office space and increased the amount of parking so that no parking waiver is required; and

WHEREAS, a residential FAR of 3.46 is proposed (an FAR of 2.42 is the maximum permitted for residential use for a height factor building in an R6 zoning district) and an open space of 18 percent will be provided (32 percent is the minimum required); and

WHEREAS, a public hearing was held on this application on October 28, 2008, after due notice by publication in the *City Record*, with continued hearings on December 16, 2008, January 27, 2009, March 17, 2009, April 28, 2009, May 19, 2009, July 14, 2009, and July 21, 2009, and then to decision on August 25, 2009; 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 7, Queens, recommends disapproval of the application, citing concerns about the proposal’s compatibility with the neighborhood, primarily related to the parking waiver and potential impacts a parking reduction might have on the surrounding area; and

WHEREAS, the Borough President recommends disapproval of the application based on the same concerns as the Community Board; and

WHEREAS, the Board notes that the Community Board and Borough President recommendations were based on the initial proposal, which included the requirement for a parking waiver; and

WHEREAS, the site is located on the northeast corner of Main Street and Elder Avenue; and

WHEREAS, the site is partially within an R6 zoning district and partially within an R6/C2-2 zoning district and has a total lot area of 9,632 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the site is the subject of a prior Board grant; in February 1964, under BSA Cal. No. 817-63-BZ, the Board granted an application for the reconstruction of an existing automotive service station at the site; and

WHEREAS, the applicant states that the station was demolished in 1986 and the site has since been occupied by other commercial uses; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable

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regulations: (1) the site is contaminated and requires environmental remediation, (2) there is a high water table at the site, and (3) there are poor soil conditions; and

WHEREAS, as to the contamination, the applicant states that the site was formerly occupied by an automotive service station since 1934 and until 1986; and

WHEREAS, the applicant represents that the New York State Department of Environmental Conservation (DEC) issued Spill Number 9209640 in November 1992 to the site following a review of a Phase II investigation conducted by the applicant's consultant; the Phase II report indicates that soil and groundwater contamination exists at the site which was apparently caused by leaking underground petroleum storage tanks; and

WHEREAS, the applicant represents that it has already expended more than \$100,000 towards efforts to remediate the groundwater and free product contamination at the site; and

WHEREAS, the applicant represents that in order to satisfy DEC requirements, it will have to remove all of the contaminated soil at the site; and

WHEREAS, the applicant estimates that the costs associated with soil removal, transporting soil from the site, vapor extraction, and further monitoring and testing, amounts to approximately \$931,000; and

WHEREAS, as to the high water table, the applicant states that, due to the site's adjacency to sizeable park land, namely Kissena Corridor Park, water is encountered at a high level; and

WHEREAS, the applicant provided a boring sample analysis which reflects that ground water is detected at depths between 4.35 and 25.10 feet; and

WHEREAS, the applicant represents that the presence of water at a high level contributes to additional construction costs, including those associated with dewatering the site during and after construction; and

WHEREAS, as to soil conditions, the applicant provided a boring report, which reflects that there is a poor soil condition at the site; and

WHEREAS, specifically, the site suffers from poor load-bearing soil to a depth of greater than 13 feet; and

WHEREAS, the applicant represents that the soil condition requires that piles be installed to support the proposed building and that there are approximately \$700,000 in premium costs associated with installing steel piles, that would not be incurred if the soil condition were not poor; and

WHEREAS, the applicant also submitted a letter from a contracting firm documenting the costs of construction at a site with good soil and a letter from a structural engineer stating that the premium costs associated with building on the soil at the site would be incurred regardless of the building type; and

WHEREAS, at the Board's request, the applicant submitted a site plan reflecting the extent to which the piles would be required for the proposed construction compared to the piles that would be required for an as-of-right building; and

WHEREAS, the applicant represents that the additional residential FAR and resultant reduction of open space are required to compensate for the increased construction costs specifically the cost of remediation and the premium

foundation costs and dewatering costs associated with the subsurface soil conditions and high water table; and

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

WHEREAS, the applicant initially submitted a feasibility study analyzing the following scenarios: (1) an 11-story as-of-right 3.98 FAR mixed-use building under height factor zoning and (2) a 13-story 5.02 FAR mixed-use building (the "Original Proposal"); and

WHEREAS, the applicant concluded that the as-of-right scenario would not result in a reasonable return, however, the Original Proposal would realize a reasonable return; and

WHEREAS, the Board expressed concerns about the as-of-right scenario, which included a residential FAR limited to 2.3, specifically noting that the applicant has the option to build pursuant to Quality Housing regulations which would allow a conforming development to increase the residential FAR to a maximum of 3.0 and the total FAR to 4.8, with certain street wall and building height restrictions; and

WHEREAS, the Board expressed concerns related to the program for the proposal, which included additional FAR resulting from the inclusion of speculative community facility space; and

WHEREAS, finally, the Board was not convinced that the amount of relief being sought was directly related to the site's unique conditions and hardship costs; and

WHEREAS, in response to the Board's concerns, the applicant provided an additional feasibility analysis for an as-of-right Quality Housing scenario at 4.12 FAR, which maximizes the residential FAR and a 4.12 FAR as-of-right Quality Housing scenario without the additional hardship costs; and

WHEREAS, the applicant clarified to the Board that the as-of-right Quality Housing scenario could not accommodate the maximum total FAR due to the building height limit of seven stories and the need to provide parking above grade in lieu of a sub-cellar level parking (which would not be feasible due to sub-surface conditions); and

WHEREAS, the applicant concluded that the as-of-right scenario would result in a loss because of the premium costs associated with the site's unique physical conditions, but that the as-of-right building on a hypothetical site without unique conditions would realize a reasonable rate of return; and

WHEREAS, although the earlier iterations of the proposal would result in a reasonable rate of return, as discussed below, the earlier proposals, including the 13-story 5.02 FAR mixed-use building, required additional waivers and do not reflect the minimum required variance; and

WHEREAS, accordingly, only the proposed 12-story 4.67 FAR mixed-use building both reflects the minimum required variance and results in a reasonable rate of return; and

WHEREAS, based upon its review of the submissions, the Board has determined that because of the subject lot's unique physical conditions, there is no reasonable possibility that development in strict conformance with applicable zoning

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requirements will provide a reasonable return; and

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

WHEREAS, the applicant states that there are residential buildings with greater height and bulk than the proposed building, including several buildings with greater than 20 stories and another building with a height of 17 stories within several hundred feet of the site at the intersection of Main Street and Dahlia Avenue; and

WHEREAS, additionally, the applicant represents that commercial use is commonly found on the first floor of nearby buildings; and

WHEREAS, as to the open space, the Board notes that the applicant is providing all of the required yards and that the open space is compatible with that of nearby development; and

WHEREAS, additionally, the Board notes that (1) the proposal reflects the addition of only 28 residential units and (2) the reduction in open space is offset by approximately 5,887 sq. ft. of open recreation space on the third floor and the close proximity of Kissena Park across the street; and

WHEREAS, further, the Board notes that the applicant has revised the application to provide all of the required parking and that, although the residential FAR exceeds what would be permitted for the subject development in the subject zoning district, it notes that the community facility and commercial FAR are below the maximum permitted and that the total building FAR and bulk are within zoning district parameters; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is rather a function of the pre-existing unique physical conditions cited above; and

WHEREAS, as discussed above, the applicant initially requested a parking waiver in addition to the residential FAR and open space waivers; and

WHEREAS, specifically, the applicant initially requested a 13-story building with an FAR of 5.02 and without the required parking; and

WHEREAS, the Board directed the applicant to revise the application to eliminate the request for a waiver for seven of the required 58 parking spaces and to reduce the floor area; and

WHEREAS, in response, the applicant redesigned the building to include all of the required parking and to reduce the height to 12 stories and the total FAR to 4.67; and

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

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under

ZR § 72-21; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08BSA014Q, dated August 17, 2007; 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, in April 2006, DEC directed the applicant to conduct quarterly groundwater monitoring, monthly free product monitoring and that a remedial action plan be provided; and

WHEREAS, DEC has received and approved a revised Remedial Investigation Work Plan (RIWP) dated April 9, 2009 which was submitted by the applicant's consultant; this plan recommended that additional groundwater monitoring wells be installed; and

WHEREAS, a July 27, 2009 Remedial Investigation Report (including the most recent groundwater monitoring results) was prepared by the applicant's consultant in accordance with the implementation schedule contained in the approved Revised RIWP; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, based on the continuation of groundwater monitoring and other remediation activities as requested by DEC and 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 R6 zoning district and partially within an R6/C2-2 zoning district, the construction of a 12-story and cellar mixed-use commercial/community facility/residential building with an FAR of 4.67 and an open space of 18 percent, which is contrary to ZR § 23-142, *on condition* that any and all work shall substantially conform to

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drawings as they apply to the objections above noted, filed with this application marked "Received August 11, 2009"- (11 sheets and *on further condition*:

THAT the floor residential floor area of the building shall be limited to 3.46 FAR, the total floor area be limited to 4.67 FAR;

THAT a minimum of 58 parking spaces (53 for parking and five for queuing) and a minimum open space of 18 percent shall be provided;

THAT 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 other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant 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 25, 2009.

173-08-BZ

CEQR #09-BSA-001Q

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Royal One Real Estate, LLC, owner.

SUBJECT – Application July 1, 2008 – Variance (§72-21) to allow a 12-story hotel building containing 99 hotel rooms; contrary to floor area regulations (§117-522). M1-5/R7-3 Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area C.

PREMISES AFFECTED – 42-59 Crescent Street, northeast corner of the intersection of Crescent Street and 43rd Avenue, Block 430, Lots 37, 38, Borough of Queens.

COMMUNITY BOARD #2Q

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

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated May 28, 2008, acting on Department of Buildings Application No. 410041431, reads in pertinent part:

"Proposed building for transient hotel (UG 5) located in M1-5/R7-3 of area "C" by exceeding maximum permitted FAR of 5.00 is contrary to section 117-522 ZR;" and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site in an M1-5/R7-3 zoning district located within the Special Long Island City Mixed Use District, Queens Plaza

Subdistrict Area C, the construction of a ten-story and cellar hotel which does not comply with floor area regulations, contrary to ZR § 117-522; and

WHEREAS, a public hearing was held on this application on February 3, 2009, after due notice by publication in *The City Record*, with continued hearings on March 17, 2009, April 21, 2009, June 9, 2009 and July 21, 2009, and then to decision on August 25, 2009; and

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

WHEREAS, Community Board 2, Queens recommended disapproval of the applicant's original proposal; and

WHEREAS, the subject site is located on the northeast corner of the intersection at Crescent Street and 43rd Avenue, in an M1-5/R7-3 zoning district located within the Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area C; and

WHEREAS, the site is an irregularly shaped corner lot with approximately 81 feet of frontage on Crescent Street and 25 feet of frontage on 43rd Avenue, and a total lot area of 4,414 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a ten-story, 88-unit hotel (UG 5) with a total floor area of approximately 27,563 sq. ft. (6.25 FAR); the maximum permitted floor area is 22,070 sq. ft. (5.0 FAR); and

WHEREAS, the applicant initially proposed a twelve-story, 99-unit hotel with a floor area of 35,109 sq. ft. (7.95); 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's small size and irregular shape; (2) the site's location adjacent to an overpass leading to the Queensboro Bridge; and (3) the site's proximity to subsurface Metropolitan Transportation Authority ("MTA") construction; and

WHEREAS, as to the site's size and irregular shape, the applicant states that the subject site has a lot area of only 4,414 sq. ft., and is one of only seven irregular corner lots in all of Area C of the Queens Plaza Subdistrict; and

WHEREAS, the applicant states that the small size and irregular shape of the lot results in an inefficient design for residential use; and

WHEREAS, the applicant states that residential use is further restricted by the site's proximity to an overpass leading to the Queensboro Bridge; and

WHEREAS, specifically, the applicant states that the subject site is located immediately adjacent to the entrance ramp to the Queensboro Bridge which is approximately two stories in height and is heavily-traveled at all hours; and

WHEREAS, the applicant represents that the high volume of traffic and corresponding noise resulting from the site's proximity to the entrance ramp inhibits the residential use of the property; thus making a hotel the only viable use for the site; and

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WHEREAS, the applicant states that the small size and irregular shape of the lot also results in an inefficient design for hotel use, as it limits the number of possible rooms per floor in a hotel development; and

WHEREAS, specifically, the irregular configuration of the lot results in a plan with 11 guest rooms on a typical floor and a maximum of 56 guest rooms in an eight-story complying hotel; and

WHEREAS, the applicant submitted plans indicating that a rectangular lot with the same lot area could accommodate a complying building with floor plates that could accommodate 14 guest rooms on a typical floor and a total of 84 guest rooms in an eight-story hotel; and

WHEREAS, therefore, the applicant concludes that the irregularity of the site directly results in the inability to efficiently accommodate rooms and increases the amount of square footage that is occupied by corridors, circulation space, and the building core; and

WHEREAS, as to the site's proximity to subsurface MTA construction, the Board disagrees with the applicant's assertion that the presence of subsurface MTA construction is a unique physical condition; and

WHEREAS, the Board observes that the subsurface MTA construction is a condition that affects a significant number of properties in the surrounding area; and

WHEREAS, based upon the above, the Board finds that certain of the aforementioned unique physical conditions cited by the applicant, namely the small size and irregular shape of the lot and the site's location adjacent to an overpass leading to the Queensboro Bridge, 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 4.98 FAR complying residential development; (2) a 56-room complying hotel development; (3) a hypothetical 84-room hotel on a rectangular lot with the same lot area as the subject site; (4) the original proposal for a 99-room hotel; (5) an 88-room hotel with significant amenity space; and (6) the proposed development; and

WHEREAS, the feasibility study concluded that both a complying residential development and a complying hotel development would generate a negative rate of return; and

WHEREAS, the feasibility study further concluded that the hypothetical 84-room hotel, the 99-room hotel, the 88-room hotel with significant amenity space, and the proposed development would realize a reasonable rate of return; and

WHEREAS, the Board notes that while several of the studied proposals provided a reasonable rate of return, the proposed hotel development represents the minimum variance necessary to afford the owner relief; and

WHEREAS, as to the hypothetical site, the Board notes that the feasibility study supports the applicant's contention that the size and shape of the subject site constrain it from developing a complying hotel that provides a reasonable rate of return; and

WHEREAS, the Board further notes that although it does not consider the site's proximity to subsurface MTA construction to be a unique physical condition, it acknowledges

that the costs associated with developing the site to ensure that there are no adverse affects on the subsurface MTA construction are legitimate construction costs which factor into the analysis of the applicant's ability to realize a reasonable return; and

WHEREAS, based upon the above, 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 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 that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant further states that the only waiver requested is for floor area, as the proposal complies with all other bulk regulations; and

WHEREAS, the applicant represents that the proposed bulk and use are consistent with the surrounding area, which is characterized by a mix of uses and an abundance of multi-story buildings; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that there is an eight-story hotel located one block north of the subject site, on the corner of Crescent Street and 42nd Road, and a 16-story office building located two blocks west of the site, on the corner of 24th Street and 44th Road; and

WHEREAS, the applicant notes that the subject site is located on the border of an M1-6/R10 zoning district within the Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area A-2, where the proposed development would be permitted as-of-right due to the permitted FAR of 12.0; and

WHEREAS, the Board notes that the applicant revised its proposal to significantly reduce the requested FAR for the proposed hotel, thus making it more compatible with the FARs of buildings in the surrounding area; and

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

WHEREAS, the Board finds that the hardship herein was not created by the owner or a predecessor in title, but is the result of the unique site conditions; and

WHEREAS, the applicant initially proposed a 99-unit hotel with a floor area of 35,109 sq. ft. (7.95 FAR), a significant amount of which was reserved for hotel amenities, such as a bar lounge and retail space; and

WHEREAS, at hearing, the Board questioned the applicant's need for the number of rooms and the amenity space provided in the plans; and

WHEREAS, in response, the applicant revised its plans by removing the requested amenities and providing an 88-unit hotel with a floor area of approximately 27,563 sq. ft. (6.25 FAR); and

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WHEREAS, the applicant states that the requested FAR is necessary to provide a sufficient number of hotel rooms to make the development financially feasible; 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; 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-001Q, dated October 6, 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, 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 makes each and every one of the required findings under ZR § 72-21 and grants a variance to permit, on a site in an M1-5/R7-3 zoning district within the Special Long Island City Mixed Use District, Queens Plaza Subdistrict Area C, the proposed construction of a ten-story and cellar hotel (UG 5) which does not comply with floor area regulations, contrary to ZR § 117-522; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received July 8, 2009"–(8) sheets; and *on further condition*:

THAT the building parameters shall be: a maximum floor area of approximately 27,563 sq. ft.; and an FAR of 6.25;

THAT the elevator bulkhead shall comply with all applicable regulations of the Zoning Resolution and Administrative Code;

THAT 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 this grant is contingent upon final approval from the Department of Environmental Protection before an issuance of construction permits other than permits needed for soil remediation; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant 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 25, 2009.

9-09-BZ CEQR #09-BSA-063Q

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Gerry Kaplan/Marlene Realty Co., for Force Fitness LLC, lessee.
SUBJECT – Application January 22, 2009 – Special Permit (§73-36) to allow a physical culture establishment in an existing one-story building. M1-1 zoning district.

PREMISES AFFECTED – 63-03 Fresh Pond Road, east side of Fresh Pond Road, 269.8' south of Metropolitan Avenue and Fresh Pond Road, Block 3608, Lot 14, 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 Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated December 22, 2008, acting on Department of Buildings Application No. 410164432, reads in pertinent part:

“Physical culture establishment requires special permit from BSA as per Section 73-36 of the Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within an M1-1 zoning district zoning district, the legalization of a physical culture establishment (PCE) on a portion of the first floor of a one-story commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on June 23, 2009, after due notice by publication in the *City Record*, with a continued hearing on July 28, 2009, and then to decision on August 25, 2009; 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 north side of Fresh Pond Road between Metropolitan Avenue and

MINUTES

Traffic Avenue, in an M1-1 zoning district; and

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

WHEREAS, the PCE has a total floor area of 11,730 sq. ft. on the first floor of the building; and

WHEREAS, the PCE is operated as Force Fitness Club; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 5:30 a.m. to 10:30 p.m.; Saturday, from 7:00 a.m. to 7:00 p.m.; and Sunday, from 7:00 a.m. to 4:00 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 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 November 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 November 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. 09BSA063Q, dated June 8, 2009; 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 an M1-1 zoning district, the legalization of a physical culture establishment on the first floor of an existing one-story commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received July 14, 2009"- Two (2) sheets and *on further condition*:

THAT the term of this grant shall expire on November 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 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 25, 2009.

73-06-BZ

APPLICANT – Eric Palatnik, P.C., for John J. Freeda, owner; Elite Fitness, lessee.

SUBJECT – Application April 21, 2006 – Special Permit (§73-36) to allow the legalization of a physical culture establishment in a portion of cellar and first floor in a three-story building. C2-3 zoning district.

PREMISES AFFECTED – 111 Union Street, northwest corner of Union Street and Columbia Street, Block 335, Lot 7501, Borough of Brooklyn.

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COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for continued hearing.

97-08-BZ

APPLICANT – Eric Palatnik, P.C., for Chesky Berkowitz, owner; Central UTA, lessee.

SUBJECT – Application April 18, 2008 – Special Permit (§73-19) to allow the legalization of an existing school (*Central UTA*) (UG 3). M1-1 district.

PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik and Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 1:30 P.M., for continued hearing.

169-08-BZ

APPLICANT – James Chin & Associates, LLC, for Jeffrey Bennett, owner.

SUBJECT – Application June 24, 2008 – Variance (§72-21) to allow the redevelopment of a commercial building for residential use. Six residential floors and six dwelling units are proposed; contrary to use regulations (§42-00 & §111-104 (e)). M1-5 (TMU- Area B-2) district.

PREMISES AFFECTED – 46 Laight Street, north side of Laight Street, 25' of frontage on Laight Street, Block 220, Lot 35, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEARANCES –

For Applicant: Ivan Khoury and Alexander Harrow.

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 October 6, 2009, at 1:30 P.M., for decision, hearing closed.

210-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Samaritan Foundation, Inc., owner.

SUBJECT – Application August 15, 2009 – Variance (§72-21) to permit two-story enlargement to an existing two-story building for a UG 3 drug treatment facility with sleeping accommodations (*Samaritan Village*), contrary to use regulations (ZR §43-00). M1-1 district.

PREMISES AFFECTED – 130-15 89th Road, north side of 89th Road, approximately 125' east of 130th Street, Block 9338, Lot 147, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Richard Lobel and 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 September 15, 2009, at 1:30 P.M., for decision, hearing closed.

254-08-BZ

APPLICANT – Eric Palatnik, P.C., for Yeshiva Ohr Yitzchok, owner.

SUBJECT – Application October 15, 2008 – Variance (§72-21) to legalize and enlarge a Yeshiva (*Yeshiva Ohr Yitzchok*) contrary to §42-11 (use regulations), §43-122 (floor area), §43-43 (wall height, number of stories, and sky exposure plane). §43-301 (required open area). M1-1D zoning district.

PREMISES AFFECTED – 1214 East 15th Street, Western side of East 15th Street between Avenue L and Locust Avenue. Block 6734, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD # 14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 20, 2009, at 1:30 P.M., for continued hearing.

260-08-BZ

APPLICANT – Eric Palatnik, for Moisei Tomshinsky, owner.

SUBJECT – Application October 21, 2008 – Special Permit (§73-622) to legalize and enlarge a single family home, contrary to floor area (§23-141) regulations. R3-1 zoning district.

PREMISES AFFECTED – 148 Oxford Street, between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for continued hearing.

297-08-BZ

APPLICANT – Lewis E. Garfinkel, for Itzhak Bardror, owner.

SUBJECT – Application December 4, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141(a)) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 3496 Bedford Avenue, between Avenue M and Avenue N, Block 7660, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #14BK

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APPEARANCES –

For Applicant: Eric Palatnik and Lewis E. Garfindel.

For Opposition: Stuart A. Klein and Marcus Fuchs.

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 October 6, 2009, at 1:30 P.M., for decision, hearing closed.

23-09-BZ

APPLICANT – Eric Palatnik, P.C., for Alla Simirnov, owner.

SUBJECT – Application February 12, 2009 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a single family home, contrary to open space, lot coverage and floor area (§23-141(b)) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 114 Amherst Street, west side of Amherst Street between Hampton Avenue and Oriental Boulevard, Block 8732, Lot 71, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for continued hearing.

37-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Shirley Ades and Moshe Ades, owners.

SUBJECT – Application March 3, 2009 – Special Permit (§73-622) for the in-part legalization and enlargement of an existing single family home, contrary to floor area, open space and lot coverage (ZR §23-141(b)); side yard (ZR §23-461(a)) & (ZR §23-48); rear yard (ZR §23 -47), and perimeter wall height (§23-631) regulations. R3-2 zoning district.

PREMISES AFFECTED – 3950 Bedford Avenue, Bedford Avenue between Avenue R and Avenue S, Block 6830, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 1:30 P.M., for continued hearing.

49-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Beth Israel Medical Center, owner; Kolliel Bnei Torah, lessee.

SUBJECT – Application March 26, 2009 – Variance (§72-21) to permit the enlargement of a synagogue contrary to side yard regulations (§24-35(a)). R4 district.

PREMISES AFFECTED – 1323 East 32nd Street, east side of East 32nd Street, between Avenue M and Kings Highway, Block 7668, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #18M

APPEARANCES –

For Applicant: Lyra J. Altman.

For Opposition: Saul Needle CB18, Dorothy Turano, D.M. CB18, Thomas Hernandez, CB18, Paul Coriale, CB18 and Senator Gruger.

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 September 22, 2009, at 1:30 P.M., for continued hearing.

54-09-BZ

APPLICANT – Juan D. Reyes, III/Riker Danzig et al, for Lord Shivas Properties, LLC, owner; Gab & Aud, Inc., lessee.

SUBJECT – Application April 8, 2009 – Special Permit (§73-36) to allow a physical culture establishment (*Haven Day Spa*) on the cellar level of a four-story mixed-use building. M1-5B district.

PREMISES AFFECTED – 150 Mercer Street (a/k/a 579 Broadway) Mercer Street between Prince and Houston in SoHo, block 512, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to September 22, 2009, at 1:30 P.M., for continued hearing.

164-09-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Palanker, owner.

SUBJECT – Application April 29, 2009 – Special Permit (§73-622) for enlargement of an existing two-family home, contrary to floor area, lot coverage and open space (§23-141) and rear yard (ZR §23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 124 Irwin Street, between Hampton Avenue and Oriental Boulevard, Block 8751, Lot 416, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Rita Mantell, Boris, Susan Klappe and Judith Baron.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for continued hearing.

166-09-BZ

APPLICANT – Slater & Beckerman, for Harry J. Brainum, Jr., Inc., owner.

SUBJECT – Application May 4, 2009 – Special Permit (§75-53) to permit the enlargement of a manufacturing building contrary to floor area, height and setback and

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permitted obstruction in rear yard regulations (§43-12, §43-43, §43-23(b)). M1-1 District.

PREMISES AFFECTED – 360-366 McGuinness Boulevard and 237 Freeman Street, northeast corner of Freeman Street and McGuinness Boulevard, Block 2506, Lots 2, 4, 5, 52, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant:

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 September 22, 2009, at 1:30 P.M., for decision, hearing closed.

184-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Annie Daniel and Elliot Daniel, owners.

SUBJECT – Application June 4, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space, lot coverage and floor area (§23-141); side yards (§23-461) and rear yard (§23-47) regulations. R3-2 zoning district.

PREMISES AFFECTED – 4072 Bedford Avenue, west side of Bedford Avenue, between Avenue S and Avenue T, Block 7303, Lot 37, 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 October 6, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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September 25, 2009

DIRECTORY

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247-09-BZ

123 East 55th Street, North side of East 55th Street between Park Avenue and Lexington Avenue, 127.5 feet., Block 1310, Lot(s) 10, Borough of **Manhattan, Community Board: 5**. Variance to allow an expansion of an existing non-complying building, contrary to regulations. C5-2 & C5-2.5 district.

248-09-BZ

3031 Bailey Avenue, Northwest corner of Bailey Avenue and Albany Court., Block 3266, Lot(s) 85, Borough of **Bronx, Community Board: 8**. Special Permit (11-411) to reinstate prior variance. R6 district.

249-09-A

363 Lafayette Street, East side of Lafayette Street between Bond and Great Jones Streets., Block 530, Lot(s) 17, Borough of **Manhattan, Community Board: 2**. Appeal challenging Department of Building's determination under the Title 28 Section 28-105.9 of the Administrative Code that the permit for the subject premises expired and became invalid because the permitted work or use was not commenced within 12 mo M1-5B district.

250-09-BZ

532 Madison Avenue, Madison Avenue; East 54th Street; Fifth Avenue; East 55th Street., Block 1290, Lot(s) 15, Borough of **Manhattan, Community Board: 5**. Special Permit (73-36) to legalize the operation of a physical culture establishment. C5-3 (MiD) district.

251-09-BZ

130-34 Hawtree Creek Road, West side of Hawtree Creek Road, 249.93 feet north of 133rd Avenue., Block 11727, Lot(s) 58, Borough of **Queens, Community Board: 10**. Variance to allow a house of worship, contrary to use regulations. R3-2 district.

252-09-A

2788 Grand Concourse and Boulevard, Between Miriam Street and East 197th Street., Block 3304, Lot(s) 103/171, Borough of **Bronx, Community Board: 15**. Appeal from the NYC Fire Department. R8 district.

253-09-BZ

53-00 65th Place, Southwest corner of 53rd Avenue and 65th Place., Block 2374, Lot(s) 160, Borough of **Queens, Community Board: 5**. Special Permit (73-30) to allow a non-accessory radio tower on the rooftop of an existing building. R-4 district.

254-09-BZ

101-03 Astoria Boulevard, Northerly side of Astoria Boulevard & northeasterly side of Kearney Street., Block 1659, Lot(s) 51,53,56, Borough of **Queens, Community Board: 3**. Variance to allow legalization of three existing family homes R3-2 district.

255-09-BZ

101-07 Astoria Boulevard, Northerly side of Astoria Boulevard & northeasterly side of Kearney Street., Block 1659, Lot(s) 51,53,56, Borough of **Queens, Community Board: 3**. Variance to allow legalization of three existing family homes R3-2 district.

256-09-BZ

101-05 Astoria Boulevard, Northerly side of Astoria Boulevard & northeasterly side of Kearney Street., Block 1659, Lot(s) 51,53,56, Borough of **Queens, Community Board: 3**. Variance to allow legalization of three existing family homes R3-2 district.

257-09-BZY

88-36 144th Street, 86.63 feet from corner of 88th Road and 144th Street., Block 9683, Lot(s) 15, Borough of **Queens, Community Board: 12**. Extension of Time (11-332) to complete construction under the prior zoning district. R-5 district.

258-09-BZY

88-38 144th Street, 86.63 feet from corner of 88th Road and 144th Street, Block 9683, Lot(s) 16, Borough of **Queens, Community Board: 12**. Extension of Time (11-332) to complete construction under prior zoning district. R-5 district.

DOCKET

259-09-BZY

139-48 88th Road, "0" feet from corner of 88th Road and 144th Street., Block 9683, Lot(s) 13, Borough of **Queens, Community Board: 12.** Extension of Time (11-332) to complete construction under the prior zoning district. R-5 district.

260-09-BZY

88-30 144th Street, "0" feet from corner of 88th Road and 144th Street., Block 9683, Lot(s) 14, Borough of **Queens, Community Board: 12.** Extension of Time (11-332) to complete construction under the prior zoning district. R-5 district.

261-09-BZY

88-34 144th Street, "0" feet from corner of 88th Road and 144th Street., Block 9683, Lot(s) 114, Borough of **Queens, Community Board: 12.** Extension of Time (11-332) to complete construction under the prior zoning district. R-5 district.

262-09-A

711 Bayside, North side of mapped 204th Street 28.63 south of Bayside Drive., Block 16350, Lot(s) 300, Borough of **Queens, Community Board: 14.** Reconstruction and enlargement of an existing single family home not fronting on a mapped street contrary to General City Law Section 36 and also the home and private disposal system located within the bed of a mapped street B204th contrary to Genral Cit R4 district.

263-09-A

28 Tioga Walk, West side of Tioga Walk 18.32' south of paved Oceanside Avenue., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14.** Reconstruction and enlargement of an existing single family home not fronting on a mapped street contrary to General City Law Section 36 and also located within the bed of a mapped street B216th contrary to General City Law Section 35 . R4 Zoning Dist R4 district.

264-09-BZ

927 Flatbush Avenue, East side of Flatbush Avenue 136.42 feet north of intersection of Flatbush Avenue & Synder Avenue., Block 5103, Lot(s) 8, Borough of **Brooklyn, Community Board: 14.** Special Permit (73-36) to legalize the operation of a physical culture establishment. C4-4A district.

265-09-A

165 Ocean Avenue, East side of Ocean Avenue 130' south of Oceanside Avenue., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14.** Reconstruction and enlargement of an existing single family home and the upgrade of a private disposal system located within the bed of a mapped street contrary to General City Law Section 35 and Department of Buildings Policy .R4 zoning distirct . 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

OCTOBER 6, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 6, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

684-64-BZ

APPLICANT – George E. Berger, for 360 East 72nd Street Owners Corporation owner.

SUBJECT – Application July 30, 2009 – Extension of Term permitting the use of no more than 45 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 is set to expire on October 23, 2009. C1-5 in a R10A & R8B zoning district. PREMISES AFFECTED – 360 East 72nd Street, East side of 1st Avenue between East 71st Street and East 72nd Street., Block 1446, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

16-95-BZ

APPLICANT – Akerman Senterfitt, LLP, for STA Parking Group, owner.

SUBJECT – Application July 24, 2009 – Extension of Term and Waiver of the Rules of a previously granted Variance (72-21) for a UG8 parking garage with accessory auto repairs which expired on March 23, 2009. R-8B zoning district.

PREMISES AFFECTED – 434 East 77th Street, between 76th and 77th Street, Block 1471, Lot 31, Borough of Manhattan.

COMMUNITY BOARD #8M

172-96-BZ

APPLICANT – Law Office of Mitchell Ross, Esquire, for Don Mitchell owner.

SUBJECT – Application April 17, 2009 – Extension of Term for a variance (§72-21) which expired on May 11, 2009 allowing the operation of a welding shop (UG 16A) contrary to §32-00; Waiver of the Rules. C6-6 zoning district. PREMISES AFFECTED – 597/99 Marcy Avenue, Southeast corner of Marcy and Vernon Avenues., Block 1759, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #3BK

193-97-BZ

APPLICANT – Fredrick A. Becker, for 29 Great Jones Corporation owner.

SUBJECT – Application 7/22/2009 – Extension of Term for a special permit (§73-36) which expired on April 1, 2008 for the operation of a Physical Culture Establishment (Great Jones Spa); Waiver of the Rules. M1-5B zoning

PREMISES AFFECTED – 27-29 Great Jones Street, Southerly side of Great Jones Street 69' easterly of the corner of Great Jones Street and Lafayette Street., Block 530, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEALS CALENDAR

228-09-A & 229-09-A

APPLICANT – Jordan Most of Sheldon Lobel, P.C., for Selvakumar Rajaratnam, owner.

SUBJECT – Application July 16, 2009 – An Appeal seeking a common law vested right to complete construction commenced under the prior R6B zoning district. R5Zoning District.

PREMISES AFFECTED – 37-45 and 37-47 98th Street, east side of 98th Street, Block 1761, Lots 48 and 49, Borough of Queens.

COMMUNITY BOARD #3Q

233-09-BZY

APPLICANT – Sheldon Lobel, P.C., for 175th Street Associates, LLC, owner.

SUBJECT – Application July 24, 2009 – Application to complete construction of a minor development (11-332) commenced under the prior R6 Zoning District. R4-1 Zoning District.

PREMISES AFFECTED – 91-12 175th Street, west side of 175th Street, Block 9809, Lot (Tent. 70), Borough of Queens.

COMMUNITY BOARD #12Q

CALENDAR

OCTOBER 6, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 6, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

171-08-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for York Prep Realty, LLC., owner.

SUBJECT – Application June 26, 2008 – Variance (§72-21) to allow the enlargement of an existing school (York Prep) contrary to ZR Section 74-95 (City Planning Commission Housing Quality Special Permit). R8 district.

PREMISES AFFECTED – 40 West 68th Street, between Central Park West and Columbus Avenue, Block 1120, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #7M

225-09-BZ

APPLICANT – Antonio S. Valenziano, AIA, for Beacon Luigi, LLC, owner.

SUBJECT – Application July 14, 2009 – Variance (§72-21) for the construction of a single family residence on a vacant undersized lot, contrary to front yard (§23-45) regulations. R2 (LDGM) zoning district.

PREMISES AFFECTED – 45 Beacon Avenue, Beacon Avenue c/o Luigi Place, Block 948, Lot 27, Borough of Staten Island.

COMMUNITY BOARD #3SI

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 15, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

441-31-BZ

APPLICANT – Ian Peter Barnes, IPB Associates, for Gurdev Singh Kang, owner.

SUBJECT – Application April 24, 2009 – Extension of Term and Waiver of the Rules for the continued use of a Gasoline Service Station (*BP Amoco*) with accessory convenience store which expired on April 26, 2007. C2-2/R5 zoning district.

PREMISES AFFECTED – 7702 Flatlands Avenue, southeast corner of Flatlands Avenue and East 77th Street, Block 8014, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Ian Peter Barnes.

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 use of a gasoline service station, which expired on April 26, 2007; and

WHEREAS, a public hearing was held on this application on June 23, 2009, after due notice by publication in *The City Record*, with continued hearings on July 28, 2009 and August 18, 2009, and then to decision on September 15, 2009; and

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

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application, on condition that the applicant adhere to the same terms and conditions that were imposed in the Board’s previous grant; and

WHEREAS, the site is located on the southeast corner of Flatlands Avenue and East 77th Street, in a C2-2 (R5) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 27, 1951 when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station,

lubratorium, auto washing, sale of accessories and office, 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 June 5, 1990, the term was extended for ten years from the expiration of the prior grant, to expire on April 26, 1997, and the grant was amended to permit: (1) the installation of a new steel canopy over three new gasoline pump islands; (2) the installation of a new eight-ft. by 18-ft. kiosk; (3) the demolition of the existing accessory building and canopy and the construction of a new 30-ft. by 60-ft. accessory building for accessory sales and storage; (4) the addition of six accessory parking spaces; and (5) the reduction in the size of the planting area along the southerly lot line; and

WHEREAS, most recently, on November 24, 1998, the term was extended for a term of ten years from the expiration of the prior grant, to expire on April 26, 2007, and the grant was amended to legalize an existing retail convenience store; and

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

WHEREAS, at hearing, the Board questioned whether the center curb cut along Flatlands Avenue was in compliance with the previously-approved plans, which reflected a 25-ft. curb cut at that location; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the current size of the center curb cut along Flatlands Avenue is 35 feet, but that the existing curb cut configuration provides four curb cuts along Flatlands Avenue and East 77th Street with a total of 105 linear feet, which is equal to the total linear feet for the four curb cuts shown in the previously-approved plans; and

WHEREAS, the applicant proposes to maintain the existing curb cut configuration, and represents that the increased size of the center curb cut along Flatlands Avenue affords better ingress and egress to and from the site, thereby minimizing traffic congestion; 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 the alteration of the previously-approved curb cut configuration 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 27, 1951, so that as amended this portion of the resolution shall read: “to extend the term for ten years from April 26, 2007, to expire on April 26, 2017; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked “Received April 24, 2009”-(1) sheet, “August 6, 2009”-(3) sheets and “September 11, 2009”-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on April 26, 2017;

THAT the above condition, and all prior conditions not

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waived by the Board, shall be listed on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by March 15, 2010;

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. 320008200)

Adopted by the Board of Standards and Appeals September 15, 2009.

719-56-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Victory Service Station Incorporated, lessee.

SUBJECT – Application July 14, 2009 – Extension of Time to obtain a certificate of occupancy for a Gasoline Service Station (*Mobil*), which expires on November 10, 2009. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2525 Victory Boulevard, northwest corner Willowbrook Road, Block 1521, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Cindy 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 a reopening and an extension of time to obtain a certificate of occupancy for a gasoline service station with accessory uses, which expires November 10, 2009; and

WHEREAS, a public hearing was held on this application on August 11, 2009, after due notice by publication in *The City Record*, and then to decision on September 15, 2009; 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 northwest corner of the intersection at Victory Boulevard and Willowbrook Road, within a C2-1 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 25, 1957 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied as a gasoline service station with accessory uses 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, the grant was extended on February 10, 2009 for a term of ten years from the expiration of the prior grant, to expire on April 27, 2017; a condition of the grant was that a new certificate of occupancy be obtained by November 10, 2009; and

WHEREAS, as part of the prior grant, the applicant agreed to a number of site improvements, including the removal of dead trees from the site’s frontage along Montauk Place and the elimination of the middle curb cut on Victory Boulevard located approximately 60 feet west of Willowbrook Road; and

WHEREAS, the applicant further agreed to relocate site improvements behind widening lines established by the City of New York for Victory Boulevard and Willowbrook Road; and

WHEREAS, the applicant represents that it will be unable to obtain a certificate of occupancy by the stipulated date because the above-mentioned site improvements have not been performed; and

WHEREAS, the applicant further represents that it will complete the site improvements as part of a piping replacement project scheduled to begin in September 2009; and

WHEREAS, at hearing, the Board questioned whether the lot was being used for the storage of vehicles for sale; and

WHEREAS, in response, the applicant stated that the owner and operator were notified that no vehicles could be sold on site, and submitted photographs evidencing that vehicles are not being offered for sale at the site; 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 *reopens* and *amends* the resolution, dated June 25, 1957, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to June 15, 2010; *on condition* that all use and operations shall substantially conform to all BSA-approved drawings associated with the prior grant; and *on further condition*:

THAT a certificate of occupancy shall be obtained by June 15, 2010;

THAT all improvements on the site shall be relocated behind the widening lines established for Victory Boulevard and Willowbrook Road;

THAT the dead trees located on the site’s frontage along Montauk Place shall be replaced with new trees;

THAT the curb cut on Victory Boulevard located approximately 60 feet west of Willowbrook Road shall be eliminated and the curbing restored;

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

THAT the Department of Buildings must ensure

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compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 510027506)

Adopted by the Board of Standards and Appeals, September 15, 2009.

271-81-BZ

APPLICANT – Mitchell S. Ross, Esq., for Pamela Equities Corporation, owners; New York Health and Racquet Club, lessees.

SUBJECT – Application June 4, 2009 – Extension of Term for a special permit (§73-36) which expired on October 6, 2006 for the operation of a Physical Culture Establishment (*New York Health and Racquet Club*); Amendment to legalize incidental alterations made to the interior layout; Extension of Time to obtain a Certificate of Occupancy which expired on October 31, 2001 and Waiver of the Rules. C6-6 zoning district.

PREMISES AFFECTED – 110/112 West 56th Street, Block 1008, Lot 7501, 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, 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 of a previously granted special permit for a physical culture establishment (PCE), and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on July 28, 2009, after due notice by publication in *The City Record*, with a continued hearing on August 25, 2009, and then to decision on September 15, 2009; and

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

WHEREAS, Community Board 5, Manhattan, states that it has no objection to the application; and

WHEREAS, the PCE is located on the south side of West 56th street, between Sixth Avenue and Seventh Avenue, in a C6-6 zoning district;

WHEREAS, the site is located in the cellar, first floor, second floor, third floor, third floor mezzanine, fourth floor and fourth floor mezzanine of a 32-story mixed-use commercial/residential building; and

WHEREAS, the PCE has a total floor area of 22,581 sq. ft., with an additional 4,700 sq. ft. of space in the cellar; and

WHEREAS, the Board has exercised jurisdiction over

the subject site since October 6, 1981 when, under the subject calendar number, the Board granted a special permit to permit a PCE in the subject building 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 October 31, 2000, the Board granted a ten-year extension of term from the expiration of the previous grant, to expire on October 6, 2006; and

WHEREAS, a condition of the grant was that a new certificate of occupancy be obtained by October 31, 2001; and

WHEREAS, the applicant now seeks to extend the term of the special permit and to extend the time to obtain a certificate of occupancy; and

WHEREAS, the applicant also seeks to modify the PCE’s previously-approved hours of operation of Monday through Friday, from 7:30 a.m. to 10:00 p.m., and Saturdays and Sundays, from 10:00 a.m. to 6:00 p.m., to reflect the current hours of operation of Monday through Friday, from 5:30 a.m. to 11:00 p.m., and Saturdays and Sundays, from 8:00 a.m. to 10:00 p.m.; and

WHEREAS, at hearing, the Board asked the applicant if there are any residential units within the building that are adjacent to or above the PCE that could be affected by noise; and

WHEREAS, in response, the applicant confirmed that there are no residential units on the same level or below the PCE and that there are only three residential units on the floor directly above the PCE; and

WHEREAS, further, the applicant provided proof of notification of the tenants of the subject units; and

WHEREAS, the Board notes that it has not received oral or written testimony in opposition to the continuation of the PCE use; and

WHEREAS, additionally, the applicant provided a description of the sound attenuation measures, which include: (1) sound limiters on the classroom stereos; (2) one-inch thick rubber floor tiles throughout the gym to minimize any vibration or noise to the adjoining floors; (3) two-inch acoustic sound batting on the concrete slab of the ceiling of the highest floor occupied by the PCE; and (4) a ten-foot drop ceiling with acoustic ceiling tiles in the yoga studio and aerobic studio on the highest floor occupied by the PCE; 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 modification of the hours of operation of the PCE are appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on October 6, 1981, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from October 6, 2006, to expire on October 6, 2016, and to grant an extension of time to obtain a certificate of occupancy to September 15, 2010, *on condition* that all use and operations shall substantially conform to drawings filed with this application marked “Received June 4, 2009”-(11) sheets; and *on further condition*:

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THAT the term of this grant shall expire on October 6, 2016;

THAT the following sound attenuation measures shall be provided: (1) locked sound limiters on all classroom stereos; (2) one-inch thick, dense rubber floor tiles throughout the gym; (3) two-inch thick fiberglass sound-insulating batting on the concrete slab of the ceiling of the highest floor occupied by the PCE; and (4) a ten-foot drop ceiling with acoustic ceiling tiles in the yoga studio and aerobic studio on the highest floor occupied by the PCE;

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

THAT a certificate of occupancy shall be obtained by September 15, 2010;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 110199268)

Adopted by the Board of Standards and Appeals, September 15, 2009.

8-96-BZ

APPLICANT – Walter T. Gorman, P.E., for Motiva Enterprises LLC, owner; Shell Service Station, lessee.

SUBJECT – Application April 20, 2009 – Extension of Term for the continued use of a gasoline service station (*Shell*) which expired on July 16, 2006; Extension of Time to obtain a Certificate of Occupancy which expired on July 16, 2000; Amendment to legalize modification to the building; Waiver of the Rules. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 175-22 Horace Harding Expressway, southwest corner of Utopia Parkway, Block 6891, Lot 32, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Cindy 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 a waiver of the Rules of Practice and Procedure, a reopening, an extension of term for the continued use of a gasoline service station, an amendment to permit certain modifications to the site, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this

application on June 19, 2009, after due notice by publication in *The City Record*, with a continued hearing on August 25, 2009, and then to decision on September 15, 2009; 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 Montanez; and

WHEREAS, the premises is located on the southwest corner of Horace Harding Expressway and Utopia Parkway, within a C2-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 31, 1950 when, under BSA Cal. No. 168-50-BZ, the Board granted a variance to permit the construction of a gasoline service station 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 December 10, 1968, under BSA Cal. No. 677-68-BZ, the Board granted an amendment under ZR § 11-412 to permit the construction of a one-story enlargement to the accessory building on the site; and

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

WHEREAS, most recently, on July 16, 1996, under the subject calendar number, the Board granted an application to permit the re-establishment of the expired grant for a gasoline service station, to expire on July 16, 2006; 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, the applicant also seeks to legalize the following site conditions which vary from the previously-approved plans: a modification to the shape of the building; the partitioning of the utility room to create a small office area; and the relocation of the door to the storage area; and

WHEREAS, at hearing, the Board directed the applicant to: (1) install opaque screening in the fence located at the rear of the premises as shown on the approved plans; (2) restore the planting strip located along the western side of the property; (3) remove excess signage on the site; and (4) identify the use of the paved area located on the southwest portion of the site; and

WHEREAS, in response, the applicant submitted revised drawings reflecting that the fence located at the rear of the premises will be made 100 percent opaque, and submitted photographs reflecting that the planting strip along the western side of the property has been restored and the excess signage on the site has been removed; and

WHEREAS, in addition, the applicant states that the paved area located on the southwest portion of the site is used as additional space for the parking of vehicles awaiting service by the accessory auto repair shop, and that the area will not be used for overnight parking; and

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

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for changes to the site; and

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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 July 16, 1996, so that as amended this portion of the resolution shall read: "to extend the term for ten years from July 16, 2006, to expire on July 16, 2016, to grant an extension of time to obtain a certificate of occupancy to March 15, 2010, 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 April 20, 2009"- (3) sheets and "August 10, 2009"- (3) sheets; and on further condition:

THAT the term of this grant shall expire on July 16, 2016;

THAT signage shall comply with C2-2 zoning district regulations;

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

THAT a new certificate of occupancy shall be obtained by March 15, 2010;

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

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

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

(DOB App. No. 420007539)

Adopted by the Board of Standards and Appeals, September 15, 2009.

55-97-BZ

APPLICANT – Sheldon Lobel, P.C. for Baker Tripi Realty, owner.

SUBJECT – Application March 18, 2009 – Extension of Term (§11-411) for an automotive repair facility (UG 16B), which expired on September 23, 2007 and Extension of Time to obtain a certificate of occupancy, which expired on September 23, 1998. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 76-36 164th Street, southwest corner of the intersection formed by 164th Street and 76th Road. Block 6848, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Elizabeth Safian.

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 operation of an automotive repair shop (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 June 16, 2009, after due notice by publication in *The City Record*, with continued hearings on July 21, 2009, July 28, 2009, and August 18, 2009, and then to decision on September 15, 2009; and

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

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

WHEREAS, the site is located on the southwest corner of the intersection at 164th Street and 76th Road, within a C2-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 12, 1961 when, under BSA Cal. No. 600-57-BZ Vol. II, the Board granted a variance to permit a gasoline service station, lubricatorium, minor repairs with hand tools, hand washing of cars, a store for the sale of tires and auto accessories and parking and storage of cars awaiting service, for a term of 25 years; and

WHEREAS, on September 15, 1992, under BSA Cal. No. 318-90-BZ, the Board granted a special permit under ZR § 11-411 to permit the re-establishment of the expired variance for an automotive service station with accessory uses, for a term of five years; and

WHEREAS, most recently, on September 23, 1997, under the subject calendar number, the Board permitted the renewal of the existing grant, a change of use from a gasoline service station with accessory uses to an automotive repair shop, and the enlargement and alteration of the building on the site, to expire on September 23, 2007; a condition of the grant was that a new 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, the applicant represents that a certificate of occupancy was not obtained due to administrative oversight; and

WHEREAS, the applicant also seeks a change in the previously approved plans to modify the layout of the site's parking spaces to better accommodate the parking and storage of cars awaiting service; and

WHEREAS, at hearing, the Board questioned whether the aisle widths in the proposed parking layout provide sufficient clearance for vehicles; and

WHEREAS, in response, the applicant submitted a revised site plan with dimensioned aisle widths, which establish that there is sufficient clearance for all vehicles in the proposed parking layout; and

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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 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 September 23, 1997, so that as amended this portion of the resolution shall read: “to extend the term for ten years from September 23, 2007, to expire on September 23, 2017, and to grant an extension of time to obtain a certificate of occupancy to March 15, 2010; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked “Received March 18, 2009”-(2) sheets and “August 4, 2009”-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on September 23, 2017;

THAT a certificate of occupancy shall be obtained by March 15, 2010;

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. 410151482)

Adopted by the Board of Standards and Appeals, September 15, 2009.

261-98-BZ

APPLICANT – Sheldon Lobel, P.C. for Steve Steigelfest, owner.

SUBJECT – Application May 29, 2009 – Extension of Term of a variance (§72-21) for a UG16A warehouse for HVAC related uses in a residential district which expired on April 20, 2009; Amendment for the addition of a mezzanine level within the existing building. R6B zoning district.

PREMISES AFFECTED – 193 20th Street, North side of 20th Street, between 4th and 5th Avenues. Block 637, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #7BK

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 a reopening, an extension of term of a previously granted variance for a warehouse for the storage, sales, service and assembly of

commercial HVAC equipment and accessories (Use Group 16A), and an amendment for the addition of a mezzanine level within the existing building, which expired on April 20, 2009; and

WHEREAS, a public hearing was held on this application on August 11, 2009, after due notice by publication in *The City Record*, and then to decision on September 15, 2009; and

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

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

WHEREAS, the subject site is located on the north side of 20th Street, between Fourth Avenue and Fifth Avenue, in an R6B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 20, 1999 when, under the subject calendar number, the Board granted a variance to permit the legalization of an existing warehouse for the storage, sales, service and assembly of commercial HVAC equipment and accessories for a term of ten years; and

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

WHEREAS, the applicant also seeks an amendment to permit the addition of a 1,519 sq. ft. mezzanine level within the existing building, thereby increasing the floor area of the building from 4,006 sq. ft. to 5,525 sq. ft.; and

WHEREAS, the applicant represents that the proposed mezzanine level is necessary to recapture space lost on the ground floor, which is partially being used for parking business vehicles in order to avoid using spaces on the street; and

WHEREAS, the applicant further represents that the mezzanine will be located entirely within the envelope of the existing building, will only be used for storage and other accessory uses, and will not increase the current operations at the site; and

WHEREAS, the applicant also seeks to reduce the hours of operation for the subject site from 7:30 a.m. to 4:30 p.m., Monday through Friday, to 8:00 a.m. to 4:00 p.m., Monday through Friday; and

WHEREAS, at hearing, the Board questioned the need for the chain-link fence with a height of eight feet proposed to be installed on the rear portion of the building’s roof; and

WHEREAS, in response, the applicant stated that the proposed fence is necessary for security purposes; 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 April 20, 1999, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from April 20, 2009, to expire on April 20, 2019, and to permit the addition of a mezzanine level within the existing building, *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received May 29, 2009”-(7) sheets; and *on further condition*:

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THAT the term of this grant shall expire on April 20, 2019;

THAT the hours of operation be limited to 8:00 a.m. to 4:00 p.m., Monday through Friday;

THAT the above conditions, and all prior conditions not waived by the Board, shall be listed on the certificate of occupancy;

THAT a new certificate of occupancy be obtained by March 15, 2010;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 320022541)

Adopted by the Board of Standards and Appeals, September 15, 2009.

327-04-BZ

APPLICANT – Sheldon Lobel, P.C., for Beth Gavriel Bukharian Congregation, owner.

SUBJECT – Application June 5, 2009 – Extension of Time to complete construction and Extension of Time to obtain a certificate of occupancy of a previously granted Variance (§72-21) for the enlargement of an existing Synagogue and School (*Beth Gavriel*) which expired on June 7, 2009. R1-2 zoning district.

PREMISES AFFECTED – 66-35 108th Street, east side of 108th Street, east side of 108th Street, between 66th Road and 67th Avenue, Block 2175, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Elizabeth Safian.

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 the enlargement of an existing building occupied by both a synagogue and a religious school, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on July 21, 2009 after due notice by publication in *The City Record*, with a continued hearing on August 19, 2009, and then to decision on September 15, 2009; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and

Commissioner Montanez; and

WHEREAS, the subject site is located on the east side of 108th Street, between 66th Road and 67th Avenue, within an R1-2 zoning district; and

WHEREAS, this application is submitted on behalf of the Beth Gavriel Bukharian Congregation (the “Synagogue”); and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 7, 2005 when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the enlargement of an existing building occupied by both a synagogue and a religious school; and

WHEREAS, substantial construction was to be completed by June 7, 2009, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that due to financing issues and other unforeseen construction delays, the construction has not been completed and the filing of an application for a certificate of occupancy has been delayed; and

WHEREAS, the applicant states that the Synagogue has obtained funding commitments and construction is now ongoing; and

WHEREAS, thus, the applicant now requests a three-year extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board raised concerns about a Stop Work Order issued by DOB on September 15, 2008 in connection with the revocation of a permit issued to the subject premises; and

WHEREAS, in response, the applicant submitted a letter from DOB that rescinded the notice of revocation of the permit, and the applicant states that no work was done at the site while the Stop Work Order was in effect; 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 7, 2005, so that as amended this portion of the resolution shall read: “to grant a three-year extension of time to complete construction and obtain a certificate of occupancy, to expire on September 15, 2013; *on condition*:

THAT construction shall be substantially complete by March 15, 2012;

THAT a certificate of occupancy shall be obtained by September 15, 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. 401995828)

MINUTES

Adopted by the Board of Standards and Appeals,
September 15, 2009.

239-07-BZ

APPLICANT – New York City Board of Standards and Appeals

YHA New York Inc.

SUBJECT – Application for dismissal for lack of prosecution – Variance (§72-21) to permit a Use Group 4 community youth center in the cellar and a portion of the first floor in a proposed mixed-use building, contrary to ZR §24-35 (side yard). R5 zoning district.

PREMISES AFFECTED – 57-38 Waldron Street, Block 1959, Lot 27, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Todd Dole.

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,
September 15, 2009.

590-76-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Cinfiors Limited, owners.

SUBJECT – Application September 15, 2009 – Extension of Term of a previously granted Variance (§72-01(b)) for an existing illuminated sign that exceeds the permitted height above curb level. C2-8 zoning district.

PREMISES AFFECTED – 243 East 59th Street, northwest corner of 59th Street and Second Avenue, Block 1414, Lot 120, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Joseph P. Morsellino.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 10 A.M., for continued hearing.

1259-79-BZ

APPLICANT – Sheldon Lobel, P.C., for Arabara, LLC, owner.

SUBJECT – Application August 13, 2009 – Extension of Time to complete construction and obtain a certificate of occupancy and Waiver of the Rules of a previously granted Variance (§72-21) for the conversion of all floors above the first floor from manufacturing lofts into residential dwellings which expired on October 6, 1984. M1-6 zoning district.

PREMISES AFFECTED – 29 West 26th Street, north side of West 26th Street, 350' east of Sixth Avenue, Block 826, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 10 A.M., for continued hearing.

826-86-BZ, 827-86-BZ and 828-86-BZ

APPLICANT – Eric Palatnik, P.C. for North Shore Tower Apartments, Incorporated, owner; Continental Communications, lessee.

SUBJECT – Application April 3, 2009 – Extension of Term for a Special Permit (§73-11) to allow non-accessory radio towers and transmitting equipment on the roof of a 33-story multiple dwelling (*North Shore Towers*) which expired on March 28, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on March 6, 2003; an Amendment to eliminate the condition that a new Certificate of Occupancy be obtained; and Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 269-10, 270-10, 271-10 Grand Central Parkway, Northeast corner of 26th Street. Block 8489, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik, Mike Littman and Errol Brett.
For Opposition: Barbara Leonardi and Dianne Stromfeld.

ACTION OF THE BOARD – Laid over to October 27, 2009, at 10 A.M., for continued hearing.

297-99-BZ

APPLICANT – Walter T. Gorman, P.E., for Bell & Northern Bayside Company, LLC, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application June 1, 2009 – Extension of Term and Waiver of the Rules for the continued use of a Gasoline Service Station (*Mobil*) which expires on September 19, 2010. C2-2/R-6B zoning district.

PREMISES AFFECTED – 45-05 Bell Boulevard, east side blockfront between Northern Boulevard and 45th Road, Block 7333, Lot 201, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Cindy Bachan.

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 October 6, 2009, at 10 A.M., for decision, hearing closed.

197-05-BZ

APPLICANT – Marvin Mitzner, Esq., for B&E 813 Broadway Realty, owner.

SUBJECT – Application April 17, 2009 – Amendment to a

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variance (§72-21) to allow full commercial coverage on the ground floor and an increase in commercial FAR in a mixed use building. C6-1 zoning district.

PREMISES AFFECTED – 813/815 Broadway, west side of Broadway, 42' south of East 12th Street, Block 563, Lots 33 & 34, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Marvin Mitzner, Robert Pauls, Richard Cantor and Carl Fisher.

ACTION OF THE BOARD – Laid over to October 20, 2009, at 10 A.M., for continued hearing.

APPEALS CALENDAR

317-08-A

APPLICANT – Margaret R. Garcia, AIA, for Block 17 Lot 112 LLC, owner.

SUBJECT – Application December 23, 2008 – Proposed construction of a four-story dwelling located within the bed of a mapped street, contrary to General City Law Section 35. R5 zoning district.

PREMISES AFFECTED – 124 Montgomery Avenue, west side of Montgomery Avenue, 140' north of Victory Boulevard, Block 17, Lot 112, 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 decision of the Staten Island Borough Superintendent, dated December 2, 2008, acting on Department of Buildings Application No. 510020228, reads in pertinent part:

“Proposed construction of a four-story apartment building, Use Group Two, in R5 residential zoning district is located within the bed of a mapped street contrary to Section 35 of the General City Law and therefore referred to the Board of Standards and Appeals for approval;” and

WHEREAS, this application requests permission to build a four-story multi-family detached residence in the bed of mapped Victory Boulevard Extension; and

WHEREAS, a public hearing was held on this application on May 19, 2009, after due notice by publication in the *City Record*, hearing postponed until August 25, 2009, hearing closed and then to decision on September 15, 2009; and

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

Montanez; and

WHEREAS, by letter dated September 10, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated January 23, 2009, the Department of Environmental Protection (DEP) states that it has reviewed the application and advises the Board that there are no existing sewers or existing City water mains in the bed of Victory Boulevard Extension between Montgomery Avenue and Monroe Avenue, and that the latest Drainage Plan No. PRD-2D (sheet 8 of 9) calls for two future ten-inch diameter sanitary sewers and one 12-inch diameter storm sewer in the bed of the Victory Boulevard Extension between Montgomery Avenue and Monroe Avenue; and

WHEREAS, DEP also notes that the final Tax Map, Block 17, Lots 1, 2, 3 and 4 are fronting an existing 18-inch diameter combined sewer in Monroe Avenue north of Victory Boulevard; Block 17, Lots 125 and 126 are fronting an existing 3'-10" by 5'-9" combined sewer in Victory Boulevard between Montgomery Avenue and Monroe Avenue; and Block 17, Lots 116 and 118 are fronting the 18-inch diameter combined sewer in Montgomery Avenue; and

WHEREAS, based on the above, DEP states that it has no objection to the subject proposal; and

WHEREAS, by letter dated April 22, 2009, the Department of Transportation states that it has reviewed the application and notes 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 Staten Island Borough Superintendent, dated December 2, 2008, acting on Department of Buildings Application No. 510020228 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 31, 2009" – (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 15, 2009.

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296-08-A

APPLICANT – Gerald J. Caliendo, R.A., for Federico Camacho, owner.

SUBJECT – Application November 25, 2008 – Proposed four-story, six-family dwelling with a community facility use located within the bed of a mapped street, contrary to General City Law, Section 35. R6B Zoning District.

PREMISES AFFECTED – 45-02 111th Street, east side of 45th Avenue, 100' south of intersection of 111th Street and 45th Avenue, Block 2001, Lot 37, 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 October 6, 2009, at 10 A.M., for decision, hearing closed.

38-09-A

APPLICANT – Benjamin Lam, for Lee Zhen Xiang, owner.
SUBJECT – Application March 6, 2009 – Proposed construction of a three-family home located within the bed of mapped street, contrary to General City Law, Section 35. R-5 zoning district.

PREMISES AFFECTED – 72-45 43rd Avenue, corner of 43rd Avenue and 74th Street, Block 1353, Lot 46, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 10 A.M., for postponed hearing.

170-09-A

APPLICANT – NYC Department of Buildings
OWNER – Kenbridge Realty Corporation
SUBJECT – Application April 3, 2009 – An appeal filed by the Department of Buildings seeking to amend Certificate of Occupancy to remove the reference to "Adult" Establishment "use on the second floor. M1-5/R-9 Special Mixed Use District.

PREMISES AFFECTED – 24-03 Queens Plaza North, northeast corner of Queens Plaza North and 24th Street, Block 414, Lot 5, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John Beene and Marvin Mitzner.

ACTION OF THE BOARD – Laid over to November 24, 2009, at 10 A.M., for continued hearing.

181-09-A

APPLICANT – Fire Department of New York, for

Koppelman Management, owner; Alexander and Sons Upholstery, lessees.

SUBJECT – Application June 1, 2009 – An appeal filed by the NYC Fire Department seeking a Modification of Certificate of Occupancy to require an approved Automatic Wet Sprinkler system throughout the cellar and first floor of a commercial use. R8 zoning district.

PREMISES AFFECTED – 410 East 64th Street, Block 1458, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Anthony Scaduto, FDNY.

For Opposition: Edward Ozery.

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 October 6, 2009, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, AUGUST 11, 2009
1:30 P.M.**

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

ZONING CALENDAR

168-09-BZ

APPLICANT – Lewis E. Garfinkel R.A., for Yaakov Miller, owner.

SUBJECT – Application May 7, 2009 – Special Permit (§73-622) to combine two semi-attached homes to create one single family home, contrary to floor area and open space (ZR §23-141(a)), and rear yard (ZR §23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 1435 & 1437 East 26th Street, east side of East 26th Street, 292’ south of Avenue N, Block 7680, Lots 34 and 35, 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 April 30, 2009, acting on Department of Buildings Application No. 310319759, reads:

1. Proposed plans are contrary to ZR 23-141(a) in that the proposed floor area ratio (FAR) exceeds the permitted 50%.
2. Proposed plans are contrary to ZR 23-141(a) in that the proposed open space ratio (OSR) is less than the required 150%.
3. Proposed plans are contrary to ZR 23-47 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 two semi-detached single-family homes, to be converted into one single-family home which does not comply with the zoning requirements for floor area, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on July 14, 2009 after due notice by publication in *The City Record*, with a continued hearing on August 11, 2009, and then to decision on September 15, 2009; 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 26th Street, between Avenue N and Avenue O, in an R2 zoning district; and

WHEREAS, the site consists of two lots, Lots 34 and 35, which the applicant proposes to merge into a single lot, Tentative Lot 35, in order to remodel and enlarge the two existing semi-detached single-family homes and convert them into one single-family home; and

WHEREAS, the subject site has a total lot area of 4,800 sq. ft., and is occupied by two semi-detached single-family homes, with a total floor area of 2,932 sq. ft. (0.61 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 2,932 sq. ft. (0.61 FAR) to 4,800 sq. ft. (1.0 FAR); the maximum floor area permitted is 2,400 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 53 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 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 that portions of the existing cellar, first floor and second floor walls, and a portion of the existing first floor and floor joists are being retained; 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,

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the proposed enlargement of two semi-detached single-family homes, to be converted into one single-family home which does not comply with the zoning requirements for floor area, open space ratio, and rear yard, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objections above-noted, filed with this application and marked "Received August 31, 2009"-(1) sheet and "September 14, 2009"-(12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 4,800 sq. ft. (1.0 FAR); an open space ratio of 53 percent; and a rear yard with a minimum depth of 20'-0", as illustrated on the BSA-approved plans;

THAT DOB shall confirm that the portions of the existing building shall be retained as illustrated on the BSA-approved plans marked A-2, A-3, A-4, A-12, A-13 and A-14;

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, September 15, 2009.

195-09-BZ

APPLICANT – Mark Levine, Esq., Herrick, Feinstein LLP, for Brooklyn Academy of Music, Incorporated, owner.

SUBJECT – Application June 24, 2009 – Variance (§72-21) for a community facility building (*Brooklyn Academy of Music*), contrary to required rear yard (§33-26). C6-1 zoning district.

PREMISES AFFECTED – 321 Ashland Place, east side of Ashland Place between Lafayette Avenue and Hanson Place, Block 2111, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Mark Levine.

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 19, 2009, acting on Department of Buildings Application No. 310223460, reads in pertinent part: "Provide minimum rear yard of 20 feet (ZR 33-26);"

and

WHEREAS, this is an application under ZR § 72-21, to permit, within a C6-1 zoning district, within the Special Downtown Brooklyn District, the Brooklyn Academy of Music ("BAM") Historic District, and the BAM Cultural District, the construction of a building which does not comply with rear yard regulations for the proposed community facility, contrary to ZR § 33-26; and

WHEREAS, a public hearing was held on this application on August 11, 2009, after due notice by publication in the *City Record*, and then to decision on September 15, 2009; 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 2, Brooklyn, recommends approval of this application; and

WHEREAS, City Council Member Letitia James provided testimony in support of the proposal; and

WHEREAS, the Downtown Brooklyn Partnership provided testimony in support of the proposal; and

WHEREAS, certain community members provided written and oral testimony in support of the proposal; and

WHEREAS, the Brooklyn Music School submitted written testimony in opposition to the variance, asserting that the site is not unique and that the hardship is self-created because the rear yard requirement could be eliminated through a zoning lot merger with the music school's site which could create a through lot condition; and

WHEREAS, the application is brought on behalf of the Brooklyn Academy of Music ("BAM"), a nonprofit cultural institution; and

WHEREAS, the site is located on the east side of Ashland Place, between Lafayette Avenue and Hanson Place; and

WHEREAS, the site has a lot area of approximately 7,213 sq. ft.; and

WHEREAS, the site is occupied by a two-story building, which was built in 1928 for the Salvation Army and is now occupied primarily by storage and archives for BAM (the "Salvation Army Building"); and

WHEREAS, the building has a floor area of approximately 7,485 sq. ft. (1.04 FAR); and

WHEREAS, the applicant proposes to construct a 28,264 sq. ft. (3.91 FAR) building on the Salvation Army Building site (the "Fisher Building"); the façade and two-story portion of the Salvation Army Building (with an associated 3,638 sq. ft. of floor area) will be maintained and incorporated into the Fisher Building, pursuant to an approval from the Landmarks Preservation Commission ("LPC"); and

WHEREAS, the rear portion of the Salvation Army Building, which extends to the rear lot line, will be demolished and replaced with the new seven-story Fisher Building, which

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will be set back approximately 23 feet from the front lot line and rise to a height of approximately 83 feet; and

WHEREAS, the existing building is non-complying as to the required rear yard, with lot coverage of approximately 98 percent; and

WHEREAS, the applicant represents that the proposed building will not create any new or increase any non-compliances except for the rear yard requirement; and

WHEREAS, the maximum permitted FAR for a community facility in the subject zoning district is 6.5 and the maximum permitted building height is 185 feet; and

WHEREAS, the Fisher Building will be occupied by (1) a theater (first and second floor), (2) theater lighting (third floor), (3) classroom/workshop/rehearsal space (fourth floor), (4) mechanicals (portions of fifth through seventh floors), (5) classrooms and office space (sixth floor), and (6) performance/community space/terrace (seventh floor); and

WHEREAS, the applicant represents that the variance request is necessitated by unique conditions of the site that create a hardship, specifically: (1) the constraints of the existing site, including the obsolescence of the existing building, the shallowness of the lot, and the requirements of the LPC and (2) the programmatic needs of BAM; and

WHEREAS, as to the obsolescence of the existing building, the applicant represents that the Salvation Army Building, which was built for a specific user in 1928, cannot accommodate the conversion into an educational and cultural facility as it is not large enough; and

WHEREAS, the applicant notes that the Salvation Army Building covers the entire lot and does not provide a rear yard, which results in a portion of the second floor encroaching into the required rear yard; and

WHEREAS, the applicant represents that, notwithstanding the LPC requirement for a setback, the Fisher Building could not feasibly be constructed further towards the front of the site and above the Salvation Army Building because the latter is structurally insufficient to accommodate the construction of the Fisher Building's third through seventh floors above it and thus those floors must be shifted back into the rear portion of the site; and

WHEREAS, the applicant represents that there would be significant structural concerns and costs associated with cantilevering or otherwise providing structural support of the Fisher Building over the Salvation Army Building above the second floor; and

WHEREAS, the applicant represents that such a proposal would also incur additional costs due to the need to perform foundation work within the New York City Transit line of influence; and

WHEREAS, as to the shallowness of the lot, the applicant represents that compared to other sites within the BAM Cultural District and/or BAM Historic District that are feasible for the development of cultural and educational facilities, the site is small and shallow; and

WHEREAS, the applicant notes that other sites available for redevelopment by cultural facilities are either larger or on corner lots, without rear yard requirements; and

WHEREAS, the applicant notes that the subject site

has a depth of 90 feet and if the 20-ft. rear yard were provided, the resultant floorplates would be insufficient to accommodate BAM's programmatic needs; and

WHEREAS, as to LPC requirements, as noted, the applicant represents that LPC has required that the front of the Fisher Building be set back approximately 23 feet from the street, in order to preserve the façade of the Salvation Army Building, and that the total height be limited to 86 feet in order to line up with the adjacent Peter Jay Sharp Building to the north of the site; and

WHEREAS, the applicant notes that if BAM were required to both set the Fisher Building back 23 feet at the front and 20 feet at the rear, the resultant floorplate would have a depth of only 67 feet and would result in the reduction of 20 percent of the total floor area proposed; and

WHEREAS, further, due in part to LPC's direction, the Fisher Building's mechanical system cannot be located on the roof since it is sizeable and would be visible from the street and thus must be located within the building; and

WHEREAS, due to programmatic needs for the cellar and roof, the applicant cannot locate the mechanicals therein and has determined that the proposed location for the mechanicals on the fifth, sixth, and seventh floors is the best design to maximize the space allocated to BAM's program; and

WHEREAS, the applicant represents the proposed volume of mechanical space is required to support the required acoustical system for the theater and to help satisfy the requirements for Leadership in Energy and Environmental Design ("LEED") silver rating or better as set forth in Local Law 86; and

WHEREAS, as to programmatic needs, the applicant states that the Fisher Building will provide facilities, which are not otherwise located within BAM's facilities; the requirements include (1) a 252-seat flexible theater space, which will be used for educational programs and performances and will be available for use by local organizations at subsidized rates; and (2) rehearsal/classroom/workshop space to accommodate small performances, rehearsals, and educational programs; and

WHEREAS, the site was selected for the Fisher Building because of its proximity to BAM's other facilities within the BAM Cultural District, which will permit BAM to operate more efficiently by consolidating certain programs which are now located in separate BAM buildings; and

WHEREAS, additionally, the Fisher Building will offer a specific size of theater and education space not currently available to students and the community; and

WHEREAS, as to the building design, the applicant asserts that a 252-seat theater, lobby, and related resources on the first and second floors could not be accommodated on a complying floorplate with a depth of 70 feet; and

WHEREAS, the applicant represents that if the building were redesigned to provide a 20-ft. rear yard, the theater would need to be rotated on the site and the amount of seats reduced to 155; and

WHEREAS, the applicant asserts that such a redesign

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would not allow BAM to provide the flexible space required for its program; and

WHEREAS, the applicant asserts that 250 seats is the minimum required to accommodate the demand for community groups and educational programming; and

WHEREAS, additionally, the applicant notes that any fewer seats would not be economically viable due to the cost of operations and the need to maximize income from performances; and

WHEREAS, the Board finds that these programmatic needs are legitimate, and agrees that the enlargement is necessary to address BAM's programmatic needs, given the limitations of the site and the Salvation Army Building; and

WHEREAS, the applicant represents that it is unable to feasibly accommodate the programmatic needs within an as-of-right building envelope; and

WHEREAS, at hearing, the Board directed the applicant to submit building plans for a complying building and to describe the insufficiency of the as of right scenario; and

WHEREAS, in response, the applicant submitted building plans, which provide a rear yard with a depth of 20 feet and which reflect a 20 percent loss in program space; and

WHEREAS, specifically, the constraints include that: (1) the theater would need to be rotated and would only accommodate 155 seats (a 40 percent reduction), which would reduce the number of students expected to attend each production by approximately 400; (2) flexible seating arrangements would not be viable in the limited space; (3) a smaller lobby would reduce efficiency; (4) the mechanicals would be required to be relocated and would potentially create noise and vibrations within the performance space; (5) the audio visual rack would need to be separated from the lighting grid; (6) the volume of the multipurpose room would be reduced, which would preclude certain uses; and (7) the elevator tower would be moved to the front of the building and be visible from the street; and

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

WHEREAS, since BAM 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 represents that the surrounding area is mixed-use in character and is occupied by an increasing number of cultural institutions in keeping with the City's designation of the area as the BAM Cultural District; and

WHEREAS, the proposed facility will supplement the

existing facilities and fill a void for larger educational programs and affordable community space; and

WHEREAS, in close proximity to the site, there is the 37-story full lot coverage Williamsburgh Savings Bank building to the south, BAM's five-story (height of 86 feet) Peter Jay Sharp Building to the north, a number of commercial buildings to the south and west, including those at Atlantic Center, which includes a 14-story office tower; and

WHEREAS, as to the Fisher Building design, the Board notes that the applicant received a Certificate of Appropriateness from the LPC, dated August 13, 2009, and that the approved design includes decorative brick veneer to be installed over masonry acoustic wall, punctuated by bay windows, which is compatible with the architectural details of the BAM Historic District; and

WHEREAS, the applicant asserts that the Salvation Army Building, portions of which will remain, is compatible with the context of the immediate area and is a full lot coverage building; and

WHEREAS, the applicant notes that the building directly to the east, occupied by the Brooklyn Music School is a four-story pre-existing full lot coverage building; and

WHEREAS the applicant notes that there is a small open area between the Brooklyn Music School building and the proposed Fisher Building, which will remain; and

WHEREAS, further, the applicant notes that there are not any lot line windows on the rear wall of the Brooklyn Music School building which would be affected by the Fisher Building; and

WHEREAS, the Peter Jay Sharp Building similarly does not have any lot line windows, which will be affected and the open alley between it and the Fisher Building will be maintained; and

WHEREAS, additionally, the applicant notes that the proposed building complies with all other bulk parameters and the use is permitted as of right; and

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

WHEREAS, the applicant states that the hardship was not self-created and that no development that would meet the programmatic needs of BAM could occur on the existing site; and

WHEREAS, the Board directed the applicant to respond to the Brooklyn Music School's assertion that the purported hardship was self-created; and

WHEREAS, the applicant states that the site is unique and is constrained due to the obsolescence of the building, the shallowness of the lot, and the requirements of the LPC, none of which were created by the owner or a predecessor in interest; and

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

WHEREAS, the applicant represents that the requested

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rear yard waiver is the minimum relief necessary to accommodate the 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 rear yard relief is the minimum necessary to allow BAM 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 Department of Cultural Affairs 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. 09CLA004B, dated June 1, 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 Department of Cultural Affairs 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 C6-1 zoning district, within the Special Downtown Brooklyn District, the BAM Historic District, and the BAM Cultural District, the construction of a building which does not comply with rear yard regulations for the proposed community facility, contrary to ZR § 33-26, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 24, 2009" – (4) sheets and "July 31, 2009" – (10) sheets; and *on further condition*:

THAT the parameters of the Fisher Building shall be a total height of 83 feet, and a total floor area of 28,264 sq. ft. (3.91 FAR);

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

THAT construction be performed in conformance with all LPC approvals and requirements including the Certificate of Appropriateness dated August 13, 2009;

THAT 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, September 15, 2009.

256-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP for Hayden Rester, owner.

SUBJECT – Application November 5, 2007 – Variance (§72-21) to permit a three-story, five-unit residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 1978 Atlantic Avenue, Southern side of Atlantic Avenue, 180 feet west of the intersection of Atlantic and Ralph. Block 1339, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD # 8BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to October 27, 2009, at 1:30 P.M., for continued hearing.

63-08-BZ

APPLICANT – Eric Palatnik for Royal Palace, lessee. Manton Holding, owner.

SUBJECT – Application March 27, 2008 – Special Permit (§73-244) to legalize an eating and drinking establishment with entertainment and a capacity of more than 200 persons with dancing. C4-2 zoning district.

PREMISES AFFECTED – 116-33 Queens Boulevard, Between 77th and 78th Avenues, Block 2268, Lot 23, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 20, 2009, at 1:30 P.M., for deferred decision.

186-08-BZ

APPLICANT – Petrus Fortune, P.E., for Kevin Mast. Chairman, Followers of Jesus Mennonite Church, owner.

SUBJECT – Application July 10, 2008 – Special Permit (§73-19) to allow the legalization and enlargement of a school in a former manufacturing building, contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 3065 Atlantic Avenue, northwest corner of Atlantic Avenue and Shepherd Avenue, Block 3957, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #5BK

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APPEARANCES –

For Applicant: James E. Gochnauer, Petrus Fortune, Lowell J. Herschberger, Gene DeCamp, Elizabeth Oporta, David Gray Bill, Allen Roth and Angel Vasquez.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for continued hearing.

187-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation and Yeshiva Machzikei Hadas, Inc., owner.

SUBJECT – Application July 11, 2008 – Variance (§72-21) to permit the construction of a six-story community facility building (*Congregation & Yeshiva Machzikei Hadas*), contrary to ZR §42-00. M2-1 zoning district.

PREMISES AFFECTED – 1247 38th Street, east side of 38th Street, between 13th and 12th Avenue, Block 5295, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel, Council Member Felder and Jacob Unger.

ACTION OF THE BOARD – Laid over to October 27, 2009, at 1:30 P.M., for continued hearing.

197-08-BZ

APPLICANT – Stuart A. Klein, for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application July 23, 2008 – Variance (§72-21) to permit a four-story and penthouse residential building, contrary to §23-141 (Floor Area, FAR & Open Space Ratio), §23-22 (Number of Dwelling Units), §23-45 (Front Yard), §23-462 (Side Yard), and §23-631 (Wall Height). R4 district.

PREMISES AFFECTED – 341/349 Troy Avenue, aka 1515 Carroll Street, corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Yankov Goldstein.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for adjourned hearing.

210-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Samaritan Foundation, Inc., owner.

SUBJECT – Application August 15, 2009 – Variance (§72-21) to permit two-story enlargement to an existing two-story building for a UG 3 drug treatment facility with sleeping accommodations (*Samaritan Village*), contrary to use regulations (ZR §43-00). M1-1 district.

PREMISES AFFECTED – 130-15 89th Road, north side of 89th Road, approximately 125' east of 130th Street, Block 9338, Lot 147, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES –

For Applicant: Richard Lobel.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for deferred decision.

7-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sandra Zagelbaum and Yechiel Zagelbaum, owners.

SUBJECT – Application January 20, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141), side yards (§23-461) and rear yard (§23-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 1082 East 26th Street, East 26th Street, between Avenue J and Avenue K, Block 7607, Lot 85, Borough of Brooklyn.

COMMUNITY BOARD #14Q

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 October 6, 2009, at 1:30 P.M., for decision, hearing closed.

46-09-BZ

APPLICANT – Eric Palatnik, P.C., for Igor Orak, owner.

SUBJECT – Application March 23, 2009 – 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)), side yards (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 122 Oxford Street, between Shore Boulevard and Oriental Avenue, Block 8757, Lot 92, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for decision, hearing closed.

161-09-BZ

APPLICANT – Rizzo Group, for 25 Garfield Sparta, LLC, owner.

SUBJECT – Application April 23, 2009 – Variance (§72-21) for the development of two residential buildings (20 dwelling units) contrary to rear yard equivalent, floor area, lot coverage, minimum distance between buildings and minimum distance between legally required window

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regulations (§§ 23-532, 23-145, 23-711, 23-861). R6B zoning district.

PREMISES AFFECTED – 580 Carroll Street (25 Garfield Place) Carroll Street/Garfield Place, between Fourth and Fifth Avenue, Block 951, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant:

ACTION OF THE BOARD – Laid over to November 17, 2009, at 1:30 P.M., for adjourned hearing.

176-09-BZ

APPLICANT – Bryan Cave LLP/Margery Purlmutter, for City of New York, owner.

SUBJECT – Application May 25, 2009 – Special Permit (§73-64) to waive height and setback regulations (§33-432) for a community facility building (*Fashion Institute of Technology*). C6-2 District.

PREMISES AFFECTED – 220-236 West 28th Street, south side of West 28th Street, between Seventh and Eighth Avenues, Block 777, Lots 1, 18, 37, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for deferred decision.

183-09-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 1400 5th Commercial LLC, owner; TSI West 115th Street LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application June 4, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*NY Sports Club*) on a portion of the ground floor and cellar in an eight-story mixed-use building. C4-5X zoning district.

PREMISES AFFECTED – 1400 5th Avenue, Northeast corner of 5th Avenue and West 115th Street. Block 1599, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #10M

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 October 20, 2009, at 1:30 P.M, for decision, hearing closed.

198-09-BZ

APPLICANT – Eric Palatnik, P.C., for Chelsea Lofts Corp., owner; Personal Training Institute, lessee.

SUBJECT – Application June 29, 2009 – Special Permit (§73-36) to allow the operation of the proposed physical culture establishment (*Personal Training Institute*) on the

first floor of an eight-story building. C6-3A zoning district. PREMISES AFFECTED – 143 West 19th Street, between Sixth and Seventh Avenues, Block 795, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 20, 2009, at 1:30 P.M, for continued hearing.

226-09-BZ

APPLICANT – Mitchell S. Ross, Esq., for Fraydun Enterprises, LLC, owner; New York Health and Racquet Club, lessee.

SUBJECT – Application June 19, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*New York Health & Racquet Club*) on the cellar through second floors of a six-story mixed-use building. C6-1 zoning district.

PREMISES AFFECTED – 24 East 13th Street, south side of East 13th Street, 142'-2 & 3/4" west of University Place, Block 570, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Mitchell S. Ross.

ACTION OF THE BOARD – Laid over to October 6, 2009, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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October 1, 2009

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266-09-BZ

114-01 Sutphin Boulevard, Southeast corner of the intersection of Sutphin Boulevard and Linden boulevard and is further bordered by August court to the east., Block 12184, Lot(s) 7, Borough of **Queens, Community Board: 12**. Special Permit (73-30) to allow an extension to an existing non-accessory radio tower. C1-2/R3-2 district.

267-09-BZ

1155-75 Tremont Avenue, Block bounded by Lebanon Street to north, Morris Park Avenue to the east, East Tremont to the south and Bronx Avenue to the west., Block 4007, Lot(s) 15, Borough of **Bronx, Community Board: 6**. Variance to allow a ten-story mixed-use building, contrary to bulk regulations. M1-1 district.

268-09-BZ

1176 Tremont Avenue, Block bounded by Lebanon Street to north, Morris Park Avenue to the east, East Tremont to the south and Bronx Avenue to the west., Block 3909, Lot(s) 8, Borough of **Bronx, Community Board: 6**. Variance to allow a ten-story mixed-use building, contrary to bulk regulations. M1-1 district.

269-09-BZ

1938 East 12th Street, West side of East 12th Street between Avenue S and Avenue T., Block 7290, Lot(s) 21, Borough of **Brooklyn, Community Board: 15**. Special Permit (73-622) for the legalization of the enlargement of a single family home. R5 district.

270-09-BZ

1910 Homecrest Avenue, Bound by East 12th Street and Homecrest Avenue, eastside of Avenue S., Block 7291, Lot(s) 1, Borough of **Brooklyn, Community Board: 15**. Variance to allow the single family dwelling, contrary to bulk regulations. R4-1 district.

271-09-BZ

132-40 Metropolitan Avenue, Between Metropolitan Avenue and Jamaica Avenue, approximately 300 feet east of 132nd Street., Block 9284, Lot(s) 19, Borough of **Queens, Community Board: 9**. Special Permit (73-36) to legalize the operation of a physical culture establishment. C2-3/R6 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 20, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 20, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

1715-61-BZ

APPLICANT – Mitchell S. Ross, for 21st Century Cleaners Corporation, owner.

SUBJECT – Application July 17, 2009 – Extension of Term (§11-411) for a dry cleaning establishment (UG 6A), which expired on June 5, 2007; Extension of Time to obtain a certificate of occupancy, which expired on December 14, 2000; Waiver of the Rules. R3X zoning district.

PREMISES AFFECTED – 129-02 Guy R. Brewer Boulevard aka 129-02 New York Boulevard, south west corner of 129th Avenue and Guy R. Brewer Boulevard, Block 2276, Lot 59, Borough of Queens.

COMMUNITY BOARD #12Q

1038-80-BZ

APPLICANT – Davidoff Malito & Hatcher LLP, for Feinrose Downing LLC, owner; Expressway Arcade Corporation, lessee.

SUBJECT – Application August 28, 2009 – Extension of Term of a Special Permit (73-35) for the continued operation of a UG15 Amusement Arcade (Smile Arcade) which will expire on January 6, 2010. M2-1 zoning district.

PREMISES AFFECTED – 31-07/09/11 Downing street, Block 427, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

1016-86-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Opera Owner Incorporated, owner; TSI West 76 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application August 13, 2009 – Extension of Term for a special permit (§73-36) which expired on May 5, 2007 for the operation of a Physical Culture Establishment (New York Sports Club); Extension of Time to obtain a Certificate of Occupancy which expired on October 26, 2000 and Waiver of the Rules. C4-6A zoning district.

PREMISES AFFECTED – 2162-2166 Broadway, easterly side of Broadway 26 feet north of West 76th Street, Block 1168, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #7M

311-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Block 2285 Lite Corporation, owner.

SUBJECT – Application July 8, 2009 – Amendment to a previously granted Variance (§72-21) for a proposed one family dwelling which is contrary to previously approved plans and does not comply with maximum Lot Coverage (ZR §105-33) and Maximum Height (ZR §23-631). R1-2(NA-1) zoning district.

PREMISES AFFECTED – 380 Lighthouse Avenue, south side of Lighthouse Avenue, 579' west of Winsor Avenue, Block 2285, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEALS CALENDAR

147-07-BZY

APPLICANT – Cozen O'Connor Attorneys, for Gabriel Realty, LLC, owner.

SUBJECT – Application August 27, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 (M1-2) district regulations. R6B Zoning District.

PREMISES AFFECTED – 144 North 8 Street, south side of North 8th Street, 100' east of Berry Street, Block 2319, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #1BK

249-09-A

APPLICANT – Bryan Cave LLP, for 363 Lafayette Street, LLC, owner.

SUBJECT – Application August 27, 2009 – Appeal challenging Department of Building's determination under the Title 28 Section 28-105.9 of the Administrative Code that the permit for the subject premises expired and became invalid because the permitted work or use was not commenced within 12 months from the date of issuance.

PREMISES AFFECTED – 363 Lafayette (371 Lafayette Street, 21 Great Jones Street) east side of Lafayette Street, between Bond and Great Jones Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

CALENDAR

OCTOBER 20, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 20, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

180-09-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Steven Smith, owner.

SUBJECT – Application June 1, 2009 – Variance (§72-21) to allow for a commercial building (UG6) contrary to use regulations ZR §22-00. R3-1 District.

PREMISES AFFECTED – 1735 Richmond Avenue, 296.35' north of the intersection of Richmond Avenue and Croft Place, block 2072, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #2SI

187-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Torath Israel Sephardic Congregation, owner.

SUBJECT – Application June 9, 2009 – Variance (72-21) to permit the construction of a mikvah (ritual bath) in the proposed building, The proposal is contrary to ZR sections 24-11 (FAR) and lot coverage, 24-35 (side yard) and 24-36 (rear yard). R3-1 district.

PREMISES AFFECTED - 94 Amherst Street, west side of Amherst Street, between Shore Boulevard and Hampton Avenues, Block 8726, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, SEPTEMBER 22, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

416-87-BZ

APPLICANT – Slater & Beckerman, LLP for Trustees of Columbia University in the City of New York, owners.

SUBJECT – Application June 29, 2009 – Extension of Term of a Variance (§72-21) for a automobile repair shop (UG16) which expired on June 27, 2009 and an Extension of Time to obtain a Certificate of Occupancy which expired on February 26, 2009. R7-2/C6-1 zoning district.

PREMISES AFFECTED – 547-551 West 133rd Street, interior lot north side of 133rd Street, between Broadway and Amsterdam Avenue, Block 1987, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #9M

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.....5

Negative:.....0

THE RESOLUTION:

WHEREAS, this is an application for a reopening, an extension of term, and an extension of time to obtain a certificate of occupancy for the continued operation of a Use Group 16 automobile repair shop with accessory uses; and

WHEREAS, a public hearing was held on this application on August 25, 2009, after due notice by publication in *The City Record*, and then to decision on September 22, 2009; and

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

WHEREAS, Community Board 9, Manhattan, recommends approval of this application, with conditions; and

WHEREAS, the site is located on the north side of West 133rd Street, between Broadway and Amsterdam Avenue; and

WHEREAS, the applicant states that the eastern 50 feet of the site is located within an R7-2 zoning district, and the western 25 feet of the site is located within a C6-1 zoning district within Subdistrict A of the Special Manhattanville Mixed Use District; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 28, 1925 when, under BSA Cal. No. 384-25-BZ, the Board granted a variance to permit the construction of a two-story garage for more than five vehicles, without a rear yard; and

WHEREAS, on December 15, 1953, under BSA Cal. No. 384-25-BZ, the Board granted the addition of motor vehicle repairs, paint spraying, and welding on the second floor, 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 June 27, 1989, under the subject calendar number, the Board permitted the re-establishment of the grant to permit an automobile repair shop, including transmission work, welding, body and fender work, incidental painting, and parking for cars awaiting service, and the legalization of a change in use to eliminate public parking; and

WHEREAS, most recently, on February 26, 2002, under the subject calendar number, the Board granted a ten year extension of the term, to expire on June 27, 2009; and

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

WHEREAS, the applicant notes that at the time of the Board's previous grant, the portion of the site located in the C6-1 district was zoned M1-2; however, on December 19, 2007, the City Council rezoned the M1-2 district to a C6-1 district within Subdistrict A of the Special Manhattanville Mixed Use District; and

WHEREAS, the applicant states that an automobile repair shop is permitted within Subdistrict A of the Special Manhattanville Mixed Use District, pursuant to ZR § 104-32; and

WHEREAS, the applicant states that the first floor is operated as a Use Group 16 automobile repair shop with parking for cars awaiting service, while the second floor is operated as a Use Group 16 automobile repair shop with welding, body and fender work, and incidental painting; and

WHEREAS, at hearing, the Board directed the applicant to remove all graffiti from the site, confirm that all signage on the portion of the site within the R7-2 zoning district complies with C1 district regulations, and ensure that the spray paint booth will comply with all applicable New York State Department of Environmental Conservation ("DEC") and New York City Environmental Protection ("DEP") rules and regulations prior to obtaining a new certificate of occupancy; and

WHEREAS, in response, the applicant submitted photographs reflecting that all graffiti has been removed from the site, a sign analysis reflecting that all signage on the premises complies with C1 district regulations, and an affidavit from the second floor tenant stating that the spray paint booth will comply with all applicable DEC and DEP rules and regulations prior to obtaining a new certificate of occupancy; and

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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 set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated June 27, 1989, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 27, 2009, to expire on June 27, 2019, and to grant an extension of time to obtain a certificate of occupancy to March 22, 2010; *on condition* that any and all work shall substantially conform to drawings filed with this application marked “Received August 19, 2009”-(2) sheets; and *on further condition*:

THAT the term of the grant shall expire on June 27, 2019;

THAT the site shall be maintained free of debris and graffiti;

THAT all signage located on the portion of the site within the R7-2 zoning district shall comply with C1 zoning district regulations;

THAT the spray paint booth located on the second floor shall comply with all applicable DEC and DEP regulations;

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

THAT a certificate of occupancy shall be obtained by March 22, 2010;

THAT all conditions from the 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 Application No. 102165791)

Adopted by the Board of Standards and Appeals, September 22, 2009.

395-60-BZ

APPLICANT – Sheldon Lobel, P.C., for Ali A. Swati, owner.

SUBJECT – Application December 22, 2006 – Extension of Term (§11-411, §11-413) for change of use from a gasoline service station (UG16) to automotive repair establishment (UG16), which expired on December 9, 2005; Amendment to reduce the size of the subject lot and to request a UG6 designation for the convenience store; and an Extension of Time to obtain a certificate of occupancy which expired on January 19, 2000. R5 zoning district.

PREMISES AFFECTED – 2557-2577 Linden Boulevard, north side of Linden Boulevard between Euclid Avenue and Pine Street, Block 4461, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #5BK

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 November 17, 2009, at 10 A.M., for decision, hearing closed.

194-97-BZ

APPLICANT – Sheldon Lobel, P.C., for Auto Service Management Corporation, owner.

SUBJECT – Application April 22, 2009 – Extension of Term for a Variance (§72-21) for an automotive repair facility (UG 16B), which expired on November 29, 2007; Extension of Time to obtain a certificate of occupancy which expired on December 22, 1999; Waiver of the Rules. R4B zoning district.

PREMISES AFFECTED – 84-12 164th Street, northwest corner of 84th Road and 164th Street, Block 9792, Lot 31,137, Borough of Queens.

COMMUNITY BOARD #8Q

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 October 20, 2009, at 10 A.M., for decision, hearing closed.

115-53-BZ

APPLICANT – Eric Palatnik, P.C., for Theodoras Zorbas, owner.

SUBJECT – Application July 8, 2009 – Extension of Term and Waiver of the Rules for the continued use of a Gasoline Service Station (*Mobil*) which expired on July 11, 2008. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 252-02 Union Turnpike, southwest corner of Little Neck Parkway, Block 8565, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Paltnik.

ACTION OF THE BOARD – Laid over to October 20, 2009, at 10 A.M., for continued hearing.

191-53-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Mobil Service Station, lessee.

SUBJECT – Application August 17, 2009 – Extension of Time and Waiver of the Rules to obtain a certificate of occupancy for a Gasoline Service Station (*Mobil*) which

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expired on September 21, 2001. C2-2/R7-1 zoning district.
PREMISES AFFECTED – 42-02/18 Queens Boulevard,
south side blockfront from 42nd Street to 43rd Street, Block
169, Lot 22, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Cindy Bachan.

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 October
20, 2009, at 10 A.M., for decision, hearing closed.

613-74-BZ

APPLICANT – Greenberg Traurig LLP by Jay Segal, for
NY-1095 Avenue of the Americas, LLC, owner;
Metropolitan Life Insurance Company, lessee.

SUBJECT – Application July 24, 2009 – Amendment to a
previously granted Variance (§72-21) to permit the
relocation of illuminated signs (*Metlife*) from the north
facade to the east façade of an existing 42-story commercial
building. C6-6, C5-3, C6-7, C5-2.5/Special Midtown
District/Theater Subdistrict.

PREMISES AFFECTED – 1095 Avenue of the Americas,
between 42nd Street and 41st Street, Block 994, Lot 1001-
1011, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Jay Segal.

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 October
20, 2009, at 10 A.M., for decision, hearing closed.

149-01-BZ

APPLICANT – Eric Palatnik, P.C. for Jane Street Realty
LLC, owner.

SUBJECT – Application March 26, 2009 – Amendment to a
previously issued resolution that seeks to remove the
condition that a residential unit be occupied by a qualified
senior citizen at a subsidized rate for a term of 10 years,
from the date of the issuance of the Certificate of
Occupancy. R6 zoning district.

PREMISES AFFECTED – 88 Jane Street, between
Washington and Greenwich Streets, Block 641, Lot 7501,
Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to
November 10, 2009, at 10 A.M., for continued hearing.

272-07-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for
Amsterdam & 76th Associates, LLC, owner; Equinox 76th
Street, Inc., lessee.

SUBJECT – Application November 28, 2007 – Amendment
of a Special Permit (§73-36) to allow an enlargement of a
Physical Culture Establishment. C2-7A and C4-6A zoning
districts.

PREMISES AFFECTED – 344 Amsterdam Avenue, aka
205 W. 76th Street aka 204 W. 77th Street, west side of
Amsterdam Avenue, between West 76th and West 77th
Streets, Block 1168, Lots 1001, 1002, 30, Borough of
Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Ellen Hay.

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 October
20, 2009, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

318-08-A

APPLICANT – Joseph A. Sherry, for Ralph Richardson,
owner.

SUBJECT – Application December 31, 2008 – Proposed
construction of an enlargement to an existing commercial
establishment located within the bed of a mapped street,
contrary to General City Law §35. C8-1 zoning district.

PREMISES AFFECTED – 1009 Beach 21st Street, north
west corner of Cornaga Avenue, Block 15705, Lot 1,
Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Loretta Papa.

ACTION OF THE BOARD – Application granted on
condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough
Commissioner, dated December 2, 2008, acting on Department
of Buildings Application No. 410055675, reads in pertinent

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part:

“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 Sect. 35 of the General City Law;” and

WHEREAS, this application seeks to enlarge an existing one-story commercial use located partially within the bed of Cornaga Avenue, a mapped street; and

WHEREAS, a public hearing was held on this application on August 18, 2009, after due notice by publication in the *City Record*, with a continued hearing on September 22, 2009, and then to closure and decision on the same date; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 22, 1953 when, under BSA Cal. No. 393-53-BZ, the Board granted a variance to permit the reconstruction and extension of an existing gasoline service station located in a business use district; and

WHEREAS, the applicant states that the site is currently occupied by an automobile repair shop and that the proposed enlargement will be occupied by commercial stores, all of which are permitted as-of-right in the subject C8-1 zoning district; accordingly, the applicant wishes to surrender the variance granted under BSA Cal. No. 393-53-BZ; and

WHEREAS, the Board notes that it accepts the surrender of the grant made pursuant to BSA Cal. No. 393-53-BZ, on condition that the Department of Buildings confirms that the site complies with all relevant zoning regulations; and

WHEREAS, by letter dated March 6, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated February 5, 2009, the Department of Environmental Protection (DEP) states that it has reviewed the application and advises the Board that there is an existing 24-inch diameter sanitary sewer and a 12-inch diameter water main in Cornaga Avenue between Beach 21st Street and Beach 22nd Street, and as per Drainage Plan No. 50S55, 50SW36, Sheet 2, there is a future 42-inch diameter storm sewer and a 24-inch diameter sanitary sewer planned for Cornaga Avenue between Beach 21st Street and Beach 22nd Street; and

WHEREAS, DEP requested that the applicant provide a revised survey or plan showing: (1) the mapped width of the street in Cornaga Avenue between Beach 21st and Beach 22nd Street; and (2) the distance from the existing water mains and sewer to the lot lines in Cornaga Avenue between Beach 21st Street and Beach 22nd Street; and

WHEREAS, in response, the applicant submitted a revised survey reflecting that Cornaga Avenue has a total width of 60 feet between Beach 21st Street and Beach 22nd Street, and the remaining approximately 50-foot width of the traveled portion of the street will be available for the construction, maintenance and/or reconstruction of the existing 24-inch diameter sanitary sewer, the 12-inch diameter water main, and the future 42-inch diameter storm sewer; and

WHEREAS, by letter dated July 17, 2009, DEP states that it has reviewed the revised survey and has no further

objections; and

WHEREAS, by letter dated March 30, 2009, the Department of Transportation (DOT) states that the applicant’s property is not included in the agency’s ten-year capital plan; and

WHEREAS, at hearing, the Board questioned whether the site was in compliance with all parking requirements; and

WHEREAS, in response, the applicant submitted a letter stating that the existing parking for the automobile repair shop complies with the zoning district requirements and that no additional parking is required for the proposed enlargement; 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 December 2, 2008, acting on Department of Buildings Application No. 410055675, 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 31, 2008” – 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 22, 2009.

45-09-A

APPLICANT – Eric Palatnik, P.C., for Kevin Yang, owner.
SUBJECT – Application March 11, 2009 – Appeal for a common law vested right to continue construction commenced under the prior R7-1/C1-2 zoning district. R7B/C1-3 zoning district.

PREMISES AFFECTED – 142-19 Cherry Avenue, northeast corner of Cherry Avenue and Bowne Street, Block 5186, Lot 51, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Appeal granted.

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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 construction of a proposed development of a six-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 August 11, 2009, after due notice by publication in *The City Record*, with a continued hearing on August 25, 2009, and then to decision on September 22, 2009; and

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

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

WHEREAS, the subject site is located on the northeast corner of Cherry Avenue and Bowne Street, within a C1-3 (R7B) zoning district; and

WHEREAS, the subject site has 28 feet of frontage on Cherry Avenue, 95 feet of frontage on Bowne Street, and a total lot area of 2,660 sq. ft.; and

WHEREAS, the site is proposed to be developed with a six-story mixed-use residential/community facility building (the “Building”); and

WHEREAS, the Building is proposed to have a total floor area of approximately 8,031 sq. ft. (3.02 FAR); and

WHEREAS, the site was formerly located within a C1-2 (R7-1) zoning district; and

WHEREAS, on September 24, 2008 (hereinafter, the “Enactment Date”), the City Council voted to enact the Waldheim Rezoning, which changed the zoning district to C1-3 (R7B); and

WHEREAS, the applicant represents that the Building complies with the former C1-2 (R7-1) zoning district parameters; specifically, the proposed 3.02 FAR and the absence of a front yard were permitted; and

WHEREAS, because the site is now within a C1-3 (R7B) zoning district, the Building would not comply with the maximum FAR of 3.0, the requirement that the building be set back 5’-9” to match the street wall location of the adjacent building, or other requirements of the Quality Housing Program; and

WHEREAS, because the Building is not in compliance with these provisions of the C1-3 (R7B) zoning district and work on the foundation was not completed as of the Enactment Date, the Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order (“SWO”) on September 25, 2008 halting work on the building; and

WHEREAS, it is from this order that the applicant appeals; and

WHEREAS, the applicant requests that the Board find that based upon the amount of financial expenditures, including irrevocable commitments, and the amount of work completed, the owner has a vested right to continue construction and finish the proposed development; 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 Board notes that New Building Permit No. 410002697-01-NB (the “Permit”), which authorized the development of a six-story mixed-use residential/ community facility building pursuant to C1-2 (R7-1) zoning district regulations was issued on May 20, 2008; and

WHEREAS, by letter dated May 8, 2009, DOB stated that the Permit was lawfully issued, authorizing construction of the proposed Building prior to the Enactment Date; and

WHEREAS, the Permit lapsed by operation of law on the Enactment Date because the plans did not comply with the new C1-3 (R7B) zoning district regulations and DOB determined that the Building’s foundation was not complete; and

WHEREAS, thus, the Board finds that the Permit was validly issued by DOB to the owner of the subject premises and was in effect until its lapse by operation of law on September 24, 2008; and

WHEREAS, the validity of the Permit has not been challenged; and

WHEREAS, the Board notes that when work proceeds under a valid permit, 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, Putnam Armonk, Inc. v. Town of Southeast, 52 A.D.2d 10, 15, 382 N.Y.S.2d 538, 541 (2d Dept. 1976) stands for the proposition that where a restrictive amendment to a zoning ordinance is enacted, the owner’s rights under the prior ordinance are deemed vested “and will not be disturbed where enforcement [of new zoning requirements] would cause ‘serious loss’ to the owner,” and “where substantial construction had been undertaken and substantial expenditures made prior to the effective date of the ordinance;” and

WHEREAS, however, notwithstanding this general framework, the court in Kadin v. Bennett, 163 A.D.2d 308 (2d Dept. 1990) found that “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 following work was completed: (1) 80 percent of the excavation; (2) 180 linear feet of shoring, constituting 100 percent of shoring; (3) 100 percent of foundation footings; (4) 90 percent of foundation walls; (5) 100 percent of the

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elevator piston shaft, concrete column buttresses, beam pockets and elevator pit; and (6) approximately 152 cubic yards of concrete poured for the foundations; and

WHEREAS, in support of this assertion, the applicant submitted the following evidence: construction contracts, photographs of the site, concrete pour tickets, a signed statement from the architect, copies of cancelled checks, and invoices for labor and materials; 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 found by New York State courts to support a positive vesting determination, a significant amount of work was performed at the site prior to the Enactment Date; and

WHEREAS, as to expenditure, the Board notes that unlike an application for relief under ZR § 11-30 *et seq.*, soft costs and irrevocable financial commitments can be considered in an application under the common law; accordingly, these costs are appropriately included in the applicant's analysis; and

WHEREAS, the applicant states that prior to the lapse of the Permit, the owner expended \$196,184.75, including hard and soft costs and irrevocable commitments for the entire project, out of \$219,745 budgeted for the foundation of the proposed development and \$1,520,800 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted copies of cancelled checks, construction contracts, invoices, and receipts; 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 the serious loss finding, the applicant contends that the costs associated with complying with the C1-3 (R7B) zoning district if vesting were not permitted is significant; and

WHEREAS, the applicant states that the need to provide a 5'-9" front yard would force the owner to either demolish the existing foundation and build anew or shift the building back 5'-9" to provide the requisite front yard, which might necessitate the reconfiguration of the unit layout; and

WHEREAS, the applicant represents that demolishing the existing foundation and building anew would result in a loss of \$206,895, including \$92,000 associated with redesign costs; and

WHEREAS, the applicant further represents that shifting the building back 5'-9" and re-using some of the existing foundations would result in a loss of \$216,600, including \$105,000 associated with redesign costs; and

WHEREAS, the applicant states that reconfiguring the existing foundation would result in further loss because the

owner would have to change the layout on floors two through six from two one-bedroom apartments to one small two-bedroom apartment and a studio apartment, which would be difficult to market and may not comply with Quality Housing requirements; and

WHEREAS, the applicant states that further financial loss would stem from the fact that the new zoning would require that the building be developed in accordance with Quality Housing and new Building Code requirements, which would include a recreation space and a larger elevator shaft than what is currently proposed; 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 date the Permit lapsed by operation of law; and

WHEREAS, accordingly, based upon its consideration of the arguments made by the applicant, as well as its consideration of the entire record, the Board finds that the owner has met the standard for vested rights under the common law and is entitled to the reinstatement of the Permit, and all other related permits necessary to complete construction; and

Therefore it is Resolved that this appeal made pursuant to the common law of vested rights requesting a reinstatement of New Building Permit No. 410002697-01-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, and the Board hereby extends the time to complete the proposed development for four years from the date of this resolution, to expire on September 22, 2013.

Adopted by the Board of Standards and Appeals, September 22, 2009.

188-09-A

APPLICANT – John Natoli, for Michael Ortega, owner.
SUBJECT – Application June 10, 2009 – Legalization of a one-story enlargement to an existing home located within the bed of a mapped street, contrary to General City Law §35. R3-2 zoning district.

PREMISES AFFECTED – 214 Noel Road, south side of Noel Road and East side of 103rd Street, Block 15459, Lot 9, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: John Natoli

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

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Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 5, 2009, acting on Department of Buildings Application No. 410095757, reads in pertinent part:

“Building front and side portion in the bed of a mapped street which is contrary to General City Law 35;” and

WHEREAS, this application seeks to legalize a one-story enlargement to an existing single-family home located in the bed of Noel Road, a mapped street; and

WHEREAS, a public hearing was held on this application on September 22, 2009, 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 7, 2009, 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 it has reviewed the application and advises the Board that there is an existing ten-inch diameter sanitary sewer, 30-inch by 19-inch diameter storm sewer, and an eight-inch diameter city water main in Noel Road between Lanark Road and West Road, and there is a ten-inch diameter sanitary sewer and eight-inch diameter water main in Lanark Road between Noel Road and 8th Road; and

WHEREAS, DEP further advises that the latest Amended Drainage Plans No. 48S(1) and 48SW(1) call for a future ten-inch diameter sanitary sewer and 15-inch/18-inch diameter storm sewer in Noel Road between Lanark Road and West Road, and for a future ten-inch diameter sanitary sewer in Lanark Road between Noel Road and 8th Road; and

WHEREAS, DEP requested that the applicant provide a revised survey or plan showing: (1) the total width of Noel Road, the width of the widening portion of the street between Lanark Road and West Road, and the width of Lanark Road and the widening portion of the street between Noel Road and 8th Road; and (2) the distance between the westerly lot line of Lot 9 and the existing eight-inch diameter city water main, and the distance between the terminal manhole of the existing ten-inch diameter sanitary sewer and the southerly lot line of Lot 9 in Lanark Road; and

WHEREAS, in response, the applicant submitted a revised survey reflecting that: (1) Noel Road has a total width of 55 feet; (2) access is available for the remaining 50 feet of Noel Road between Lanark Road and West Road for the installation, maintenance and/or reconstruction of the future 15-inch/18-inch diameter storm sewer, ten-inch diameter existing sanitary sewer, 30-inch by 19-inch diameter existing storm sewer, and eight-inch diameter city water main; (3) Lanark Road has a total width of 50 feet; and (4) access is available for the remaining 30 feet of Lanark Road between Noel Road and 8th Road for the installation, maintenance and/or reconstruction of the ten-inch diameter existing sanitary sewer and the eight-inch diameter city water main; and

WHEREAS, by letter dated August 6, 2009, DEP states that it has reviewed the revised survey and has no further objections; and

WHEREAS, by letter dated August 14, 2009, the Department of Transportation 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 June 5, 2009, acting on Department of Buildings Application No. 410095757 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 10, 2009” – 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 22, 2009.

62-08-A

APPLICANT – Eric Palatnik, P.C. for Benny Ulloa, owner
SUBJECT – Application March 27, 2009 – Proposed construction not fronting on a legally mapped street, contrary to General City Law, Section 36. R1-2 zoning district.

PREMISES AFFECTED – 398 Nugent Street, Nugent Street, North of Saint George Road, Block 2284, Lot 25, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Carol Donovan, Kathleen Meaghan and Helen Kravetz.

ACTION OF THE BOARD – Laid over to November 10, 2009, at 10 A.M., for an adjourned hearing.

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159-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLC, for 2nd Street Development Corp., owner.

SUBJECT – Application April 16, 2009 – Proposed construction of a single family home located within the bed of a mapped street (Doane Avenue), contrary to General City Law §35. R2 zoning district.

PREMISES AFFECTED – 85 Woodland Avenue, 175’ east of the intersection of Colon Avenue and Woodland Avenue, Block 5442, Lot 44, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to October 27, 2009, at 10 A.M., for continued hearing.

167-09-A

APPLICANT – Harold Weinberg, P.E., for Yi Fu Rong, owner.

SUBJECT – Application May 5, 2009 – Appeal challenging Department of Building’s determination that the reconstruction of non-complying building must be done in accordance with §54-41 and be required to provide a 30 foot rear yard. M1-2 zoning district.

PREMISES AFFECTED – 820 39th Street, south side, 150’ east of 8th Avenue, Block 916, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Harold Weinberg, Frank Sellitto.

For Administration: Lisa Orrantia, DOB.

ACTION OF THE BOARD – Laid over to November 10, 2009, at 10 A.M., for continued hearing.

217-09-A

APPLICANT – Marvin B. Mitzner, Esq., for 514-516 East 6th Street, owner.

SUBJECT – Application July 7, 2009 – An appeal seeking to vary the applicable provisions under the Multiple Dwelling Law as it applies to the enlargement of non-fireproof tenement buildings. R7-2 zoning district.

PREMISES AFFECTED – 514-516 East 6th Street, south side of East 6th Street, between Avenue A and B, Block 401, Lots 17 and 18, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin B. Mitzner.

For Administration: Council Member Rosie Mendez, Brian Cook (Manhattan Borough President), Carlos Rosa (CB#3M), Marvey Epstein and Monte Shapiro.

ACTION OF THE BOARD – Laid over to November 17, 2009, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: 12:00 P.M.

REGULAR MEETING TUESDAY AFTERNOON, SEPTEMBER 22, 2009 1:30 P.M.

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

ZONING CALENDAR

241-08-BZ

CEQR #09-BSA-029R

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Devonshire Enterprises, Inc., owner.

SUBJECT – Application September 25, 2008 – Variance (§72-21) to permit a one-story commercial building (Use Group 6), contrary to §32-10. R3-1 zoning district.

PREMISES AFFECTED – 546 Midland Avenue, a/k/a 287 Freeborn Street, southwest corner of the intersection of Freeborn Street and Midland Avenue, Block 3803, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam Rothkrug.

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, the decision of the Staten Island Borough Commissioner dated August 25, 2008, acting on Department of Buildings Application No. 510051523, reads:

“The proposed commercial use (Use Group 6) is not permitted as-of-right in R3 zoning district[s] and is contrary to Section 22-10;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a lot within an R3-1 zoning district, a one-story building to be occupied by commercial use (Use Group 6), contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on May 19, 2009 after due publication in *The City Record*, with continued hearings on June 23, 2009 and July 28, 2009; on September 22, 2009, the case was reopened and closed and then a decision was rendered; and

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

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Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board, 2, Staten Island recommends approval of this application with the condition that a drywell be installed at the site to mitigate drainage conditions; and

WHEREAS, the Midland Beach Civic Association provided written testimony in support of the application on condition that a drywell be installed to compensate for an ineffective drywell in the area; and

WHEREAS, the site is located at the southwest corner of Freeborn Street and Midland Avenue, within an R3-1 zoning district; and

WHEREAS, the site is rectangular, with a width of 60 feet, a depth of 87 feet, and a lot area of approximately 5,220 sq. ft.; and

WHEREAS, the site was formerly two lots – Lot 29 and Lot 27 – which were merged in 2008; the site was formerly occupied by a two-story single-family home, which was demolished in 2004; the entire site is currently vacant; and

WHEREAS, the applicant now proposes to construct a one-story building with a floor area of 2,100 sq. ft. to be occupied by a commercial (Use Group 6) use, which is not permitted as of right in the subject R3-1 zoning district; and

WHEREAS, accordingly, the applicant seeks a use variance pursuant to ZR § 72-21; and

WHEREAS, the Board notes that, although there are not any bulk regulations for a non-conforming use within a residential zoning district, the proposal does not comply with the parking requirement for a commercial district or the R3-1 yard requirements; and

WHEREAS, specifically, the applicant proposes five parking spaces (14 spaces would be required in a commercial district for such use) and the applicant proposes one front yard with a depth of 47 feet and one side yard with a width of five feet (two front yards, with depths of ten feet and 15'-0" and two side yards, with widths of five feet and 20'-0" are required for a corner lot within the subject zoning district); and

WHEREAS, the applicant asserts that the following are unique physical conditions that lead to practical difficulties in developing the subject site in strict compliance with underlying district regulations: (1) the proximity of Use Group 16 uses and the commercial nature of the subject block; (2) the shallow depth of the lot; (3) the traffic condition of Midland Avenue; and (4) the location at the border of an AE10 flood zone; and

WHEREAS, for reasons set forth below, the Board rejects that these physical conditions are unique or create any practical difficulties or unnecessary hardship in developing the site with a conforming use; and

WHEREAS, as to the nearby uses, the applicant asserts that it is surrounded by Use Group 16 uses and that the subject site is the only site along Midland Avenue with such a condition; and

WHEREAS, the Board notes that the site is a corner

lot, adjacent to a dry cleaning establishment to the west and a one-story home to the south; and

WHEREAS, the Board notes that there has not been any evidence submitted into the record to establish that the one-story dry cleaning establishment, which occupies a portion of a 2,568 sq. ft. lot is a Use Group 16, rather than Use Group 6 use (as defined in ZR § 32-15); in either case, though, Use Group 6 dry cleaning establishments, which are comparable in size to the adjacent business, are permitted within most commercial zoning districts, including commercial overlays within residential zoning districts, and are deemed compatible with residential use; and

WHEREAS, the Board notes that the confirmed Use Group 16 uses are either across Midland Avenue or Freeborn Street and are not adjacent to the site or even within the subject block; and

WHEREAS, further, the Board notes that the automotive storage facility across Midland Avenue (at 545 Midland Avenue) only has a curb cut and entrance on Freeborn Street and that the portion of the facility, which is across Midland Avenue from the site does not have any access points or fenestration and the operation is otherwise contained within the building and not visible from the subject site; and

WHEREAS, the other automotive facility across Midland Avenue is diagonal from the site with a small amount of frontage on Midland Avenue; and

WHEREAS, the automotive repair shop across Freeborn Street occupies a small site with a lot area of approximately 2,925 sq. ft. or a little more than half the lot area of the subject site; and

WHEREAS, the Board finds that the applicant's assertion that the noted uses constrain residential use is conclusory; and

WHEREAS, as to whether the location near to Use Group 16 uses is a unique condition, the Board notes that all of the noted Use Group 16 and other non-residential uses abut and are across the street from residential uses, many of which occupy smaller sites than the subject site; and

WHEREAS, further, the Board notes that there are at least four vacant sites within a 400-ft. radius of the site which have a narrower width than the subject site and which share a lot line with an automotive use, unlike the subject site, which is across the street from automotive uses; and

WHEREAS, accordingly, the assertion that the site is unique in its proximity to commercial and Use Group 16 uses is unavailing; and

WHEREAS, as to the purported commercial nature of the subject block, the Board notes that other than the four small commercial establishments with frontage on Midland Avenue, the subject block is occupied entirely by residential uses; there are 13 lots occupied by residential uses on the subject block; and

WHEREAS, Block 3802, to the west is occupied exclusively by residential uses and Block 3804 to the east is occupied exclusively by residential uses, except for the

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noted automotive repair shop; the three blocks across Midland Avenue are also occupied by a majority of residential uses; and

WHEREAS, the applicant's assertion that the subject block is almost exclusively developed with non-conforming uses is factually incorrect, based on the submitted land use map, which reflects a majority of sites and a majority of the lot area occupied by one- and two-story homes; and

WHEREAS, site visits and photographs submitted by the applicant confirm that there is a strong residential character in the area; and

WHEREAS, the Board also notes that the property directly adjoining the subject site to its south, and built nearly to the lot line is occupied by residential use, and that a substantial number of additional sites along Midland Avenue and the side streets are occupied by residential uses; and

WHEREAS, as to the depth of the lot, the applicant asserts that the lot, with a width of 60 feet along the Midland Avenue frontage and a depth of 87 feet along the Freeborn Street frontage is uniquely shallow; and

WHEREAS, specifically, the applicant asserts that a site plan with an orientation on Freeborn Street reflects a depth of 60 feet, which constrains residential development; and

WHEREAS, the Board notes that because the site is a regular rectangular corner lot with a lot area of 5,220 sq. ft., the applicant has two alternatives for orienting the homes on the site; the homes may either be oriented on Midland Avenue, where the width would be 60 feet and the depth 87 feet, or along Freeborn Street, where the width would be 87 feet and the depth 60 feet; and

WHEREAS, the Board notes that the applicant submitted two site plans, which each accommodate two habitable homes, one with the homes fronting on Midland Avenue and one with the homes fronting on Freeborn Street; and

WHEREAS, the Board notes that the applicant's site plan erroneously reflects that a rear yard with a depth of 30 feet is required from the Freeborn Street frontage; due to the corner lot condition, that rear yard is deemed a side yard with a required width of 20 feet, as provided; accordingly, the Board notes that the site can accommodate at least two complying residential alternatives and is thus not constrained by the lot dimensions; and

WHEREAS, specifically, the Board notes that there are four other lots within the subject block with depths equal to or shallower than 60 feet, on which 60 feet is the larger of the lots' two dimensions, and which have lot areas a fraction the size of the 5,220 sq. ft. subject lot; and

WHEREAS, additionally, the Board notes that the applicant has the alternative to orient the site plan so that the frontage is on Midland Avenue where the depth is 87 feet; a total of at least 17 lots within the 400-ft. radius of the site have a depth of 87 feet or shallower; and

WHEREAS, additionally, as to the overall impact of

the lot dimensions, the subject site with a lot area of 5,220 sq. ft. is larger than the average site within the radius and more regularly-shaped than the large number of long, narrow mid-block sites with widths in the 15 to 40-ft. range and depths of 100 feet and no alternative to re-orient the frontage; and

WHEREAS, the site also has a comparable lot area to the other corner lots in the radius; and

WHEREAS, the Board notes that the proposed alternatives for two complying semi-detached homes on the site, are able to accommodate the total amount of available floor area; and

WHEREAS, accordingly, the Board has determined that there is no evidence in the record that the depth of the lot, either along Freeborn Street or Midland Avenue constrains a conforming and complying development; and

WHEREAS, on the contrary, the Board notes that the majority of lots in the area, with narrow widths cannot accommodate more than one home; and

WHEREAS, as to the site's location, the applicant asserts that Midland Avenue is a heavily-trafficked arterial not suitable for residential use; and

WHEREAS, the Board rejects the applicant's assertion that Midland Avenue is a heavily-trafficked arterial; and

WHEREAS, Midland Avenue has a width of 80 feet, which includes sidewalks on both sides of the street, one lane of traffic in each direction, one bicycle lane in each direction, and one lane of curbside parking on each side of the street, which does not reach the threshold of a heavily-trafficked arterial; and

WHEREAS, the Board notes that roads within Staten Island that have been identified as heavily-trafficked arterials, which may constrain residential development, include Richmond Avenue, with a width of 150 feet and eight lanes of traffic and Hylan Boulevard, with a width of 100 feet and six lanes of traffic; and

WHEREAS, the Board notes that the applicant has failed to prove that the traffic on Midland Avenue rises to the level of uniqueness and that expanding the definition of uniqueness to include the location of a site on a street with two lanes of moving traffic in a city with innumerable such streets is contrary to the definition of what is unique; and

WHEREAS, the Board notes that there are at least two sites on Midland Avenue, within one block of the site, which have been recently developed with homes; and

WHEREAS, additionally, the Board notes that the site also has 87 feet of frontage on Freeborn Street, which is a one-way street, with a width of 50 feet, and parking on both sides of the street; and

WHEREAS, accordingly, the Board rejects the applicant's argument that the location on Midland Avenue is a unique condition resulting in a hardship; and

WHEREAS, as to the location within an AE10 flood zone, the Board notes that, as reflected in the as of right scenarios, any potential restrictions on the ability to occupy the first floor of a proposed building with residential use

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does not inhibit the development of two habitable semi-detached three-story homes; and

WHEREAS, the Board also rejects the assertion that location in the flood zone is a unique condition which creates a hardship in developing the site with a conforming use; and

WHEREAS, the applicant cites to four prior Board grants for nearby sites in support of the argument that the Board has accepted that certain of the noted conditions form the basis of a unique physical condition that leads to practical difficulty or unnecessary hardship; these cases are BSA Cal. Nos. 435-74-BZ, 289-79-BZ/290-79-BZ, and 46-93-BZ; and

WHEREAS, a careful reading of these resolutions reveals that the applicant's reliance on these particular grants is misplaced, as, although each site is in close proximity, they can all be distinguished; and

WHEREAS, as to BSA Cal. No. 435-74-BZ (552 Midland Avenue), the Board notes that the application was for the reconstruction of an automotive service station at the site, which was a pre-existing non-conforming use; and

WHEREAS, the Board notes that, in addition to the prior existence of the use, the subject site in BSA Cal. No. 435-74-BZ has a width of 45 feet and a depth of 65 feet, which amounts to a lot area of a little more than half that of the subject site (546 Midland Avenue); and

WHEREAS, the Board notes that it granted the applicant's request to reopen the record so that the applicant could submit the site plan associated with a proposed conforming development at 552 Midland Avenue (435-74-BZ); the Board does not find the site plan to be relevant to the subject application; and

WHEREAS, specifically, the Board notes that because the subject site has a lot area that is approximately 44 percent larger than 552 Midland Avenue, the subject site can accommodate two semi-detached homes with widths of 18'-6" each, with a substantial amount of open space, including two front yards with depths of 15'-0" and 11'-6", and two side yards with widths of 30'-0" and 11'-6"; and

WHEREAS, in contrast, the as of right plan associated with the smaller 552 Midland Avenue reflects two semi-detached homes with widths of 13'-6" each, two front yards with depths of 15'-0" and 10'-0", and two side yards with widths of 3'-0", and 8'-0"; and

WHEREAS, in addition to the other distinctions of 552 Midland Avenue, namely that at the time of the grant, it was occupied by a pre-existing non-conforming use and was enlarged per the Board's grant, the 552 Midland Avenue site is significantly more constrained for residential development, due to its lot size, which results in smaller, less desirable homes and would require two side yard waivers; and

WHEREAS, accordingly, if anything, the alternate site plan for 552 Midland Avenue demonstrates that the subject site can accommodate more sizeable homes with more open space, which do not require any bulk waivers; and

WHEREAS, as to BSA Cal. No. 289-79-BZ and its companion case BSA Cal. No. 290-79-BZ (respectively, 547 and 551 Midland Avenue), the Board notes that there was a pre-existing non-conforming use at 551 Midland Avenue and, as reflected on the 1959 certificate of occupancy and in the Board's decision, that the use at 547 Midland Avenue is a fully enclosed automotive storage building restricted to accessory use to the pre-existing non-conforming garage at 551 Midland Avenue, directly across Freeborn Street; and

WHEREAS, as to BSA Cal. No. 46-93-BZ (530 Midland Avenue), the Board notes that there are at least three distinctions to be made; the differences include the following: (1) the site is midblock and has a narrower width of 40 feet and a lot area that is smaller by approximately 1,000 sq. ft.; (2) because of the site's midblock location, narrower width, and yard requirements, two homes could not be feasibly accommodated at the site; and (3) the site is directly between two pre-existing non-conforming commercial uses; and

WHEREAS, the Board therefore, is not persuaded that the site's (1) location opposite automotive uses and adjacent to a dry cleaning establishment; (2) depth of 60 feet along Freeborn Avenue or 87 feet along Midland Avenue; (3) location on the corner of Midland Avenue and Freeborn Street; (4) location within an AE10 flood zone; and (5) perceived similarities with nearby sites do not constitute unique physical conditions that create a practical difficulty or unnecessary hardship in constructing a complying building to be occupied by a conforming use; and

WHEREAS, the Board still requires proof of actual unique physical features present at the site which cause practical difficulties or unnecessary hardship; and

WHEREAS, for all of the reasons set forth above, the Board finds that the applicant has failed to meet the finding set forth at ZR § 72-21(a); and

WHEREAS, because the applicant has failed to establish that any of the purported site conditions are unique or constrain a conforming development on the site, the Board rejects the argument that these conditions create an inability to realize a reasonable return; and

WHEREAS, the Board notes that the applicant's financial analysis relies on the noted conditions as hardships which constrain the economic feasibility of conforming residential development and, in the absence of any nexus between the conditions and the purported hardship, the Board finds that the applicant relies on the general economic market condition in the surrounding area, which is a condition shared by all sites, many of which are much smaller than the subject site; and

WHEREAS, further, the applicant has provided a site plan, which reflects that two three-story single-family homes could be accommodated on the site, a more favorable result than what could be achieved on the majority of lots in the 400-ft. radius; and

WHEREAS, thus, the application also fails to meet the finding set forth at ZR §72-21(b); and

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WHEREAS, since the application fails to meet the findings set forth at ZR § 72-21 (a) and (b), it must be denied; and

WHEREAS, because the Board finds that the application fails to meet the findings set forth at ZR § 72-21(a) and (b), which are threshold findings that must be met for a grant of a variance, the Board declines to address the other findings.

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, dated August 25, 2008, acting on Department of Buildings Application No. 510051523, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, September 22, 2009.

166-09-BZ

CEQR #09-BSA-108K

APPLICANT – Slater & Beckerman, for Harry J. Brainum, Jr., Inc., owner.

SUBJECT – Application May 4, 2009 – Special Permit (§75-53) to permit the enlargement of a manufacturing building contrary to floor area, height and setback and permitted obstruction in rear yard regulations (§43-12, §43-43, §43-23(b)). M1-1 District.

PREMISES AFFECTED – 360-366 McGuinness Boulevard and 237 Freeman Street, northeast corner of Freeman Street and McGuinness Boulevard, Block 2506, Lots 2, 4, 5, 52, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Stuart Beckerman.

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 Brooklyn Borough Commissioner, dated April 7, 2009, acting on Department of Buildings Application No. 310036243, reads in pertinent part:

“The proposed enlargement of a legal conforming commercial and manufacturing use located in an M1-1 zoning district is contrary to bulk provisions of ZR Article IV, Chapter 3:

1. Proposed floor area contrary to ZR 43-12
2. Proposed height of building contrary to ZR 43-43
3. Proposed permitted obstruction in rear yard contrary to ZR 43-23(b) and requires a special permit from the Board of Standards and Appeals pursuant to Section 73-53 of the Zoning Resolution;” and

WHEREAS, this is an application made pursuant to ZR §§ 73-53 and 73-03, to allow, within an M1-1 zoning district, the proposed enlargement of a conforming Use Group 16D and Use Group 17B warehouse and manufacturing building, which does not comply with requirements related to floor area, height, setback, and rear yard encroachment, contrary to ZR §§ 43-12, 43-43 and 43-23(b); and

WHEREAS, a public hearing was held on this application on August 25, 2009 after due notice by publication in *The City Record*, and then to decision on September 22, 2009; 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 Mayor’s Office of Industrial & Manufacturing Businesses provided written testimony in support of this application; and

WHEREAS, the subject site is located on the northeast corner of McGuinness Boulevard and Freeman Street, in an M1-1 zoning district within the North Brooklyn Industrial Business Zone; and

WHEREAS, the site has a lot area of 13,092 sq. ft. and is occupied by a 16,592 sq. ft. (1.27 FAR) one- and two-story warehouse and manufacturing building; and

WHEREAS, the site consists of four tax lots (Lots 2, 4, 5 and 52) which were merged into a single zoning lot, pursuant to Department of Buildings (“DOB”) approval; and

WHEREAS, the applicant states that the owner has owned Lots 2 and 4 (the “Original Zoning Lot”) since 1918 and acquired Lots 5 and 52 in 2002 and 2004, respectively; and

WHEREAS, the Original Zoning Lot had a lot area of 8,250 sq. ft. and was occupied by a one- and two-story warehouse and manufacturing building with a floor area of 11,750 sq. ft.; Lot 5 is occupied by a warehouse and Lot 52 was formerly occupied by a home; and

WHEREAS, the applicant states that in 2006 DOB approved plans to add Lot 5 to the subject zoning lot and permitted an increase of the floor area on Lot 5, pursuant to ZR § 43-121; and

WHEREAS, the applicant further states that the plans were amended in 2008 to add Lot 52 to the zoning lot and permit an increase of the floor area on Lot 52, pursuant to ZR § 43-121; and

WHEREAS, the applicant states that the application permitting an increase in the floor area of Lots 5 and 52 pursuant to ZR § 43-121 has been withdrawn, and the subject proposal is analyzed within the context of the subject special permit; and

WHEREAS, the applicant now seeks a special permit, pursuant to ZR § 73-53, to address the following non-complying conditions associated with the current proposal:

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an FAR of 1.27 (the maximum FAR is 1.0); a wall height of 75'-0" (the maximum wall height is 30'-0"); no setback (a setback of 15'-0" is required after a height of 30'-0"); and a portion of a one-story building in the rear yard with a height of 30'-0" (the maximum height of a permitted obstruction in the rear yard is 23'-0"); and

WHEREAS, as to the prerequisites listed in ZR § 73-53(a), the applicant states that the existing and proposed Use Group 16D and Use Group 17B warehouse and manufacturing uses conform to the use regulations of the M1-1 zoning district, and therefore the uses are not subject to termination pursuant to ZR § 52-70; and

WHEREAS, in accordance with ZR § 73-53(a)(2), the applicant demonstrated that the subject use for which the special permit is being sought has been lawfully located on the zoning lot on which the expansion is to occur, or a portion thereof, for five years or more; and

WHEREAS, in support of this finding, the applicant states that the owner's business has been lawfully located on the Original Zoning Lot since 1918, and the applicant submitted a certificate of occupancy, utility bills, and corresponding checks from the owner evidencing that the subject use has been lawfully located on the zoning lot for more than five years; and

WHEREAS, ZR § 73-53(a)(3) requires that the building in which such use is located must not have been previously enlarged pursuant to ZR §§ 11-412, 43-121 or 72-21; and

WHEREAS, the applicant states that, as discussed above, the portion of the proposed enlargement located on Lots 5 and 52 was approved pursuant to ZR § 43-121; however, the application for that work has been withdrawn; and

WHEREAS, the applicant submitted a Pre-Consideration from DOB, dated December 11, 2008, confirming that the subject proposal satisfies ZR § 73-53(a)(3), and is therefore eligible for the subject special permit; and

WHEREAS, the applicant states that, in accordance with the requirement of ZR § 73-53(a)(4), the subject uses are listed in Use Group 16D and Use Group 17B, not Use Group 18; and

WHEREAS, pursuant to ZR § 73-53(b)(1), the permitted enlargement is limited to the greater of 45 percent of the floor area occupied by the use on December 17, 1987 or a 2,500 sq. ft. increase in the floor area occupied by the use on December 17, 1987, and in no event shall exceed a 10,000 sq. ft. increase in the floor area occupied on that date; and

WHEREAS, the applicant has demonstrated that the requested proposal is for a 4,842 sq. ft. enlargement, which amounts to less than 45 percent of the 11,750 sq. ft. of floor area occupied by the use on December 17, 1987, and does not exceed 10,000 square feet; therefore, the proposed enlargement meets the requirements of ZR § 73-53(b)(1); and

WHEREAS, the applicant represents that pursuant to ZR § 73-53(b)(2), the enlargement is an entirely enclosed building, and there will be no open uses of any kind; and

WHEREAS, the applicant represents, and the Board agrees, that that the requirements set forth at ZR § 73-53(b)(3),(4),(5),(6),(7),(8), and (9) are either satisfied, or are inapplicable to the instant application; and

WHEREAS, as to the finding under ZR § 73-53(c)(1), the applicant states that the enlargement will not generate significant increases in vehicular or pedestrian traffic nor cause congestion in the surrounding area, but will rather decrease such traffic and congestion; and

WHEREAS, the applicant states that the proposed enlargement is necessary to accommodate stacking equipment that will increase the efficiency of storage and other operations; and

WHEREAS, the applicant represents that currently, space constraints force the owner to receive items in less than full truckload quantities, and having the ability to store more raw and finished product will enable the owner to receive larger deliveries, thereby reducing the number and frequency of truck deliveries at the site; and

WHEREAS, as to potential parking impacts, the applicant states that the proposed enlargement provides the three required accessory off-street parking spaces, which will be adequate to accommodate any vehicles generated by the enlargement, as required under ZR § 73-53(c)(2); and

WHEREAS, the Board notes that ZR § 73-53(c)(3) and (4) are inapplicable to the subject proposal, as there are no required side yards and that there is no open parking or loading on the premises; and

WHEREAS, as to the general impact on the essential character of the neighborhood and nearby conforming uses, the applicant notes that the proposed enlargement will be constructed entirely within the subject M1-1 zoning district, and the existing and proposed uses are consistent with the industrial character of the surrounding area; and

WHEREAS, the applicant states that the proposed FAR of 1.27 is less than the FAR of 1.5 which would be allowed as-of-right pursuant to ZR § 43-121; and

WHEREAS, the applicant further states that the street wall and bulk are compatible with the character of the surrounding area for the following reasons: (1) the building's total height of 75 feet would be permitted with an appropriate setback; (2) McGuinness Boulevard is a wide divided boulevard with a range of widths from 160 to 180 feet; (3) the block is at the beginning of the Pulaski Bridge approach ramp; and (4) the subject section of McGuinness Boulevard is characterized by significant commercial truck traffic; and

WHEREAS, as to the rear yard encroachment, the applicant states that such an encroachment is permitted with full lot coverage up to a height of 23 feet, and the additional seven feet of height proposed by the applicant will have a minimal impact on the surrounding area; and

WHEREAS, the applicant further states that the impact

MINUTES

of the rear yard encroachment will be minimal because the adjacent lot to the east is occupied by an open storage yard, the adjacent lots to the north are occupied by non-conforming homes located more than 50 feet from the rear lot line of the premises, the only access points to the site are from McGuinness Boulevard and Freeman Street, and the rear yard encroachment is fully enclosed with no windows; and

WHEREAS, the applicant notes that the premises is located in an M1-1 zoning district within the North Brooklyn Industrial Business Zone, which is an area designated by the Mayor's Office of Industrial and Manufacturing Businesses as one of the most productive manufacturing zones in the City and therefore worthy of special protections; and

WHEREAS, accordingly, the Board finds that the proposed enlargement will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, the Board notes that the grant of the special permit will facilitate the enlargement of viable Use Group 16D and Use Group 17B uses, which provide jobs and tax revenue, on a site where such use is appropriate and legal; and

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

WHEREAS, at hearing, the Board questioned whether the proposed wall height of 75 feet could be reduced; and

WHEREAS, in response, the applicant states that the proposed height is necessary for the business to remain at its current location, as the height will accommodate an automated sheet storage system capable of storing a large quantity of flat sheet in a small area by raising the ceiling height, thereby opening up much needed warehouse space for other operations, including material processing, sheet manufacturing, order picking and packing, and truck loading and unloading; and

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

WHEREAS, therefore, the Board determines that the evidence in the record supports the findings required to be made under ZR §§ 73-53 and 73-03.

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09-BSA-108K, dated April 27, 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 §§ 73-53 and 73-03 for a special permit to allow, within an M1-1 zoning district, the proposed enlargement of a conforming Use Group 16D and Use Group 17B warehouse and manufacturing building, which does not comply with requirements related to floor area, height, setback, and rear yard encroachment, contrary to ZR §§ 43-12, 43-43 and 43-23(b), *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received August 5, 2009"-(5) sheets and "August 13, 2009"-(1) sheet; and *on further condition*;

THAT the premises shall be maintained free of debris and graffiti;

THAT there shall be no open uses on the site;

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

THAT substantial construction shall be completed pursuant to 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 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 September 22, 2009.

220-07-BZ

APPLICANT – Moshe M. Friedman, P.E., for Relly Bodansky, owner.

SUBJECT – Application September 25, 2007 – Variance (§72-21) to allow the erection of a new four-story residential building containing four dwelling units, contrary to use

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regulations (§42-10). M1-1 zoning district.
PREMISES AFFECTED – 847 Kent Avenue, east side of Kent Avenue, 300' north of intersection of Kent Avenue and Myrtle Avenue, Block 1898, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 10, 2009 at 1:30 P.M., for deferred decision.

97-08-BZ

APPLICANT – Eric Palatnik, P.C., for Chesky Berkowitz, owner; Central UTA, lessee.

SUBJECT – Application April 18, 2008 – Special Permit (§73-19) to allow the legalization of an existing school (*Central UTA*) (UG 3). M1-1 district.

PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik and Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to November 10, 2009, at 1:30 P.M., for continued hearing.

249-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Gee Jay Real Estate Development Company, owner.

SUBJECT – Application October 6, 2008 – Variance (§72-21) for the construction of a single family residence, contrary to floor area and open space (§23-141); required front yard (§23-45), rear yard (§23-47), side yard (§23-46) and off street parking (§25-622) regulations. R2 (LDGM) zoning district.

PREMISES AFFECTED – 130 Adelaide Avenue, west side of Adelaide Avenue, 497' south of intersection with Guyon Avenue, Block 4705, Lot 151, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Michael Scagnelli.

ACTION OF THE BOARD – Laid over to October 27, 2009, at 1:30 P.M., for continued hearing.

314-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 437-51 West 13th Street, LLC, owner.

SUBJECT – Application December 22, 2008 – Variance (§72-21) to allow for the construction of a 12-story commercial building (office and UG10 retail), contrary to FAR, height and setback and rear yard regulations (§43-12, §43-43, §43-26) and use regulations (§42-12). M1-5 zoning district.

PREMISES AFFECTED – 437-447 West 13th Street, 862-

868 Washington Street, southeast portion, block bounded by West 13th, West 14th and Washington Streets, Tenth Avenue, Block 646, Lots 19, 20, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to October 27, 2009, at 1:30 P.M., for an adjourned hearing.

37-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Shirley Ades and Moshe Ades, owners.

SUBJECT – Application March 3, 2009 – Special Permit (§73-622) for the in-part legalization and enlargement of an existing single family home, contrary to floor area, open space and lot coverage (ZR §23-141(b)); side yard (ZR §23-461(a)) & (ZR §23-48); rear yard (ZR §23 -47), and perimeter wall height (ZR §23-631) regulations. R3-2 zoning district.

PREMISES AFFECTED – 3950 Bedford Avenue, Bedford Avenue between Avenue R and Avenue S, Block 6830, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra J. Altman.

ACTION OF THE BOARD – Laid over to October 20, 2009, at 1:30 P.M., for continued hearing.

49-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Beth Israel Medical Center, owner; Kollel Bnei Torah, lessee.

SUBJECT – Application March 26, 2009 – Variance (§72-21) to permit the enlargement of a synagogue contrary to side yard regulations (§24-35(a)). R4 district.

PREMISES AFFECTED – 1323 East 32nd Street, east side of East 32nd Street, between Avenue M and Kings Highway, Block 7668, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #18M

APPEARANCES –

For Applicant: Lyra J. Altman.

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 October 6, 2009, at 1:30 P.M., for decision, hearing closed.

51-09-BZ

APPLICANT – Eric Palatnik, P.C., for Shiranian Nizi, owner.

SUBJECT – Application April 3, 2009 – Special Permit (§73-622) for the legalization of an enlargement to an existing single family home, contrary to side yard

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requirements (§461). R-5 zoning district.
PREMISES AFFECTED – 2032 East 17th Street, East 17th Street and Avenue T, Block 7321, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

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 November 10, 2009, at 1:30 P.M., for decision, hearing closed.

53-09-BZ

APPLICANT – Harold Weinberg, P.E., for David Salamon, owner.

SUBJECT – Application April 6, 2009 – Variance (§72-21) for the construction of a three-family home on a vacant undersized lot. This application seeks to vary floor area (§23-141); front yard (§23-45) side yard (§23-461) and parking (§25-161) in an R5 zoning district.

PREMISES AFFECTED – 540 Schenck Avenue, southwest corner of Dumont Avenue, between Schenck Avenue and Hendrix Street, Block 4075, Lot 118, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

For Opposition: Meville Thorne.

ACTION OF THE BOARD – Laid over to November 10, 2009, at 1:30 P.M., for continued hearing.

54-09-BZ

APPLICANT – Juan D. Reyes, III/Riker Danzig et al, for Lord Shivas Properties, LLC, owner; Gab & Aud, Inc., lessee.

SUBJECT – Application April 8, 2009 – Special Permit (§73-36) to allow a physical culture establishment (*Haven Day Spa*) on the cellar level of a four-story mixed-use building. M1-5B district.

PREMISES AFFECTED – 150 Mercer Street (a/k/a 579 Broadway) Mercer Street between Prince and Houston in SoHo, block 512, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Juan Reyes III.

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 October

20, 2009, at 1:30 P.M., for decision, hearing closed.

56-09-BZ

APPLICANT – Omnipoint Communications, Inc., for The South Shore Swimming Club, Inc., owner.

SUBJECT – Application April 15, 2009 – Special Permit (§73-30) to allow a proposed non-accessory radio tower and related equipment. R3X zoning district.

PREMISES AFFECTED – 6736 Hylan Boulevard, south side of Hylan Boulevard between Culotta Lane and Page Avenue, Block 7734, Lot 50, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to October 20, 2009, at 1:30 P.M., for an adjourned hearing.

214-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 3210 Riverdale Associates, LLC, owner.

SUBJECT – Application September 18, 2007 – Variance (§72-21) to allow a public parking garage and increase the maximum permitted floor area in a mixed residential and community facility building, contrary to §22-10 and §24-162. R6 zoning district.

PREMISES AFFECTED – 3217 Irwin Avenue, aka 3210 Riverdale Avenue, north side of West 232nd Street, Block 5759, Lots 356, 358, 362, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Josh Rinesmith and John Becker.

For Administration: Assemblyman Jeffrey Dinowitz, Manuel Delgado, Benjamin Greif and Zulmu Montanez.

ACTION OF THE BOARD – Laid over to November 24, 2009, at 1:30 P.M., for continued hearing.

28-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for 133 Equity Corp., owner.

SUBJECT – Application February 17, 2009 – Variance (§72-21) to permit a four-story residential building on a vacant lot, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 133 Taaffe Place, east side of Taaffe Place, 142'-2.5" north of intersection of Taaffe Place and Myrtle Avenue, Block 1897, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Moishe Friedman.

For Opposition: Sue Ellen Levy and Raphael Davon.

ACTION OF THE BOARD – Laid over to November 17, 2009, at 1:30 P.M., for continued hearing.

MINUTES

214-09-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for LAL Astor Avenue Management Co., LLC, owner.

SUBJECT – Application June 29, 2009 – Special Permit (§73-125) to allow for a 9,996 sq ft ambulatory diagnostic or treatment center which exceeds the 1,500 sq ft maximum allowable floor area set forth in ZR §22-14. R4-1 zoning district.

PREMISES AFFECTED – 1464 Astor Avenue, south side of Astor Avenue, 100’ east of intersection with Fenton Avenue, Block 4389, Lot 26, 45, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Adam Rothkrug.

For Opposition: Councilmember Jame Vacca, Joseph A. McManus, John Doyle, Sal Gasteriun Anjali Kochar, Frank Ficabasso, Desmond A. Philip, Michael Franco, Dr. Peppino Bonelli, Dufinn Franco, Anthony J. Bellitto, Xueliang Su, Karen Evangeliou, Edith Shope, Rosalinda Nardone, Mike Franco, Wanda Bennett and Kamleon Bogga.

ACTION OF THE BOARD – Laid over to November 10, 2009, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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October 16, 2009

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DOCKETS

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272-09-BZ

32-62 Steinway Street, North side, 281' east of 34th Avenue., Block 656, Lot(s) 61, Borough of **Queens, Community Board: 1**. Special Permit (73-36) to allow legalization of a physical culture establishment. C4-2 district.

273-09-BZ

117-40 125th Street, West side of 125th Street, 360 mfeet north of intersection with Sutter Avenue., Block 11746, Lot(s) 64, Borough of **Queens, Community Board: 10**. Variance to allow a single family home, contrary to bulk regulations. R3-2 district.

274-09-A

3920 Merritt Avenue, 153 Feet north of intersection of Merritt and East 233rd Street, Block 4972, Lot(s) 12, Borough of **Bronx, Community Board: 12**. Application filed by the Fire Department seeking to modify Certificate of Occupancy No. 71956 to require additional fire protection for a commercial use in the form of automatic wet sprinkler system throughout the entire building . M1-1 by an R-4 district.

275-09-A

1801 51st Street, 18th Avenue and 51st Street, Block 5461, Lot(s) 1, Borough of **Brooklyn, Community Board: 12**. Application filed by the NYC Fire Department to modify Certificate of Occupancy No. 12578, 53475, 15219 & 71956 to require additional fire protection in the form of automatic wet sprinkler system throughout the entire building . R-5 district.

276-09-A

18th Avenue and 51st Street, Block 5461, Lot(s), Borough of **Brooklyn, Community Board: 12**. Application for multiple certificate of occupancies to require additional fire protection. R-5 district.

277-09-A

18th Avenue and 51st Street, Block 5461, Lot(s), Borough of **Brooklyn, Community Board: 12**. Application for multiple certificate of occupancy to require additional fire protection. R-5 district.

278-09-A

18th Avenue and 51st Street, Block 5461, Lot(s) 1, Borough of **Brooklyn, Community Board: 12**. Application for multiple certificate of occupancy to require additional fire protection. R-5 district.

279-09-BZ

2709 Avenue M, Between East 27th and East 28th Street, Block 7645, Lot(s) 7, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargment of a single family home. R-2 district.

280-09-A

330 West 86th Street, South side of West 86th Street, 280 feet west of the intersection of Riverside Drive and West 86th Street., Block 1247, Lot(s) 49, Borough of **Manhattan, Community Board: 7**. Appeal seeking determination of the Department of Building. R10A district.

279-09-BZ

2709 Avenue M, Between East 27th and East 28th Street., Block 7645, Lot(s) 7, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargment of a single family home. R-2 district.

280-09-A

330 West 86th Street, South side of West 86th Street, 280 feet west of the intersection of Riverside Drive and West 86th Street., Block 1247, Lot(s) 49, Borough of **Manhattan, Community Board: 7**. Appeal seeking determination of the Department of Building. R10A 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 27, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 27, 2009, 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 – Slater & Beckerman, LLP, for Verizon New York, owner.

SUBJECT – Application September 15, 2009 – Amendment of Special Permit (§73-65) which allowed the enlargement of Telephone Exchange Facility (UG 6D). The amendment would allow the change of use from a telephone exchange (UG 6D) to a UG 6 on the first floor, from a hospital related facility (UG 4A) to a school (UG 3) on the fourth floor, from a telephone exchange (UG 6D) to a school (UG 3) on the fifth and sixth floors, and from offices for the Human Resources Administration (UG 6B) to offices (UG 6B) on the seventh and eighth floors and the creation of recreation space, accessory to the school (UG 3), on the roof. R8/Special Grand Concourse Preservation District.

PREMISES AFFECTED – 1775 Grand Concourse, 100 East 175th Street and 1730 Walton Avenue, Corner lot with frontages on the south side of East 175th Street, east side of Walton Avenue and west side of Grand Concourse, Block 2822, Lot 27, Borough of Bronx.

COMMUNITY BOARD #5BX

60-82-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application September 22, 2009 – Extension of Time to obtain a Certificate of Occupancy for a gasoline service station (BP North America) which expired on December 13, 2007; Waiver of the Rules. C2-3/R7X zoning district.

PREMISES AFFECTED – 60-11 Queens Boulevard, between 60th Street and 61st Street, Block 1338, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

140-92-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Evangel Church, owner.

SUBJECT – Application December 19, 2008 – Amendment of variance (§72-21) which allowed a five story and cellar enlargement of an existing four story and cellar non-conforming school with accessory uses (UG 3) which increased the degree of non-compliance when the zoning lot was designated M1-3D. The amendment seeks to enlarge the current building creating new non-compliances with

respect to height and setback (§43-43). M1-2/R5D & M1-2/R5B (Special Long Island City Mixed Use District). PREMISES AFFECTED – 39-21 Crescent Street, southerly side of Crescent Street between 39th Avenue and 40th Avenue, Block 396, Lot 10 & 36, Borough of Queens.

COMMUNITY BOARD #1Q

3-04-BZ

APPLICANT – Eric Palatnik, P.C., for Rushikesh Trivedi, owner.

SUBJECT – Application September 22, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for a two story, two family dwelling which expires on November 29, 2009; Waiver of the Rules. R-2 zoning district.

PREMISES AFFECTED – 147-08 46th Avenue, between Parsons Boulevard and 149th Street, Block 5452, Lot 3, Borough of Queens.

COMMUNITY BOARD #7Q

19-05-BZ

APPLICANT – Slater & Beckerman, LLP, for Groff Studios Corporation, owner.

SUBJECT – Application September 18, 2009 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the change in use of portions of an existing nine-story, mixed-use building to residential use which expires on October 18, 2009. M1-6 zoning district.

PREMISES AFFECTED – 151 West 28th Street, north side of West 28th Street, 101' east of Seventh Avenue, Block 804, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEALS CALENDAR

197-09-A

APPLICANT – Paul Russo, Breezy Point Cooperative Inc., owner; Paul Armour, lessee.

SUBJECT – Application June 26, 2009 – Proposed reconstruction and enlargement of an existing building which lies within the bed of a mapped street contrary to General City Law Section 35 and the upgrade of the private disposal system located within the bed of a mapped street contrary to Section 35 GCL and the Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 518 Browns Boulevard, southwest side of Browns Boulevard, 366.43' east of Bayside Drive, Block 16340, Lot 50, Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

232-09-A

APPLICANT – New York City Fire Department
OWNER OF PREMISES: Martin Goldstein
LESSEE: Romar Check Cashing
SUBJECT – Application July 23, 2009 – An appeal filed by the NYC Fire Department seeking a modification of Certificate of Occupancy to require an approved automatic wet sprinkler system installed throughout the entire building of a commercial use . R5 zoning district.
PREMISES AFFECTED – 1775 Flatbush Avenue, Brooklyn Avenue and East 36th Street, Block 7618, Lot 39, Borough of Brooklyn.
COMMUNITY BOARD #18BK.

OCTOBER 27, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 27, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

14-09-BZ

APPLICANT – Eric Palatnik, P.C., for Orenstein Brothers, owner; ExxonMobil Corporation, lessee.
SUBJECT – Application January 26, 2009 – Special Permit (§73-211) to allow an automotive service station with an accessory convenience store and automotive laundry (UG 16B) on a site located in a C2-1/R3-2 zoning district.
PREMISES AFFECTED – 2294 Forest Avenue, Southeast intersection of Forest Avenue and South Avenue, Block 1685, Lot 15, 20, Borough of Staten Island.
COMMUNITY BOARD #1SI

182-09-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Mita, Inc., owner.
SUBJECT – Application June 4, 2009 – Variance (§72-21) to legalize the existing Use Group 3 novitiate and Use Group 4 house of worship. The proposal is contrary to §24-35 (side yard) and §24-36 (rear yard). R7-2 district.
PREMISES AFFECTED – 612 West 180th Street, 180th Street between Wadsworth and St. Nicholas Avenues, Block 2162, Lot 33, Borough of Manhattan.
COMMUNITY BOARD #12M

215-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 92-16 95th Avenue Realty Corporation By: Alfred Smith, owner.
SUBJECT – Application July 6, 2009 – Special Permit (§11-411 & §11-413) for a reinstatement and change of use

from a wholesale sales of imported food products (UG 7) to retail (UG6) on the ground floor of a three story building, which expired on March, 2002; Extension of Time to obtain a certificate of occupancy, which expired March 1993; 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

218-09-BZ

APPLICANT – Jeffrey A. Chester, for Rich Gene Realty Corporation, owner; McDonald's Corporation, lessee.
SUBJECT – Application July 8, 2009 – Special Permit (§73-243) to allow an accessory drive-through facility to an as-of-right eating and drinking establishment (McDonald's) on the C1-3 zoned portion of a lot which is divided by a district boundary line and is contrary to §32-15. C1-3/C8-2 zoning district.

PREMISES AFFECTED – 57 Empire Boulevard, between Mckeever Place and Bedford Avenue, bounded by Sullivan Place on south, Block 1306, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

247-09-BZ

APPLICANT – Michael T. Sillerman, Esq., c/o Kramer Levin et al, for Central Synagogue, owner.

SUBJECT – Application August 26, 2009 – Variance (§72-21) to allow for the expansion of the Community House of the Congregation Ahawath Chesed Shaar Hashomayim contrary to floor area and height and setback regulations. (ZR 33-12, 81-211, 33-432). C5-2, C5-2.5 MiD District.

PREMISES AFFECTED – 123 East 55th Street, north side of East 55th Street between Park Avenue and Lexington Avenue, 127.5', Block 1310, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

Jeff Mulligan, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, OCTOBER 6, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

32-91-BZ

APPLICANT – Walter T. Gorman, P.E., for Fulvan Realty Corporation, owner; Fulton Auto Repair Incorporated, lessee.

SUBJECT – Application May 5, 2009 – Extension of Term and Waiver of the Rules for the continued use of a Gasoline Service Station (*Coastal*) which expired on May 19, 2007. C2-4/R7A zoning district.

PREMISES AFFECTED – 838/846 Fulton Street, south east corner of Vanderbilt Avenue, Block 2010, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Cindy 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.....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 term for a gasoline service station (Use Group 16) with accessory uses, which expired on May 19, 2007; and

WHEREAS, a public hearing was held on this application on July 21, 2009, after due notice by publication in *The City Record*, with a continued hearing on August 18, 2009, and then to decision on October 6, 2009; 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 site is located on the southeast corner of the intersection at Fulton Street and Vanderbilt Avenue, within a C2-4 (R7A) zoning district; and

WHEREAS, the site is currently occupied by a gasoline service station (Use Group 16) with accessory uses; and

WHEREAS, on September 29, 1959, under BSA Cal. No. 336-59-BZ, the Board granted a variance to permit the construction and maintenance of a gasoline service station, lubricatorium, car washing and 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 May 19, 1992, 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 with accessory uses, 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 July 23, 2002, the Board granted an amendment to permit the installation of a new canopy, the elongation of the island on the Fulton Street side of the property, the addition of one new multi-product dispenser, the conversion of the existing sales area to a new accessory convenience store and the extension of the service building to accommodate a new bay; and

WHEREAS, the applicant now seeks to extend the term for an additional ten years; and

WHEREAS, at hearing, the Board requested that the applicant either maintain the planters located at the rear of the premises or repair the existing fence and provide screening for the adjacent residential uses; and

WHEREAS, in response, the applicant submitted revised drawings indicating that the existing chain-link fence located at the southeast and southwest corners of the site will be repaired and made 100 percent opaque; and

WHEREAS, at hearing, the Board requested that the applicant provide documentation regarding the current status of an open spill report issued by the New York State Department of Environmental Conservation (“DEC”) and violations issued by the Fire Department regarding a failure to provide the Fire Department with documentation from the Department of Buildings (“DOB”) establishing that its fuel oil equipment has been approved and that its tank has the proper oil level gauge; and

WHEREAS, as to the open spill report, the applicant submitted a letter from its environmental consultant stating that its soil analytical results were below the DEC Technical Administrative Guidance Memorandum Soil Cleanup Objectives, and recommending that no further environmental work needs to be completed; and

WHEREAS, the applicant also submitted a copy of a letter from its environmental consultant to DEC requesting that the subject spill report be closed based on its findings; and

WHEREAS, as to the Fire Department violations, the applicant represents that DOB approved its application, dated August 29, 2009, to replace the existing fuel oil tank, and that it is in the process of selecting a contractor for the work; 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 May 19, 1992, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from May 19, 2007, to expire on May 19, 2017; *on condition* that any and all work shall substantially conform to drawings as they apply to the

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objections above noted, filed with this application marked "Received May 5, 2009"– (5) sheets and "August 3, 2009"–(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on May 19, 2017;

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. 320016745)

Adopted by the Board of Standards and Appeals, October 6, 2009.

297-99-BZ

APPLICANT – Walter T. Gorman, P.E., for Bell & Northern Bayside Company, LLC, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application June 1, 2009 – Extension of Term and Waiver of the Rules for the continued use of a Gasoline Service Station (*Mobil*) which expires on September 19, 2010. C2-2/R-6B zoning district.

PREMISES AFFECTED – 45-05 Bell Boulevard, east side blockfront between Northern Boulevard and 45th Road, Block 7333, Lot 201, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Cindy 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.....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 term for a gasoline service station (Use Group 16) with accessory uses, which expires September 19, 2010; and

WHEREAS, a public hearing was held on this application on September 15, 2009, after due notice by publication in *The City Record*, and then to decision on October 6, 2009; and

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

WHEREAS, the site is located on the east side of Bell Boulevard between 45th Road and Northern Boulevard, in a C2-2 (R6B) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 3, 1960 when, under BSA Cal. No.

477-31-BZ, the Board granted a variance to permit the construction of a gasoline service station located partially within a business district and partially within a residential district; and

WHEREAS, on September 19, 2000, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-211, to permit the replacement of the existing non-conforming gasoline service station with a larger gasoline service station and an accessory convenience store, to expire on September 19, 2010; and

WHEREAS, on February 12, 2008, under the subject calendar number, the Board permitted an amendment to the plans and an extension of time to complete construction and obtain a certificate of occupancy; the grant included a condition that a new certificate of occupancy be obtained by February 12, 2009; and

WHEREAS, on December 9, 2008, under the subject calendar number, the Board granted a further extension of time to obtain a certificate of occupancy, to expire on February 12, 2010, based on the applicant's representation that the owner would be unable to obtain the certificate of occupancy by the stipulated date due to a boundary dispute with the adjoining property owner; and

WHEREAS, the applicant states that the boundary dispute remains ongoing and concerns an approximately 70 sq. ft. portion located at the southeast corner of the site, which was designated for landscaping in the Board's grant on September 19, 2000; and

WHEREAS, the applicant represents that the owner has diligently pursued a new certificate of occupancy but has been unable to obtain it because the Department of Buildings cannot issue a sign-off due to the fact that the southeast corner of the site cannot be developed in accordance with the latest BSA-approved drawing because of the boundary dispute; and

WHEREAS, the applicant now seeks to extend the term of the special permit for ten years, so that when the boundary dispute is resolved the owner will have a term extension in place and be able to promptly obtain a new certificate of occupancy with an expiration date of September 19, 2020; and

WHEREAS, the applicant represents that the boundary dispute is expected to be settled in time to complete all landscaping in accordance with the BSA-approved plans and obtain a certificate of occupancy by February 12, 2010; 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 September 19, 2000, so that as amended this portion of the resolution shall read: "to extend the term for a period of ten years from September 19, 2010, to expire on September 19, 2020; *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 1, 2009"–(5) sheets; and *on further condition*:

THAT the term of this grant shall expire on September 19, 2020;

THAT a new certificate of occupancy be obtained by

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February 12, 2010;

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. 402586554)

Adopted by the Board of Standards and Appeals, October 6, 2009.

684-64-BZ

APPLICANT – George E. Berger, for 360 East 72nd Street Owners Corporation owner.

SUBJECT – Application July 30, 2009 – Extension of Term permitting the use of no more than 45 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 is set to expire on October 23, 2009. C1-5 in a R10A & R8B zoning district. PREMISES AFFECTED – 360 East 72nd Street, East side of 1st Avenue between East 71st Street and East 72nd Street, Block 1446, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: George E. Berger.

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 October 27, 2009, at 10 A.M., for decision, hearing closed.

590-76-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Cinfiors Limited, owners.

SUBJECT – Application September 15, 2009 – Extension of Term of a previously granted Variance (§72-01(b)) for an existing illuminated sign that exceeds the permitted height above curb level. C2-8 zoning district.

PREMISES AFFECTED – 243 East 59th Street, northwest corner of 59th Street and Second Avenue, Block 1414, Lot 120, Borough of Manhattan.

COMMUNITY BOARD #8M

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 October 20, 2009, at 10 A.M., for decision, hearing closed.

1259-79-BZ

APPLICANT – Sheldon Lobel, P.C., for Arabara, LLC, owner.

SUBJECT – Application August 13, 2009 – Extension of Time to complete construction and obtain a certificate of occupancy and Waiver of the Rules of a previously granted Variance (§72-21) for the conversion of all floors above the first floor from manufacturing lofts into residential dwellings which expired on October 6, 1984. M1-6 zoning district.

PREMISES AFFECTED – 29 West 26th Street, north side of West 26th Street, 350’ east of Sixth Avenue, Block 826, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #5M

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 October 27, 2009, at 10 A.M., for decision, hearing closed.

16-95-BZ

APPLICANT – Akerman Senterfitt, LLP, for STA Parking Group, owner.

SUBJECT – Application July 24, 2009 – Extension of Term and Waiver of the Rules of a previously granted Variance (§72-21) for a UG8 parking garage with accessory auto repairs which expired on March 23, 2009. R-8B zoning district.

PREMISES AFFECTED – 434 East 77th Street, between 76th and 77th Street, Block 1471, Lot 31, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Calvin Wong.

ACTION OF THE BOARD – Laid over to October 27, 2009, at 10 A.M., for continued hearing.

5-96-BZ

APPLICANT – Sheldon Lobel, P.C. for Saint John's Place, LLC c/o Ultra Parking Systems Incorporated, owner; Park Right Corporation, lessee.

SUBJECT – Application January 20, 2009 – Extension of Term (§11-411) to permit the operation a one-story public parking garage for no more than 150 cars (UG 8), which expired on March 18, 2007; Amendment to change the parking layout; and an Extension of Time to obtain a certificate of occupancy, which expired on March 18, 1998. R7-1 zoning district.

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PREMISES AFFECTED – 564/92 St. John's Place, South side of Saint John's Place approximately 334' west of Classon Avenue, Block 1178, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to November 24, 2009, at 10 A.M., for adjourned hearing.

172-96-BZ

APPLICANT – Law Office of Mitchell Ross, Esquire, for Don Mitchell owner.

SUBJECT – Application April 17, 2009 – Extension of Term for a variance (§72-21) which expired on May 11, 2009 allowing the operation of a welding shop (UG 16A) contrary to §32-00; Waiver of the Rules. C6-6 zoning district.

PREMISES AFFECTED – 597/99 Marcy Avenue, Southeast corner of Marcy and Vernon Avenues., Block 1759, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Laid over to October 27, 2009, at 10 A.M., for continued hearing.

193-97-BZ

APPLICANT – Fredrick A. Becker, for 29 Great Jones Corporation owner.

SUBJECT – Application July 22, 2009 – Extension of Term for a special permit (§73-36) which expired on April 1, 2008 for the operation of a Physical Culture Establishment (Great Jones Spa); Waiver of the Rules. M1-5B zoning

PREMISES AFFECTED – 27-29 Great Jones Street, Southerly side of Great Jones Street 69' easterly of the corner of Great Jones Street and Lafayette Street, Block 530, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #2M

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 October 27, 2009, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

296-08-A

APPLICANT – Gerald J. Caliendo, R.A., for Federico Camacho, owner.

SUBJECT – Application November 25, 2008 – Proposed four-story, six-family dwelling with a community facility use located within the bed of a mapped street, contrary to General City Law, Section 35. R6B Zoning District.

PREMISES AFFECTED – 45-02 111th Street, east side of 45th Avenue, 100' south of intersection of 111th Street and 45th Avenue, Block 2001, Lot 37, Borough of Queens.

COMMUNITY BOARD #4Q

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, October 6, 2009.

38-09-A

APPLICANT – Benjamin Lam, for Lee Zhen Xiang, owner.

SUBJECT – Application March 6, 2009 – Proposed construction of a three-family home located within the bed of mapped street, contrary to General City Law, Section 35. R-5 zoning district.

PREMISES AFFECTED – 72-45 43rd Avenue, corner of 43rd Avenue and 74th Street, Block 1353, Lot 46, Borough of Queens.

COMMUNITY BOARD #4Q

APPEARANCES –

For Applicant: Benjamin Lam.

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 4, 2009, acting on Department of Buildings Application No. 402138682, reads in pertinent part: “Proposed building is built to City Mapped Street

contrary to Section 35 General City Law;” and

WHEREAS, this application seeks to construct a three-family house located partially within the bed of 43rd Avenue, a mapped street; and

WHEREAS, a public hearing was held on this application on October 6, 2009, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez;

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and

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

WHEREAS, on May 22, 2007, under BSA Cal. No. 65-06-BZ, the Board granted a variance to permit the construction of a three-story three-family home that does not provide one of the two required front yards nor one of the two required side yards, contrary to ZR § 23-45(a) and ZR § 23-462(a); and

WHEREAS, the applicant now seeks permission to construct the proposed three-family home in the bed of a mapped street; and

WHEREAS, by letter dated March 18, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated April 14, 2009, the Department of Environmental Protection (DEP) states that it has reviewed the application and advises the Board that there is an existing 12-inch combined sewer and an eight-inch diameter water main in the bed of 43rd Avenue between 74th Street and the Long Island Rail Road (LIRR), and as per Amended Drainage Plan No. 24(32), 8C, 28(3) and 27(4) second ward dated May 22, 1923, there is a future 12-inch diameter combined sewer in 43rd Avenue between 74th Street and the LIRR; and

WHEREAS, DEP requested that the applicant provide a revised survey or plan showing: (1) the total width of 43rd Avenue and the width of the portion of the street to be widened between 74th Street and the LIRR; and (2) the distance from the existing water main and the combined sewer to the lot lines in 43rd Avenue between 74th Street and the LIRR; and

WHEREAS, in response, the applicant submitted a revised site plan reflecting that the 60-ft. total width of 43rd Avenue and the paved corridor of 50 feet for 43rd Avenue between 74th Street and the LIRR will be available for the installation, maintenance and/or reconstruction of the existing 12-inch diameter combined sewer and the eight-inch diameter water main; and

WHEREAS, by letter dated July 7, 2009, DEP states that it has reviewed the revised site plan and has no further objections; and

WHEREAS, by letter dated July 29, 2009, the Department of Transportation (DOT) states that it has reviewed the application and advises the Board that it requires a minimum sidewalk width of ten feet; and

WHEREAS, in response, the applicant submitted a revised site plan showing the addition of the ten-foot wide sidewalk on 43rd Avenue; and

WHEREAS by letter dated October 1, 2009, DOT states that it has reviewed the revised site plan and has no further 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 March 4, 2009, acting on Department of Buildings Application No. 402138682 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 5, 2009" – 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, October 6, 2009.

181-09-A

APPLICANT – Fire Department of New York, for Koppelman Management, owner; Alexander and Sons Upholstery, lessees.

SUBJECT – Application June 1, 2009 – An appeal filed by the NYC Fire Department seeking a Modification of Certificate of Occupancy to require an approved Automatic Wet Sprinkler system throughout the cellar and first floor of a commercial use. R8 zoning district.

PREMISES AFFECTED – 410 East 64th Street, Block 1458, Lot 41, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Anthony Scaduto, FDNY.

ACTION OF THE BOARD – Application granted.

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 from the Fire Commissioner, requesting to modify the certificate of occupancy of the subject premises to reflect a requirement for automatic wet sprinklers throughout the cellar level and the stairway leading into and out of the cellar; and

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

“You are hereby directed and required to comply with the following order within (30) days.

Install an approved Automatic Wet Sprinkler System throughout the cellar occupancy and stairs

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leading into and out of the cellar occupancy arranged and equipped as per Title 27, Chapter 1, and Subchapter 17 of the NYC Administrative Code.

Note: Plans shall be filed and approved by the Department of Buildings before work commences;" and

WHEREAS, a public hearing was held on this application on September 15, 2009, after due notice by publication in the *City Record*, and then to decision on October 6, 2009; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; 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 south side of East 64th Street, between York Avenue and First Avenue, within an R8 zoning district; and

WHEREAS, the subject site is occupied by a five-story mixed-use building with a shoe repair store and furniture upholstery repair store operating on the first floor, accessory storage of upholstery fabrics in the cellar, and apartments on the second through fifth floors; and

WHEREAS, the current Certificate of Occupancy Number 79367 (the "Current CO") reflects the following uses: (i) a boiler room and storage in the cellar; (ii) Use Group 6 beauty shop and retail store, with an apartment in the rear, on the first floor; and (iii) Use Group 2 apartments on the second through fifth floors; and

WHEREAS, the Current CO does not reflect that sprinklers are required; and

WHEREAS, the Fire Department performed an inspection of the building on January 5, 2009 and submitted a Sprinkler System Recommendation Report for the subject site, dated January 22, 2009, which explained the need for the proposed automatic wet sprinkler system in the cellar and first floor and included photographs of the conditions at the subject site; and

WHEREAS, the Fire Department asserts that the proposed modification to the Current CO is necessary in the interest of public safety because fire protection within the subject building is deemed inadequate; and

WHEREAS, specifically, the Fire Department states that an automatic wet sprinkler system is required on the cellar level and the stairs leading into and out of the cellar for the following reasons: (1) the subject building is a non-fireproof building; (2) the furniture upholstery repair shop with extensive storage in the cellar contains combustible fibers and creates a dangerous condition; (3) the cellar area has very limited access through an interior stair below the main egress for tenants; (4) the inability to vent the cellar, combined with its narrow stairs, combustible storage throughout, and its overall narrowness leads to difficulty in fire suppression and unsafe conditions for

firefighters and building occupants; and (5) a violation order was issued to remove all rubbish and to repair holes in the cellar ceiling; and

WHEREAS, the Fire Department states that there are no fire protection systems currently in place at the subject site, and that the installation of the proposed sprinkler system will help counteract the lack of ventilation and lack of exterior access to the basement; and

WHEREAS, pursuant to the Administrative Code § 27-4265, the Fire Department requests to modify the certificate of occupancy to reflect that an automatic wet sprinkler system be installed throughout the cellar level and stairway leading into and out of the cellar; and

WHEREAS, at hearing, the Owner objected to the proposed sprinkler system as being overly expensive and time-consuming to install, and questioned whether there was an alternative to the installation of the proposed sprinkler system; and

WHEREAS, in response, the Fire Department states that the installation of an automatic wet sprinkler system is the only way to resolve the safety issues created by the first floor and cellar use of the subject building and to protect the tenants of the residential units above; and

WHEREAS, the Board agrees with the Fire Department that, given the use of the building and the inability to provide ventilation through any other means, automatic sprinklers are required in the entire building as per the Building Code; and

WHEREAS, however, the Board notes that the property owner and the Fire Department may agree to modify the specifications for the sprinkler system and the Board would not object to such mutual agreement; and

WHEREAS, thus, based on the evidence in the record, the Board finds that the installation of an automatic wet sprinkler system, as requested by the Fire Department, is necessary to protect life and property at the premises in the event of fire.

Therefore it is Resolved that the application of the Fire Commissioner, dated June 1, 2009, seeking the modification of Certificate of Occupancy No. 79367 is hereby granted.

Adopted by the Board of Standards and Appeals, October 6, 2009.

228-09-A & 229-09-A

APPLICANT – Jordan Most of Sheldon Lobel, P.C., for Selvakumar Rajaratnam, owner.

SUBJECT – Application July 16, 2009 – An Appeal seeking a common law vested right to complete construction commenced under the prior R6B zoning district. R5 zoning district.

PREMISES AFFECTED – 37-45 and 37-47 98th Street, east side of 98th Street, Block 1761, Lots 48 and 49, Borough of Queens.

COMMUNITY BOARD #3Q

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to

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November 10, 2009, at 10 A.M., for continued hearing.

233-09-BZY

APPLICANT – Sheldon Lobel, P.C., for 175th Street Associates, LLC, owner.

SUBJECT – Application July 24, 2009 – Application to complete construction of a minor development (§11-332) commenced under the prior R6 Zoning District. R4-1 zoning district.

PREMISES AFFECTED – 91-12 175th Street, west side of 175th Street, Block 9809, Lot (Tent. 70), Borough of Queens.

COMMUNITY BOARD #12Q

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 October 20, 2009, at 10 A.M., for decision, hearing closed.

REGULAR MEETING

TUESDAY AFTERNOON, OCTOBER 6, 2009

1:30 P.M.

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

ZONING CALENDAR

169-08-BZ

CEQR #08-BSA-099M

APPLICANT – James Chin & Associates, LLC, for Jeffrey Bennett, owner.

SUBJECT – Application June 24, 2008 – Variance (§72-21) to allow the redevelopment of a commercial building for residential use. Six residential floors and six dwelling units are proposed; contrary to use regulations (§42-00 & §111-104 (e)). M1-5 (TMU- Area B-2) district.

PREMISES AFFECTED – 46 Laight Street, north side of Laight Street, 25’ of frontage on Laight Street, Block 220, Lot 35, Borough of Manhattan.

COMMUNITY BOARD #1M

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 Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, decision of the Manhattan Borough Commissioner, dated September 18, 2008, acting on Department of Buildings Application No. 104367436, reads:

“Proposed residential use (UG 2) is not permitted as of right in Manufacturing M1-5, Area B-1 of the Special Tribeca Mixed Use zoning district is contrary to ZR 111-104(e) and ZR 42-00”;

WHEREAS, to permit, within an M1-5 zoning district, within the Special Tribeca Mixed Use District (Area B1) and the Tribeca North Historic District, the conversion and enlargement of a five-story commercial building into a six-story, six-unit residential building, which is contrary to ZR §§ 42-00 and 111-104(e); and

WHEREAS, a public hearing was held on this application on February 3, 2009, after due notice by publication in the *City Record*, with continued hearings on June 16, 2009, July 28, 2009, and August 25, 2009, and then to decision on October 6, 2009; 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 1, Manhattan, recommends approval of this application; and

WHEREAS, the site is located on the north side of Laight Street between Hudson Street and Varick Street, within an M1-5 zoning district, within the Special Tribeca Mixed Use District (Area B1) and the Tribeca North Historic District; and

WHEREAS, the site has 25 feet of frontage on Laight Street, a depth of 100 feet, and a lot area of approximately 2,500 sq. ft.; and

WHEREAS, the site is occupied by a five-story commercial building built in 1874, with a total floor area of 10,625 sq. ft. and an FAR of 4.3; portions of the building, including the façade, side walls, and the foundation remain, and the floors and rear wall will be reconstructed; and

WHEREAS, the applicant proposes to maintain certain building elements and construct a partial sixth floor to result in a building with a total floor area of 12,500 sq. ft. and an FAR of 5.0; and

WHEREAS, the building will provide one residential unit on each floor, with one parking space and a residential lobby also on the first floor; 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 historic building is obsolete for modern commercial or manufacturing use; (2) the site is small; and (3) the site is in close proximity to the Holland Tunnel, has a narrow street width, and is located mid-block, which are not compatible conditions for a conforming use; and

WHEREAS, the applicant represents that the building, built in 1874, is obsolete for modern commercial or manufacturing due to its small floor plate, and lack of a loading dock; and

MINUTES

WHEREAS, as to the building's floor plate, the applicant represents that a floor plate of less than 2,500 sq. ft. cannot accommodate modern manufacturing use and cannot compete with modern commercial uses, which provide floorplates in excess of 10,000 sq. ft.; and

WHEREAS, the land use map submitted by the applicant reflects that most sites occupied by conforming uses in the surrounding neighborhood have significantly larger floor plates; and

WHEREAS, as to the lot size, the applicant states that it is insufficient to accommodate a modern building for a conforming use; and

WHEREAS, as to the uniqueness of this condition, the applicant's land use map reflects that the majority of sites within a 400-ft. radius of the site are significantly larger and that there are only six other similarly-sized midblock sites within a 400-ft. radius of the site, one of which is occupied by an eight-story multiple dwelling; and

WHEREAS, the Board finds that the roadway's width, in and of itself, would not create a hardship, but that the combination of the Holland Tunnel traffic, small lot size, small floor plate, and lack of space for loading berths, creates unnecessary hardship and practical difficulty in using the site in conformance with the applicable zoning regulations; and

WHEREAS, the applicant notes that the site is located immediately to the north of the rotary road system for vehicles exiting the Holland Tunnel, which results in continuous vehicular traffic that passes directly by the site thus making it unsuitable for a conforming use, which would require loading docks and viable street access for trucks; and

WHEREAS, the applicant also states that the lack of a loading dock and the narrowness of Laight Street, with of width of 60 feet, constrain the site from accommodating the deliveries required of modern manufacturers; and

WHEREAS, the applicant provided a feasibility study analyzing three alternatives: (1) a new as of right commercial building; (2) an as of right conversion of the existing building into loft dwellings and commercial use; and (3) the proposed residential building; and

WHEREAS, the applicant's financial analysis reflects that only the proposal will provide 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 manufacturing/industrial uses; and

WHEREAS, the applicant notes that the proposed residential use is consistent with the character of the area, which includes many other such uses, some of which occupy

the subject block; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of six dwelling units is compatible with the neighborhood character; and

WHEREAS, the applicant also notes that there are several residential buildings which are larger or of comparable size in the vicinity; and

WHEREAS, specifically, a site to the west on Laight Street occupied by a six-story residential building; the site at the northeast corner of Greenwich Street and Laight Street is occupied by an 11-story loft building with first floor commercial use; and there is also a nine-story building and a five-story building with residential use a block away; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, reflecting the uses in the immediate vicinity of the site; and

WHEREAS, additionally, the applicant notes that the sixth floor will be set back so as to minimize its visibility from the street; and

WHEREAS, the Board notes that there are no bulk regulations for a residential building in an M1-5 zoning district, but that the proposed FAR of 5.0 and all other bulk parameters comply with regulations for a conforming use within the subject zoning district; and

WHEREAS, since the rear wall was demolished, the Board inquired as to whether the applicant could provide a rear yard with a depth of 30 feet; and

WHEREAS, the applicant represents that there has historically been a rear yard with a depth of 15 feet, prior to the demolition of the rear wall; accordingly, the applicant proposes to provide a rear yard with a depth of 15 feet, rather than the 30 feet required for residential uses in a residential zoning district; and

WHEREAS, in response to the Board's inquiry, the applicant provided evidence that the site historically had a rear yard with a depth of 15 feet, which is maintained with the reconstruction of the rear wall and the reconstruction of the floors in the place of the pre-existing floors; and

WHEREAS, the Board accepts the evidence as to the historic rear yard condition, but requests that the Department of Buildings confirm that the rear yard condition does not create any non-compliance with the Multiple Dwelling Law or Building Code; and

WHEREAS, the Board notes that the applicant will provide a rear setback with a depth of 30 feet at the sixth floor; and

WHEREAS, the applicant received a Certificate of Appropriateness from the Landmarks Preservation Commission (LPC), dated March 17, 2008; and

WHEREAS, at the LPC's direction, the applicant designed the height of the street wall to be compatible with adjacent buildings; the floor to ceiling heights are proportionate to those on adjacent buildings; and the composition of the façade is in a traditional arrangement which is characteristic of the multi-story buildings in the district; and

WHEREAS, additionally, the applicant represents that the façade materials have been chosen to be compatible with

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the district's historic character; and

WHEREAS, at hearing, the Board inquired whether an earlier iteration of the proposal, which did not include a vestibule, complied with egress and other Building and Fire Code requirements and directed the applicant to revise the plans if they did not comply; and

WHEREAS, in response, the applicant revised the plans to include the required vestibule; and

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

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

WHEREAS, the applicant represents that the proposed building envelope, which reflects the pre-existing building envelope with the addition of a partial sixth floor, is the minimum necessary to compensate for the additional construction costs associated with the uniqueness of the lot and which has been designed to be compatible with nearby buildings; and

WHEREAS, the Board observes that the proposed building of six dwelling units is limited in scope and compatible with nearby development; and

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

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

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 08-BSA-099M, dated September 22, 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 Department of Environmental Protection's Office of Environmental Planning and Assessment (DEP) has reviewed the following submissions from the Applicant: June 24, 2008 Environmental Assessment Statement; February 2007 Phase I Environmental Site Assessment; July 2009 Phase II Subsurface Investigation Report; July 2009 Remedial Action Plan (RAP); July 2009 Construction Health & Safety Plan (CHASP); and June 5, 2009 and July 21, 2009 Air Quality and Noise submissions; and

WHEREAS, these submissions specifically examined the proposed action for potential hazardous materials, air quality

and noise impacts; and

WHEREAS, DEP finds the RAP & CHASP acceptable and requests that the applicant submit a professionally-certified Remedial Closure Report to DEP at the conclusion of the construction activities on the subject site; the Remedial Closure Report should contain documentation that all measures described in the RAP have been implemented and that remediation on the site has been completed; and

WHEREAS, DEP states that based on the air quality submissions that significant air quality impacts from surrounding manufacturing/industrial uses on the proposed project are not anticipated; and

WHEREAS, the following proposed noise attenuation was reviewed and approved by DEP for the building: the building design shall include the use of double-glazed windows and an alternate means of ventilation to maintain an interior noise level of 45 dBA in the residential units and the south facade of the proposed building at Laight Street requires 25 dBA of attenuation; and

WHEREAS, DEP has determined that the proposed project would not generate sufficient traffic to have to potential to cause a significant noise impact from mobile sources; 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 B1) and the Tribeca North Historic District, the conversion and enlargement of a five-story commercial building into a six-story, six-unit residential building, which is contrary to ZR §§ 42-00 and 111-104(e); and, *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 2, 2009"– (8) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: six stories; six residential units; a total floor area of 12,500 sq. ft. (5.0 FAR); a rear yard with a minimum depth of 15 feet and a minimum depth of 30 feet at the sixth floor; a streetwall height of 59'-10"; and a total height of 66'-4";

THAT this 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;

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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 building design shall include the use of double-glazed windows and an alternate means of ventilation to maintain a maximum interior noise level of 45 dBA in the residential units and a maximum of 25 dBA in the south facade of the proposed building at Laight Street;

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, October 6, 2009.

7-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sandra Zagelbaum and Yechiel Zagelbaum, owners.

SUBJECT – Application January 20, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141), side yards (§23-461) and rear yard (§23-47) regulations. R-2 zoning district.

PREMISES AFFECTED – 1082 East 26th Street, East 26th Street, between Avenue J and Avenue K, Block 7607, Lot 85, 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 Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated December 19, 2008, acting on Department of Buildings Application No. 310239925, 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 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 yards, contrary to ZR §§ 23-141, 23-461, and 23-47; and

WHEREAS, a public hearing was held on this application on June 9, 2009 after due notice by publication in *The City Record*, with continued hearings on July 14, 2009, August 11, 2009 and September 15, 2009, and then to decision on October 6, 2009; 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, certain neighbors to the south of the subject site provided testimony in opposition to the original proposal, citing concerns that the proposed enlargement would block their access to light and air; and

WHEREAS, in response, the applicant modified the proposal and the neighbors withdrew their opposition; and

WHEREAS, the subject site is located on the west side of East 26th Street, between Avenue J and Avenue K, in 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 1,969 sq. ft. (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 approximately 1,969 sq. ft. (0.52 FAR) to 3,764 sq. ft. (1.00 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 approximately 54 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard with a width of 3’-9” along the northern lot line (a minimum width of 5’-0” is required) and will provide a complying side yard of 8’-5” along the southern lot line; 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 adjacent neighbors to the south of the site raised concerns that the proposed enlargement at the rear would reduce the amount of light and air their homes receive; and

WHEREAS, in response, and at the direction of the

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Board, the applicant submitted revised plans reflecting a reduction in the total height of the proposed home from 36'-3" to 35'-2"; and

WHEREAS, subsequently, the neighbors submitted a response to the revised plans, indicating their approval of the new design; and

WHEREAS, at hearing, the Board questioned whether the dormers and roof of the proposed home were in compliance with the requirements of ZR § 23-661; and

WHEREAS, in response, the applicant submitted revised plans reflecting that the dormers were relocated towards the front and the building was redesigned to comply with ZR § 23-661; 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, open space ratio, side yards 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 July 28, 2009"-(5) sheets, "September 1, 2009"-(6) sheets and "September 16, 2009"-(2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 3,764 sq. ft. (1.00 FAR); an open space ratio of approximately 54 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'-5" along the southern lot line; a rear yard with a minimum depth of 20'-0"; and a total height of 35'-2", 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 6, 2009.

46-09-BZ

APPLICANT – Eric Palatnik, P.C., for Igor Orak, owner.

SUBJECT – Application March 23, 2009 – 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)), side yards (§23-461) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 122 Oxford Street, between Shore Boulevard and Oriental Avenue, Block 8757, Lot 92, 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 Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated February 25, 2009, acting on Department of Buildings Application No. 310300689, reads in pertinent part:

1. The proposed total floor area exceeded the permitted, contrary to ZR 23-141(b).
2. The proposed lot coverage exceeded the permitted, contrary to ZR 23-141(b).
3. The proposed open space is inadequate, contrary to ZR 23-141(b).
4. The proposed side yards are contrary to ZR 23-461.
5. The proposed rear yard is contrary to ZR 23-47;" and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-1 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 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 July 14, 2009 after due notice by publication

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in *The City Record*, with continued hearings on August 11, 2009 and September 15, 2009, and then to decision on October 6, 2009; 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 west side of Oxford Street, between Shore Boulevard and Oriental Avenue, in an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 2,500 sq. ft., and is occupied by a single-family home with a floor area of 833 sq. ft. (0.33 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 833 sq. ft. (0.33 FAR) to approximately 2,321 sq. ft. (0.93 FAR); the maximum permitted floor area is 1,500 sq. ft. (0.60 FAR, with attic bonus); and

WHEREAS, the applicant proposes to provide a lot coverage of 41 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide an open space ratio of 59 percent (65 percent is the minimum required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yards with a width of 3'-0" along the northern lot line and a width of 3'-0" along the southern lot line (two side yards with a minimum width of 5'-0" each are required); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 25'-11" (a minimum rear yard 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 an affidavit from the project engineer stating that: (1) the existing first floor will be lifted by jacking up the existing floor joists; (2) the existing crawl space will be dug out to create a full cellar; (3) the existing foundation walls and footings are composed of reinforced concrete; and (4) the existing reinforced concrete foundation walls and footings will be underpinned; and

WHEREAS, the applicant also submitted revised plans showing that the first floor and two side walls are being retained; 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 proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area, lot coverage, open space, 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 October 6, 2009"-(13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of approximately 2,321 sq. ft. (0.93 FAR); a lot coverage of 41 percent; an open space ratio of 59 percent; a side yard with a minimum width of 3'-0" along the northern lot line; a side yard with a minimum width of 3'-0" along the southern lot line; and a rear yard with a minimum depth of 25'-11", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve compliance with the planting requirements under ZR § 23-451;

THAT DOB shall confirm that the portions of the existing building shall be retained as illustrated on the BSA-approved plans; and

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 6, 2009.

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49-09-BZ

CEQR #09-BSA-102K

APPLICANT – Law Office of Fredrick A. Becker, for Beth Israel Medical Center, owner; Kollel Bnei Torah, lessee.

SUBJECT – Application March 26, 2009 – Variance (§72-21) to permit the enlargement of a synagogue contrary to side yard regulations (§24-35(a)). R4 district.

PREMISES AFFECTED – 1323 East 32nd Street, east side of East 32nd Street, between Avenue M and Kings Highway, Block 7668, Lot 36, Borough of Brooklyn.

COMMUNITY BOARD #18BK

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 Brooklyn Borough Commissioner, dated February 26, 2009, acting on Department of Buildings Application No. 302280092, reads:

“Proposed side yard is contrary to Zoning Resolution section 24-35(a);” 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 enlargement of a two-story and cellar synagogue and the conversion of the residential portion of the building to a Rabbi’s residence (Use Group 4), which does not comply with side yard requirements for community facilities, contrary to ZR § 24-35; and

WHEREAS, a public hearing was held on this application on July 21, 2009, after due notice by publication in *The City Record*, after which the hearing was closed and the application was set for decision on August 25, 2009; and

WHEREAS, on August 25, 2009, the hearing was reopened to allow additional submissions and testimony by the parties, with a continued hearing on September 22, 2009, and then to decision on October 6, 2009; and

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

WHEREAS, Community Board 18, Brooklyn, recommends disapproval of the application; and

WHEREAS, State Senator Carl Kruger provided written testimony in opposition to the proposal; and

WHEREAS, certain members of the community provided testimony in support of the proposal; and

WHEREAS, certain members of the community provided testimony in opposition to the proposal; 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 proposed synagogue does not provide parking; (2) the proposed enlargement has already

been constructed; and (3) the claimed hardship is self-created; and

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

WHEREAS, the subject premises is located on the east side of East 32nd Street, between Kings Highway and Avenue M, within an R4 zoning district; and

WHEREAS, the site has 30 feet of frontage on East 32nd Street, a depth of 100 feet, and a total lot area of 3,000 sq. ft.; and

WHEREAS, the subject site is currently occupied by a two-story and cellar residential building and synagogue, with a floor area of 2,772 sq. ft. (0.92); and

WHEREAS, the proposed two-story synagogue and Rabbi’s residence consists of a 22’-7½” by 8’-0” enlargement in the northern side yard of the existing building, resulting in a total floor area of 3,132 sq. ft. (1.04 FAR); and

WHEREAS, the proposal maintains the existing non-complying side yard of 2’-10½” along the southern lot line and maintains the existing side yard of 6’-9” along the majority of the northern lot line, aside from a 22’-7½” portion along the northern lot line that provides no side yard (two side yards with minimum widths of 8’-0” each are required for a community facility use); and

WHEREAS, the Board notes that only a small portion of the building will have no side yard along the northern lot line, as the existing 6’-9” side yard is maintained for the majority of the residential portion of the building; and

WHEREAS, the existing building includes a residential use (Use Group 2) in the front and a synagogue use (Use Group 4) at the rear; and

WHEREAS, the applicant states that the existing side yards with a width of 2’-10 ½” along the southern lot line (a pre-existing, non-complying condition) and a complying width of 6’-9” along the northern lot line are associated with the pre-existing residential use, but that a waiver is required for the proposed change of use from residential to community facility (Rabbi’s residence) because greater side yards are required for such use; and

WHEREAS, the proposal provides for the following uses: (1) the main sanctuary and Rabbi’s residence on the first floor; (2) the women’s gallery and Rabbi’s residence on the second floor; and (3) a men’s bathroom, mechanical room, and storage space on the cellar level; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Synagogue which necessitate the requested variance: (1) to accommodate the current congregation and the future growth in the congregation; and (2) to provide a residence for the Synagogue’s Rabbi; and

WHEREAS, the applicant represents that the existing synagogue, located two blocks away from the subject site on Nostrand Avenue, has serviced the congregation since 1998, but that it is no longer able to accommodate the size of the congregation; and

WHEREAS, as a result, the applicant represents that the congregation sought a building which can better accommodate

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the size of its growing congregation; and

WHEREAS, the applicant states that the congregation acquired the subject building to accommodate its programmatic needs, and commenced building an as-of-right synagogue as an enlargement to the existing home on the site, pursuant to valid permits issued by the Department of Buildings (“DOB”); and

WHEREAS, the applicant represents that the size, layout and design of the presently constructed synagogue at the site is inadequate to serve the current needs of the congregation of approximately 50 families, and would be inadequate for its future needs; and

WHEREAS, specifically, the applicant states that the as-of-right synagogue at the subject site accommodates only 100 people seated; and

WHEREAS, the applicant states that the requested side yard waiver would enable the Synagogue to enlarge the main sanctuary on the first floor and the women’s gallery on the second floor to accommodate 138 people seated, thereby meeting its programmatic needs; and

WHEREAS, in addition, the applicant states that the side yard waiver will allow the Synagogue to convert the existing residential portion of the building to a community facility use, specifically, a residence for the Synagogue’s Rabbi; 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, in addition to its programmatic needs, the applicant represents that the existing building on the site constrains the ability to provide complying side yards; and

WHEREAS, specifically, the applicant states that the existing side yards do not comply with the proposed community facility use, and therefore the Synagogue would be forced to demolish portions of the existing building to provide complying side yards; and

WHEREAS, the applicant further states that providing two eight-foot side yards, in compliance with ZR § 24-35, would result in a narrow building with a width of only 14 feet; 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 and floor area are permitted as-of-right in the subject zoning district; and

WHEREAS, the applicant submitted a 400-foot radius diagram establishing that the use of the site will be consistent with the current uses located in the surrounding neighborhood, which include a church, a rectory, a school, a health care facility, and a hospital as well as residential use; and

WHEREAS, the radius diagram submitted by the applicant also establishes that the bulk and height of the proposed Synagogue are consistent with the bulk and height of the homes in the surrounding neighborhood, which have heights ranging between two and six stories; and

WHEREAS, the Board notes that the site could be developed as-of-right with a building that has a floor area of 6,000 sq. ft. (3,132 sq. ft. is proposed) if all yards were provided; and

WHEREAS, the Board further notes that the proposed enlargement only results in an additional 360 sq. ft. of floor area; and

WHEREAS, the applicant notes that the subject enlargement is proposed on the northern side of the site, and that the property situated to the north of the site is owned by a hospital which also owns the subject property, and that the hospital has consented to this application; and

WHEREAS, at hearing, the Board directed the applicant to confirm whether there was a parking requirement and to describe the anticipated parking demand; and

WHEREAS, in response, the applicant submitted a letter from the architect stating that the required number of parking spaces is less than ten, which meets the finding of a waiver pursuant to ZR § 25-33; and

WHEREAS, in addition, the applicant states that on the Sabbath and the majority of the holidays when the synagogue is most often used, there is only pedestrian traffic as the orthodox practice of the congregation prohibits driving on these days; and

WHEREAS, the applicant further states that there has been sufficient parking to meet the demand of the prior synagogue, located only two blocks away 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 Synagogue could occur on the existing lot; and

WHEREAS, the Opposition contends that the applicant was aware of the restrictions of the R4 zoning district when it purchased the subject site, and therefore the hardship claimed by the applicant was self-created; and

WHEREAS, the Board notes that ZR § 72-21(d)

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specifically states that “the purchase of a zoning lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship;” 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 proposed Synagogue complies with all bulk and use regulations, with the exception of the non-compliant side yards; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Synagogue 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 Opposition argues that this application should be denied because the enlargement sought under the variance application has already been constructed; and

WHEREAS, in response, the applicant submitted evidence that the portion of construction that was completed during the pendency of this application was for the as-of-right synagogue, which was constructed under valid permits issued by the Department of Buildings; and

WHEREAS, the Board notes that, notwithstanding the fact that under appropriate circumstances a variance may be granted to legalize construction that has already been performed, the only construction requested under the subject application is for a small enlargement in the northern side yard, which has not been performed; 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 (aj) 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 enlargement of a two-story and cellar synagogue and the conversion of the residential portion of the building to a Rabbi’s residence (Use Group 4), which does not comply with side yard requirements for community facilities, 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 12, 2009” – (10) sheets; and *on further condition*:

THAT the building parameters shall be: a floor area of 3,132 sq. ft. (1.04 FAR); a side yard of 2’-10 ½” along the southern lot line; a front yard of 10’-9”; and a total height of 32’-0”;

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 and Rabbi’s residence (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;

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, October 6, 2009.

176-09-BZ CEQR #09-BSA-112M

APPLICANT – Bryan Cave LLP/Margery Purlmutter, for City of New York, owner.

SUBJECT – Application May 25, 2009 – Special Permit (§73-64) to waive height and setback regulations (§33-432) for a community facility building (*Fashion Institute of Technology*). C6-2 District.

PREMISES AFFECTED – 220-236 West 28th Street, south side of West 28th Street, between Seventh and Eighth Avenues, Block 777, Lots 1, 18, 37, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Frank Chaney.

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 May 22, 2009, acting on Department of Buildings Application No. 120029940, reads:

“Request reconsideration to allow in a C6-2 zoning district – where pursuant to ZR 33-432, the maximum street wall height on a narrow street is the lesser of 85 feet or six stories with a sky exposure plane ratio of 2.7:1 – a community facility building with a street wall that rises without setback to a height of 134’-2”, then sets back 8’-0” and rises to a building height of 143’-10+.”;” and

WHEREAS, this is an application under ZR §§ 73-641 and 73-03, to permit, on a site located within a C6-2 zoning district, the proposed construction of a ten-story community facility building, which does not comply with the zoning requirements for height, setback and sky exposure plane, contrary to ZR § 33-432; and

WHEREAS, a public hearing was held on this

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application on July 28, 2009 after due notice by publication in *The City Record*, with a continued hearing on September 15, 2009, and then to decision on October 6, 2009; 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, Manhattan, recommends approval of this application; and

WHEREAS, this application is brought on behalf of the Fashion Institute of Technology (“FIT”), a college of the State University of New York, a non-profit entity; and

WHEREAS, the subject site is located on the south side of West 28th Street, between Seventh Avenue and Eighth Avenue, within a C6-2 zoning district; and

WHEREAS, the applicant states that FIT occupies the entirety of Block 777, which is a single zoning lot consisting of three tax lots; Lot 1 on the western end of the block, Lot 37 on the eastern end of the block and Lot 18 in the middle of the block; and

WHEREAS, the zoning lot is currently occupied by four FIT buildings located on Lots 1, 18 and 37, with a total floor area of 746,889 sq. ft.; and

WHEREAS, the proposed development is located on a site with a footprint of 15,092 sq. ft. consisting of: (1) a 12,941 sq. ft. portion of Lot 18 with approximately 214 feet of frontage along West 28th Street and an average depth of 60 feet; and (2) a 2,151 sq. ft. portion of Lot 1 located immediately to the west of Lot 18 (the “Project Site”); and

WHEREAS, the Project Site is currently an unoccupied, walled-in courtyard; and

WHEREAS, the applicant proposes to construct a ten-story academic building with a floor area of 67,066 sq. ft. and an additional 27,393 sq. ft. of space in the cellar and sub-cellar (the “Proposed Building”) as an addition to the existing nine-story academic building located on Lot 18, immediately to the south of the Project Site (the “Existing Building”); and

WHEREAS, the applicant states that the addition of the Proposed Building will increase the total floor area of the zoning lot from 746,889 sq. ft. (4.72 FAR) to 813,955 sq. ft. (5.15 FAR); the maximum floor area permitted is 1,028,163 sq. ft. (6.5 FAR); and

WHEREAS, as a result of the addition of the Proposed Building, the applicant requests the following modifications: a street wall height of 134’-2” (85 feet is the maximum permitted); no setback up to a height of 134’-2”, and an eight-ft. setback from 134’-2” up to the total height of 143’-10” (a setback of 20 feet is required at 85 feet); and penetration of the sky exposure plane; and

WHEREAS, as a threshold requirement under ZR § 73-641, the applicant must establish that it has owned a portion of the zoning lot and continuously occupied and used one or more buildings located thereon for a specified community facility use from December 15, 1961 until the time of the application and to the present; and

WHEREAS, the applicant represents that it has owned Lot 18 since 1955; and

WHEREAS, in support of the above representation, the applicant has submitted a copy of an Order of the Supreme Court of the State of New York dated August 29, 1955, in Condemnation Proceeding 41340, which reflects that the City of New York acquired title to the properties that currently constitute Lot 18 in Block 777 as a site for FIT; and

WHEREAS, the applicant also submitted a temporary certificate of occupancy dated September 14, 1959, which reflects that FIT took legal occupancy of a new building on the premises as of that date; and

WHEREAS, accordingly, the Board finds that the applicant has satisfied the threshold requirement of ZR § 73-641; and

WHEREAS, the applicant represents that the proposed modifications are required in order to provide education and training in all aspects of the fashion industry, which is an essential service to the community, as per ZR § 73-641(a); and

WHEREAS, the applicant states that the Proposed Building is designed to provide sufficient classroom, studio, administrative and student life space to address a space shortfall of more than 400,000 sq. ft. identified in FIT’s 2002 campus facilities master plan; and

WHEREAS, the applicant further states that New York City has historically been the center of the fashion industry in the United States, and that the Garment District of Manhattan, within which FIT is located, has been and remains the center of the fashion industry in New York City; and

WHEREAS, the applicant represents that fashion and its ancillary businesses and services, including fabric and clothing design and manufacturing, advertising, photography and art, is one of New York City’s largest industries; and

WHEREAS, accordingly, the Board finds that the requested modifications are required in order to enable FIT to provide an essential service to the community; and

WHEREAS, the applicant states that, as per ZR § 73-641(b), without the requested height and setback modification there is no way to design and construct the Proposed Building in satisfactory physical relationship with the existing buildings on the site, so as to produce an integrated development; and

WHEREAS, the applicant states that all of FIT’s academic and student life facilities, with the exception of a dormitory located on West 31st Street, are located on the subject block and a portion of Block 776; and

WHEREAS, the applicant represents that the Project Site is the only significant development parcel remaining within the two-block campus; and

WHEREAS, the applicant states that the development of the Project Site is constrained by the fact that it has an average depth of only 60 feet and is directly adjacent to the Existing Building, the north-facing wall of which consists of windows that provide light to all of the classrooms and offices on the north side of the building; and

WHEREAS, the applicant represents that constructing

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the addition directly against the north side of the Existing Building would allow the addition to comply with the applicable height and setback requirements, but doing so would effectively turn all of the Existing Building's nine floors of rooms into interior rooms with no access to natural light; and

WHEREAS, the applicant states that shifting the floor area and core of the Proposed Building away from the Existing Building and interposing a full-height atrium between the two buildings allows the interior walls of both buildings to have access to natural light while still allowing for the integration of the new addition with the Existing Building and providing full internal access between the two buildings; and

WHEREAS, the applicant represents that providing natural light to the classrooms of both the Proposed Building and the Existing Building is of critical importance because the design work and study in these classrooms involve color and texture; and

WHEREAS, the applicant concludes that the requested modifications for height and setback are therefore necessary to provide for an integrated development and to ensure that the Proposed Building is in satisfactory relationship to the Existing Building that is to remain on the site; and

WHEREAS, the applicant states that, as per ZR § 73-641(c), such modification is the minimum necessary to permit the proposed development, and thereby creates the least detriment to the character of the neighborhood and the use of nearby zoning lots; and

WHEREAS, the applicant states that the defining design features of the Proposed Building include: the triple-height student life hall located on floors five, six and seven, around which the building is centered; the glass-enclosed vertical and horizontal circulation core on the front façade which extends from the second floor to the tenth floor; and the rear atrium that spans the full height of the building from the basement to the tenth floor; and

WHEREAS, the applicant represents that the student life hall will provide a much needed space for students, faculty and administration to meet and exchange ideas in a community-oriented setting; and

WHEREAS, the applicant states that the rear atrium will allow light to reach all levels of both the Proposed Building and the Existing Building, which is of critical importance at FIT because the many disciplines of design study taught there involve work with, and the analysis of, color and texture; and

WHEREAS, the applicant represents that in combination with the student life hall, the front circulation core and rear atrium will allow light to flow through the building and onto West 28th Street, thereby increasing the amount of sunlight reaching street level beyond what would otherwise be available if the atrium and student life hall were not provided; and

WHEREAS, the applicant states that in order to comply with the street wall height, setback and sky exposure plane requirements of ZR § 33-432(a), the floors above the student life hall would have to be set back 20 feet, and the

floor plates above the student life hall would have to be reduced in depth to retain the rear atrium, which is essential for providing natural light to the classrooms in both the Proposed Building and the Existing Building; and

WHEREAS, the applicant submitted plans reflecting that in order to provide the necessary floor area and program space required to meet FIT's needs within a complying building, FIT would have to construct a 13-story building with a total height of 171 feet, as opposed to the proposed ten-story building with a total height of 144 feet; and

WHEREAS, the applicant states that the smaller floor plates on the eighth through 13th floors in the complying building would contain inefficiently configured classrooms and meeting rooms and require increased horizontal and vertical circulation at those levels, resulting in a building with approximately 6,800 sq. ft. more floor area than the Proposed Building; and

WHEREAS, the applicant states that the smaller floor plates would also negatively affect the flexibility of the academic space on these floors by creating long, narrow classrooms with a width to length ratio of 1:4 rather than the ideal 1:1 ratio, and subdividing the long classrooms into smaller classrooms of the correct proportions would create many small seminar rooms instead of the large, flexible multi-purpose rooms that are necessary for studios, workshops and instructional technology; and

WHEREAS, the applicant further states that the smaller floor plates on the eighth through 13th floors also limit the utility of the conference rooms, which could no longer accommodate the large meetings, readings, performances, awards ceremonies and other administrative and academic functions for which it was intended; and

WHEREAS, the applicant represents that setting back the eighth through 13th floors by 20 feet would reduce the depth of the rear atrium at these levels, as well as the height of the student life hall at the rear of the building, thereby reducing the amount of natural sunlight that reaches the classrooms in both the Proposed Building and the Existing Building; and

WHEREAS, the applicant further represents that a reduction in the atrium depth would also reduce the amount of sunlight passing through the atrium into the building and onto West 28th Street; and

WHEREAS, in sum, the applicant states that the proposal: (1) allows for a building with fewer floors to accommodate FIT's programmatic space needs; (2) provides adequate room sizes and efficient floor layouts; and (3) allows light to flow into the atrium and student life hall, through the building, and onto West 28th Street; and

WHEREAS, as noted, without the requested modifications FIT would be required to build a less efficient building with a greater height that would not accommodate its programmatic needs; and

WHEREAS, specifically, the applicant represents that the as-of-right scenario would not permit light to funnel through the building and provide all portions of the Existing Building and Proposed Building with access to required light and air; and

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WHEREAS, accordingly, the Board finds the requested modifications are the minimum necessary to permit the development of an integrated community facility that will thereby create the least detriment to the character of the neighborhood and the use of nearby zoning lots; and

WHEREAS, the Board finds that the proposed enlargement will neither alter the essential character of the surrounding neighborhood, nor impair the future use and development of the surrounding area; and

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

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

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under ZR §§ 73-641 and 73-03; and

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

WHEREAS, the Bureau of Environmental Planning and Analysis of the New York City Department of Environmental Protection ("DEP") has reviewed the following submissions by the applicant: a September 2009 Environmental Assessment Statement, a May 2009 Phase I Environmental Site Assessment, and a May 2009 Phase II Subsurface Sampling Investigation; and

WHEREAS, these submissions specifically examined the proposed action for Hazardous Materials; and

WHEREAS, prior to the issuance of any building permit by DOB that would result in grading, excavation, foundation, alteration, building or other permit respecting the subject site which permits soil disturbance, the applicant proposes to have DEP review and approve: (1) a Remedial Action Plan ("RAP") for the subject site; and (2) a site-specific Construction Health and Safety Plan ("CHASP"); and

WHEREAS, after review and approval of the RAP and CHASP, DEP will issue a Notice to Proceed for the subject property; and

WHEREAS, following implementation of the RAP, a Remedial Closure Report certified by a Professional Engineer, must be submitted to DEP showing that all remedial requirements have been properly undertaken; and

WHEREAS, after review and approval of the Remedial Closure Report, DEP will issue a Notice of Satisfaction; 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, and makes the required findings under ZR §§ 73-641 and 73-03, to permit, on a site located within a C6-2 zoning district, the proposed construction of a ten-story community facility building, which does not comply with the zoning requirements for height, setback and sky exposure plane, contrary to ZR § 33-432; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked "Received August 28, 2009"-(21) sheets; and *on further condition*

THAT the bulk parameters of the Proposed Building shall be as follows: a floor area of 67,006 sq. ft., a street wall height of 134'-2"; a setback of 8'-0" at a height of 134'-2"; and a total height of 143'-10";

THAT prior to DOB's issuance of any grading, excavation, foundation, alteration, building, or other permit respecting the subject site which permits soil disturbance, a Remedial Action Plan shall be submitted to DEP for review and approval delineating that all soils and fill materials will be properly disposed of in accordance with applicable New York State Department of Environmental Conservation ("DEC") regulations, and that additional testing of the soils may be required by the disposal and/or recycling facility;

THAT a site-specific Construction Health and Safety Plan shall be submitted to DEP prior to the start of soil disturbance or construction on the basis of worker exposure to the contaminants detected at the site;

THAT during the course of construction the applicant shall:

- 1) Incorporate an appropriate vapor barrier for the Proposed Building into the design plan and submit it to DEP for review and approval;
- 2) Cover any excavated soils which are temporarily stockpiled on-site with polyethylene sheeting while disposal options are determined, not re-use such soils for grading purposes, and adhere to any additional testing of the soils as required by the disposal and/or recycling facility;
- 3) Remove and properly dispose of any petroleum-impacted soils (which display petroleum odors and/or staining) that are encountered in accordance with all DEC regulations;
- 4) Ensure that the contractor maintains dust suppression of the site;
- 5) Remove/close any known or found underground storage tanks or aboveground storage tanks (including dispensers, piping, and fill-ports) in accordance with all applicable DEC regulations;
- 6) Obtain a DEP Sewer Discharged Permit prior to the start any de-watering activities on the site if de-watering into New York City storm and/or sewer drains will occur; and

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- 7) Import a minimum of two feet of clean fill/top soil from an approved facility/source and grade it across all landscaped or grass covered areas of the site not capped with concrete or asphalt, upon written approval to use the clean fill/top soil from DEP;

THAT no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until DEP shall have issued a Notice of Satisfaction;

THAT the building shall include double-glazed windows and an alternate means of ventilation to maintain interior noise levels of 45 dBA or lower in the classrooms and 30 dBA or lower on the north facade of the Proposed Building at West 28th Street;

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

THAT substantial construction shall be completed pursuant to 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 objections(s) only; no approval has been given by the Board as to the use and layout of the cellar; and

THAT the Department of Buildings must 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 6, 2009.

184-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Annie Daniel and Elliot Daniel, owners.

SUBJECT – Application June 4, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space, lot coverage and floor area (§23-141); side yards (§23-461; rear yard (§23-47) and perimeter wall height (§23-631) regulations. R3-2 zoning district.

PREMISES AFFECTED – 4072 Bedford Avenue, west side of Bedford Avenue, between Avenue S and Avenue T, Block 7303, Lot 37, 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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough

Commissioner, dated August 14, 2009, acting on Department of Buildings Application No. 320025281, reads in pertinent part:

“The proposed enlargement of existing 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 requirements of Sections 23-461, 23-48 of the Zoning Resolution.
4. Creates non-compliance with respect to the open space ratio by not meeting the minimum requirements of Section 23-141 of the Zoning Resolution.
5. Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of Section 23-47 of the Zoning Resolution.
6. Creates non-compliance with respect to the perimeter wall height by not meeting the maximum requirements of Section 23-631 of the Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 zoning district, the proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, lot coverage, open space, side yards, rear yard, and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-48, 23-47 and 23-631; and

WHEREAS, a public hearing was held on this application on July 21, 2009 after due notice by publication in *The City Record*, with continued hearings on August 11, 2009 and August 25, 2009, and then to decision on October 6, 2009; 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, recommended approval of the original application; and

WHEREAS, the Board notes that the applicant revised its plans during the pendency of the application, therefore the Board directed the applicant to return to the Community Board to present its revised plans; and

WHEREAS, Community Board 15 recommends approval of the revised proposal; and

WHEREAS, the subject site is located on the west side of Bedford Avenue, between Avenue S and Avenue T, in an R3-2 zoning district; and

WHEREAS, the subject site has a total lot area of 2,500 sq. ft., and is occupied by a single-family home with a floor area of 1,598 sq. ft. (0.64 FAR); and

WHEREAS, the premises is within the boundaries of a

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designated area in which the subject special permit is available; and

WHEREAS, the applicant seeks an increase in the floor area from approximately 1,598 sq. ft. (0.64 FAR) to approximately 2,586 sq. ft. (1.03 FAR); the maximum permitted floor area is 1,250 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of 45 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide open space of 55 percent (65 percent is the minimum required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard with a width of 4'-6" along the southern lot line and will increase the existing non-complying side yard along the northern lot line from 2'-8" to 3'-0" (two side yards, with a total width of 10 feet and a width of at least five feet each, are the minimum 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, the applicant further seeks a waiver to ZR § 23-631 to allow an increase in the perimeter wall height; 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 R3-2 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, the applicant seeks an increase in the perimeter wall height to 22'-3" (a maximum perimeter wall height of 21'-0" is permitted); and

WHEREAS, in support of the request for the noted perimeter wall height, the applicant submitted a plan demonstrating that the perimeter wall height of the adjacent home to the south is 24'-9"; and

WHEREAS, the applicant represents that the perimeter wall of the proposed home therefore falls within the scope of the special permit; 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 proposed enlargement of a single-family home, which does not comply with the zoning requirements for floor area ratio, lot coverage, open space, side yards, rear yard and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-48, 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 June 4, 2009"-(1) sheet, "July 28, 2009"-(1) sheet, "August 19, 2009"-(2) sheets and "September 22, 2009"-(7) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a floor area of 2,586 sq. ft. (1.03 FAR); a lot coverage of 45 percent; an open space ratio of 55 percent; a side yard with a minimum width of 4'-6" along the southern lot line; a side yard with a minimum width of 3'-0" along the northern lot line; a rear yard with a minimum depth of 20'-0"; and a perimeter wall height of 22'-3", 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 6, 2009.

73-06-BZ

APPLICANT – Eric Palatnik, P.C., for John J. Freeda, owner; Elite Fitness, lessee.

SUBJECT – Application April 21, 2006 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Elite Fitness*) in a portion of cellar and first floor in a three-story building. C2-3 zoning district.

PREMISES AFFECTED – 111 Union Street, northwest corner of Union Street and Columbia Street, Block 335, Lot 7501, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Eric Palatnik.

MINUTES

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 October 27, 2009, at 1:30 P.M., for decision, hearing closed.

195-07-BZ

APPLICANT – Greenberg Traurig by Deirdre A. Carson, for Bond Street Partners LLC (as to lot 64) c/o Convermat, owner.

SUBJECT – Application August 9, 2007 – Variance (§72-21) to allow hotel and retail uses below the floor level of the second story, contrary to use regulations (§42-14(d)(2)). M1-5B zoning district.

PREMISES AFFECTED – 8-12 Bond Street, Northwest corner of Bond and Lafayette Streets, Block 530, Lot 62 & 64, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Diedra Carson and Jack Freeman.

ACTION OF THE BOARD – Laid over to October 27, 2009, at 1:30 P.M., for continued hearing.

100-08-BZ & 101-08-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) for the construction of a two-story with basement single family residence, contrary to front yard regulations (§23-45) and within the bed of a mapped, un-built street, contrary to General City Law Section 35. R2 zoning district.

PREMISES AFFECTED – 205 Wolverine Street, northwest of intersection of Wolverine Street and Thomas Street, Block 4421, Lot 167, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Harold McGough.

ACTION OF THE BOARD – Laid over to October 27, 2009, at 1:30 P.M., for continued hearing.

171-08-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for York Prep Realty, LLC., owner.

SUBJECT – Application June 26, 2008 – Variance (§72-21) to allow the enlargement of an existing school (*York Prep*) contrary to ZR §74-95 (City Planning Commission Housing Quality Special Permit). R8 zoning district.

PREMISES AFFECTED – 40 West 68th Street, between Central Park West and Columbus Avenue, Block 1120, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Howard Goldman.

ACTION OF THE BOARD – Laid over to November 10, 2009, at 1:30 P.M., for continued hearing.

186-08-BZ

APPLICANT – Petrus Fortune, P.E., for Kevin Mast, Chairman, Followers of Jesus Mennonite Church, owner.

SUBJECT – Application July 10, 2008 – Special Permit (§73-19) to allow the legalization and enlargement of a school (*Followers of Jesus Mennonite Church & School*) in a former manufacturing building, contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 3065 Atlantic Avenue, northwest corner of Atlantic Avenue and Shepherd Avenue, Block 3957, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: James E. Gochnauer.

ACTION OF THE BOARD – Laid over to November 17, 2009, at 1:30 P.M., for continued hearing.

197-08-BZ

APPLICANT – Stuart A. Klein, for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application July 23, 2008 – Variance (§72-21) to permit a four-story and penthouse residential building, contrary to §23-141 (FAR, open space ratio), §23-22 (number of dwelling units), §23-45 (front yard), §23-462 (side yard), and §23-631 (wall height). R4 district.

PREMISES AFFECTED – 341/349 Troy Avenue, aka 1515 Carroll Street, corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Jay Goldstein.

ACTION OF THE BOARD – Laid over to November 10, 2009, at 1:30 P.M., for adjourned hearing.

210-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Samaritan Foundation, Inc., owner.

SUBJECT – Application August 15, 2009 – Variance (§72-21) to permit two-story enlargement to an existing two-story building for a UG 3 drug treatment facility with sleeping accommodations (*Samaritan Village*), contrary to use regulations (ZR §43-00). M1-1 district.

PREMISES AFFECTED – 130-15 89th Road, north side of 89th Road, approximately 125' east of 130th Street, Block 9338, Lot 147, Borough of Queens.

COMMUNITY BOARD #9Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to October 20, 2009, at 1:30 P.M., for deferred decision.

MINUTES

260-08-BZ

APPLICANT – Eric Palatnik, for Moisei Tomshinsky, owner.

SUBJECT – Application October 21, 2008 – Special Permit (§73-622) to legalize and enlarge a single family home, contrary to floor area (§23-141) regulations. R3-1 zoning district.

PREMISES AFFECTED – 148 Oxford Street, between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to November 24, 2009, at 1:30 P.M., for adjourned hearing.

297-08-BZ

APPLICANT – Lewis E. Garfinkel, for Itzhak Bardror, owner.

SUBJECT – Application December 4, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141(a)) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 3496 Bedford Avenue, between Avenue M and Avenue N, Block 7660, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO REOPEN HEARING –

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

Negative:.....0

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 October 20, 2009, at 1:30 P.M., for decision, hearing closed.

23-09-BZ

APPLICANT – Eric Palatnik, P.C., for Alla Simirnov, owner.

SUBJECT – Application February 12, 2009 – Special Permit (§73-622) for the enlargement of an existing one family home, contrary to open space, lot coverage and floor area (§23-141(b)) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 114 Amherst Street, west side of Amherst Street between Hampton Avenue and Oriental Boulevard, Block 8732, Lot 71, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to November 10, 2009, at 1:30 P.M., for adjourned hearing.

29-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chabad Israeli Center, owner.

SUBJECT – Application February 23, 2009 – Variance (§72-21) to legalize and enlarge a synagogue (*Chabad Israeli Center*), contrary to lot coverage, front yards, side yards, and parking regulations. R3X zoning district.

PREMISES AFFECTED – 44 Brunswick Street, northwest corner of Brunswick Street and Richmond Hill Road, Block 2397, Lot 212, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to November 17, 2009, at 1:30 P.M., for adjourned hearing.

164-09-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Palanker, owner.

SUBJECT – Application April 29, 2009 – Special Permit (§73-622) for enlargement of an existing two-family home, contrary to floor area, lot coverage and open space (§23-141) and rear yard (ZR §23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 124 Irwin Street, between Hampton Avenue and Oriental Boulevard, Block 8751, Lot 416, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Boris Mantell, Francine Olk, Susan Klappe and Judith Baron.

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 November 10, 2009, at 1:30 P.M., for decision, hearing closed.

225-09-BZ

APPLICANT – Antonio S. Valenziano, AIA, for Beacon Luigi, LLC, owner.

SUBJECT – Application July 14, 2009 – Variance (§72-21) for the construction of a single family residence on a vacant undersized lot, contrary to front yard (§23-45) regulations. R2 (LDGM) zoning district.

PREMISES AFFECTED – 45 Beacon Avenue, Beacon Avenue c/o Luigi Place, Block 948, Lot 27, Borough of Staten Island.

MINUTES

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Antonio S. Valenzino.

ACTION OF THE BOARD – Laid over to November 10, 2009, at 1:30 P.M., for continued hearing.

226-09-BZ

APPLICANT – Mitchell S. Ross, Esq., for Fraydun Enterprises, LLC, owner; New York Health and Racquet Club, lessee.

SUBJECT – Application June 19, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*New York Health & Racquet Club*) on the cellar through second floors of a six-story mixed-use building. C6-1 zoning district.

PREMISES AFFECTED – 24 East 13th Street, south side of East 13th Street, 142'-2 & ¾" west of University Place, Block 570, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: David Reck.

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 October 27, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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October 29, 2009

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272-07-BZ	344 Amsterdam Avenue, Manhattan
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187-09-BZ	94 Amherst Street, Brooklyn
198-09-BZ	143 West 19 th Street, Manhattan

DOCKETS

New Case Filed Up to October 20, 2009

281-09-BZ

246 Spring Street, Spring Street, Sixth Avenue, Dominick Street, Varick Street, Block 491, Lot(s) 34-36, Borough of **Manhattan, Community Board: 2**. Special Permit (73-36) to allow the operation of a physical culture establishment. M1-6 district.

282-09-BZ

54-19 Myrtle Avenue, Northeast corner of Myrtle Avenue., Block 3445, Lot(s) 009, Borough of **Queens, Community Board: 5**. Special Permit (73-36) to legalize the operation of a physical culture establishment. C4-3 district.

283-09-BZY

90-18 176th Street, Between Jamaica and 90th Avenues, Block 9811, Lot(s) 60 (tent), Borough of **Queens, Community Board: 12**. Extension of Time (11-332) to complete construction under the prior zoning. R4-1 district.

284-09-BZY

175-19 Lauren Court, Between Jamaica and 90th Avenues., Block 9811, Lot(s) 160 (tent), Borough of **Queens, Community Board: 12**. Extension of Time (11-332) to complete construction under the prior zoning. R4-1 district.

285-09-BZY

175-21 Lauren Court, Between Jamaica and 90th Avenues, Block 9811, Lot(s) 161 (tent), Borough of **Queens, Community Board: 12**. Extension of Time (11-332) to complete construction under the prior zoning. R4-1 district.

286-09-BZY

175-23 Lauren Court, Between Jamaica and 90th Avenues, Block 9811, Lot(s) 162 (tent), Borough of **Queens, Community Board: 12**. Extension of Time (11-332) to complete construction under the prior zoning. R4-1 district.

287-09-BZY

87-85 144th Street, East side of 144th Street between Hillside Avenue and 88th Avenue., Block 9689, Lot(s) 6, Borough of **Queens, Community Board: 12**. Extension of Time (11-332) to complete construction under the prior zoning district. R5 district.

288-09-BZY

87-87 144th Street, East side of 144th Street between Hillside Avenue and 88th Avenue., Block 9689, Lot(s) 7, Borough of **Queens, Community Board: 12**. Extension of Time (11-332) to complete construction under the prior zoning district. R5 district.

289-09-BZ

3295 Amboy Road, Property is on the west side of Amboy Road approximately 1,263' south of Montreal Avenue., Block 4535, Lot(s) 200 & 205, Borough of **Staten Island, Community Board: 3**. Special Permit (73-30) to allow a non-accessory radio tower on the rooftop of an existing building. C2-5/R3-2/SRD district.

290-09-BZ

24/32 Lindenwood Road, South west corner of Lindenwood road and Lindenwood Place., Block 5432, Lot(s) 20, Borough of **Staten Island, Community Board: 3**. Special Permit (73-44) to permit the reduction in required parking for ambulatory and diagnostic treatment center. C4-1 (SRD) district.

291-09-A

33 Queens Walk, East side of Queens Walk 115.0' north of Breezy Point Boulevard., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14**. Construction not fronting a mapped street, contrary to Section 36, Article 3 of the General city Law. R4 district.

292-09-BZ

9310-9333 Third Avenue, North east corner of 94th Street., Block 6107, Lot(s) 1, Borough of **Brooklyn, Community Board: 10**. Variance (11-411 & 11-413) to reopen C1-3/R6A&R5B/BR district.

293-09-BZ

2501 Avenue M, Northeast corner of Avenue M and Bedford Avenue., Block 7643, Lot(s) 8, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a single family home. R-2 district.

DOCKET

294-09-BZ

3768 Richmond Avenue, West side of Richmond Avenue, 200 feet south of the intersection with Petrus Avenue., Block 5595, Lot(s) 11, Borough of **Staten Island, Community Board: 3**. Special Permit (73-125) to permit an one-story ambulatory diagnostic and treatment health care facility. R3A district.

295-09-A

81 Cortlandt Street, South side of Cortlandt Street, bed of Bache Street., Block 1039, Lot(s) 26, Borough of **Staten Island, Community Board: 2**. Construction within a bed of a mapped street, contrary to Section 35 of the General City Law. R3A district.

296-09-A

83 Cortlandt Street, South side of Cortlandt Street, bed of Bache Street., Block 1039, Lot(s) 25, Borough of **Staten Island, Community Board: 2**. Construction within a bed of a mapped street, contrary to Section 35 of the General City Law. R3A district.

297-09-BZ

180 Ludlow Street, East side of Ludlow Street approximately 125 feet south of East Houston Street., Block 412, Lot(s) 48,49,50, Borough of **Manhattan, Community Board: 3**. Variance to permit the residential use of a partially completed commercial building, contrary to use and bulk regulations. C4-4A 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 10, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 10, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

728-29-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; ExxonMobil Franchisee, lessee.
SUBJECT – Application August 31, 2009 – Extension of Term for the continued use of a gasoline service station (Mobil) which expires on March 19, 2010. R-4 zoning district.

PREMISES AFFECTED – 154-04 Horace Harding Expressway, bounded easterly by Kissena Boulevard, northerly by Horace Harding Expressway and southerly by 64th Street, Block 6744, Lot 71, Borough of Queens.

COMMUNITY BOARD #8Q

467-58-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Nor-Topia Service Station, lessee.
SUBJECT – Application September 14, 2009 – Extension of Term for the continued operation of a Gasoline Service Station (Mobil) which expires on December 4, 2009. R3-2 zoning district.

PREMISES AFFECTED – 172-11 Northern Boulevard, northside blockfront between 172nd Street & Utopia Parkway, Block 5363, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEALS CALENDAR

216-09-A

APPLICANT – Gary D. Lenhart, RA, for The Breezy Point Cooperative, Incorporated, owner; Thomas Fitzgerald, lessee.

SUBJECT – Application July 7, 2009 – Proposed reconstruction and enlargement of a single family home and the proposed upgrade of an existing non-conforming private disposal system located in the bed of a mapped street is contrary to General City Law Section 35. R4 zoning district.
PREMISES AFFECTED – 51 West Market Street, North side of Rockaway Point Boulevard at the intersection of mapperd Bayside Drive. Block 16350, Lot p/o 300, Borough of Queens.

COMMUNITY BOARD #14Q

241-09-BZY

APPLICANT – Gouranga Kundu, for 170-22 93rd Property LLC, owner.

SUBJECT – Application August 12, 2009 – Extension of time to complete construction of a minor development (§11-332) commenced under the prior R6 Zoning district. R4-1 Zoning District.

PREMISES AFFECTED – 87-26 175th Street, (aka 88-04 175th Street) west side of 175th Street, 100' north of corner of 89th Avenue and 175th Street, Block 9830, Lot 41, Borough of Queens.

COMMUNITY BOARD #12Q

NOVEMBER 10, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 10, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

160-08-BZ

APPLICANT – Dominick Salvati and Son Architects, for HJC Holding Corporation, owner.

SUBJECT – Application June 11, 2008 – Variance (§72-21) to permit in a R4 zoning district the legalization of commercial storage of motor vehicles (bus storage) (UG 16C) with accessory fuel storage and motor vehicles sales and repair (UG 16B), which is contrary to §22-00.

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

299-08-BZ

APPLICANT – Sheldon Lobel, P.C., for The Lantern Group, Inc., owner.

SUBJECT – Application December 4, 1008 – Variance (§72-21) to allow for a 9 story, 104 unit community facility building (non profit institution with sleeping accommodations), contrary to floor area and use regulations (ZR §24-111, §42-00). R6/C1-4, R6/C2-4 and M1-4 zoning districts.

PREMISES AFFECTED – 3857-3861 Third Avenue, northwest intersection of Claremont Parkway and Third Avenue, block 2919, Lots 39, 42, 43, 44, Borough of Bronx.

COMMUNITY BOARD #3BX

CALENDAR

231-09-BZ

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 6 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

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, OCTOBER 20, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

191-53-BZ

APPLICANT – Walter T. Gorman, P.E.. for ExxonMobil Corporation, owner; Mobil Service Station, lessee.

SUBJECT – Application August 17, 2009 – Extension of Time and Waiver of the Rules to obtain a certificate of occupancy for a Gasoline Service Station (*Mobil*) which expired on September 21, 2001. C2-2/R7-1 zoning district. PREMISES AFFECTED – 42-02/18 Queens Boulevard, south side blockfront from 42nd Street to 43rd Street, Block 169, Lot 22, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Cindy 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 a waiver of the Rules of Practice and Procedure, a reopening, and an extension of time to obtain a certificate of occupancy for a gasoline service station, which expired on September 21, 2001; and

WHEREAS, a public hearing was held on this application on September 22, 2009 after due notice by publication in *The City Record*, and then to decision on October 20, 2009; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, the site is located on a through block bounded by 42nd Street to the west, Queens Boulevard to the north, and 43rd Street to the east, in a C2-2 (R7-1) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 23, 1959 when, under the subject calendar number, the Board granted a variance to permit the reconstruction of a gasoline service station with accessory uses; and

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

WHEREAS, most recently, on September 21, 1999, the grant was amended pursuant to ZR § 11-412 to permit

the replacement of the existing automotive service station building with a 3,532 sq. ft. masonry building containing an attendant area, office, bathrooms, storage, and an accessory convenience store with 1,700 sq. ft. of sales area and with six multiple pump dispensers and a metal canopy; and

WHEREAS, a condition of the grant was that a new certificate of occupancy be obtained by September 21, 2001; and

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the stipulated date due to administrative oversight during the merger of the corporate owner; and

WHEREAS, the applicant therefore seeks an extension of time to obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board questioned whether the site is in compliance with all conditions from the prior grant; and

WHEREAS, in response, the applicant states that the site is in compliance with the conditions of the previous grant, except that an air machine and car vacuum have been installed on the site; and

WHEREAS, at hearing, the Board directed the applicant to either revise its site plan to reflect the location of the air machine and car vacuum or remove them from the site; and

WHEREAS, in response, the applicant submitted a revised site plan reflecting the location of the air machine and car vacuum; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of time to obtain a certificate of occupancy 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 23, 1959, 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 October 20, 2010; *on condition* that the use and operation of the site shall substantially conform to approved plans dated “Received October 19, 2009”-(1) sheet; and *on further condition*:

THAT a certificate of occupancy shall be obtained by October 20, 2010;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Application No. 401096899)

Adopted by the Board of Standards and Appeals October 20, 2009.

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613-74-BZ

APPLICANT – Greenberg Traurig LLP by Jay Segal, for NY-1095 Avenue of the Americas, LLC, owner; Metropolitan Life Insurance Company, lessee.

SUBJECT – Application July 24, 2009 – Amendment to a previously granted Variance (§72-21) to permit the relocation of illuminated signs (*Metlife*) from the north facade to the east façade of an existing 42-story commercial building. C6-6, C5-3, C6-7, C5-2.5/Special Midtown District/Theater Subdistrict.

PREMISES AFFECTED – 1095 Avenue of the Americas, between 42nd Street and 41st Street, Block 994, Lot 1001-1011, Borough of Manhattan.

COMMUNITY BOARD #5M

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, this is an application for a reopening and an amendment to permit the relocation of an illuminated sign for the Metropolitan Life Insurance Company (“Met Life”) at the subject site; and

WHEREAS, a public hearing was held on this application on September 22, 2009, after due notice by publication in *The City Record*, and then to decision on October 20, 2009; 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 5, Manhattan, recommends disapproval of this application; and

WHEREAS, the Bryant Park Corporation provided testimony in support of the application; and

WHEREAS, the site is located on a through block bounded by West 42nd Street to the north, Avenue of the Americas to the east, and West 41st Street to the south, and is located partially within four different zoning districts within the Theater Subdistrict of the Special Midtown District: C5-2.5, C5-3, C6-6, and C6-7; and

WHEREAS, the site is occupied by a 42-story commercial office building with a height of 664 feet (the “Building”); and

WHEREAS, the Board has exercised jurisdiction over the site since January 21, 1975 when, under the subject calendar number, the Board granted a variance to permit the installation of an illuminated sign at the rooftop level, on each of the north and south facades of Building; and

WHEREAS, the signs reflected the name of the then owner of the Building, the New York Telephone Company (“NYTC”); and

WHEREAS, the applicant states that subsequently, in

1995, DOB allowed the illuminated NYTC signage to be replaced by non-illuminated signage for NYNEX, the parent company of NYTC; and

WHEREAS, the applicant further states that upon the merger of NYNEX and Bell Atlantic in 1997, DOB allowed the non-illuminated NYNEX signage to be replaced with non-illuminated signage for Bell Atlantic; and

WHEREAS, on August 14, 2001, the Board granted an amendment to permit the replacement of the existing signage with illuminated signage reflecting the logo for Verizon, the new anchor tenant in the Building; and

WHEREAS, the anchor tenant is now Met Life, and on May 30, 2007 the Board issued a letter stating that it had no objection to the Department of Buildings (“DOB”) allowing the applicant to change the existing illuminated signs on the north and south facades of the Building from “Verizon” to “Met Life;” and

WHEREAS, the applicant now seeks an amendment to permit the relocation of the signage located on the north façade (the “North-Facing Sign”) of the Building to the east façade (the “East-Facing Sign”); and

WHEREAS, the applicant represents that the recently-constructed Bank of America Tower (“BOA Tower”) with a height of 1,200 feet on the block across the street to the north of the subject site obscures the North-Facing Sign; and

WHEREAS, the applicant submitted photographs and a sign study reflecting that as a result of the construction of the BOA Tower, the North-Facing Sign would not be visible from anywhere along the Avenue of the Americas; and

WHEREAS, the applicant notes that at the time of the original variance, the BOA Tower site and surrounding area were occupied by one- and two-story buildings which allowed the visibility of the North-Facing Sign along the Avenue of the Americas; and

WHEREAS, accordingly, the applicant proposes to maintain the location of the sign on the south façade of the Building and to relocate the North-Facing Sign to the east where it will be more visible, particularly along 42nd Street east of Fifth Avenue; and

WHEREAS, the applicant notes that the east façade of the Building faces Bryant Park, however the East-Facing Sign will be placed on a portion of the Building that is setback approximately 40 feet from the roofline such that the sign will not be visible from Bryant Park but will be visible at 42nd Street and Fifth Avenue; and

WHEREAS, in support of this contention the applicant submitted evidence, including a sign study for the proposed East-Facing Sign, which reflects that it will not be visible from Bryant Park; and

WHEREAS, the applicant states that the East-Facing Sign will be the same size and have the same degree of illumination as the North-Facing Sign; and

WHEREAS, the applicant states that in order to relocate the sign to the east façade it must install a structure for the sign at that location; and

WHEREAS, the Board acknowledges that the structure is an integral element of the sign and is contemplated within the scope of the amendment; and

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WHEREAS, based upon its review of the record, the Board finds that the requested amendment to the previous grant 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 21, 1975, so that as amended this portion of the resolution shall read: “to permit the relocation of an illuminated sign from the north façade of the Building to the east façade of the Building, *on condition* that the use and operation of the site shall substantially conform to approved plans dated “Received July 24, 2009”-(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;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 120083667)

Adopted by the Board of Standards and Appeals, October 20, 2009.

590-76-BZ

APPLICANT – Joseph P. Morsellino, Esq., for Cinfiors Limited, owners.

SUBJECT – Application September 15, 2009 – Extension of Term of a previously granted Variance (§72-01(b)) for an existing illuminated sign that exceeds the permitted height above curb level. C2-8 zoning district.

PREMISES AFFECTED – 243 East 59th Street, northwest corner of 59th Street and Second Avenue, Block 1414, Lot 120, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair 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 illuminated advertising sign that exceeds the permitted height above curb level at the subject site, which expires on July 19, 2010; and

WHEREAS, a public hearing was held on this application on September 15, 2009, after due notice by publication in *The City Record*, with a continued hearing on October 6, 2009, and then to decision on October 20, 2009; 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 8, Manhattan, recommends disapproval of this application, stating that the subject advertising sign is too large and is inappropriate for this location; and

WHEREAS, the site is located on the northwest corner of the intersection at East 59th Street and Second Avenue, within a C2-8 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 19, 1977 when, under the subject calendar number, the Board granted a variance to permit the reconstruction of an existing advertising sign that exceeded the permitted height above curb level and to install illumination, for a term of three years; and

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

WHEREAS, most recently, the grant was extended on March 28, 2000 for a term of ten years from the expiration of the prior grant, to expire on July 19, 2010; and

WHEREAS, the applicant now seeks to extend the term of the variance for another ten years; and

WHEREAS, the applicant represents that there have been no changes in the sign except for the addition of a platform in compliance with Directive STD 1-1.14 from the U.S. Department of Labor, Occupational Safety and Health Administration, and a change in the material of the sign, in compliance with New York City requirements; and

WHEREAS, the Board notes that the sign will adhere to previously approved parameters, including a size of 1,500 sq. ft. and a height of no more than 60 feet above curb level; and

WHEREAS, in response to the concerns raised by the Community Board, the applicant states that the sign has existed at the subject location for more than 30 years without any complaints; and

WHEREAS, the Board notes that the applicant submitted consent forms from certain neighbors stating that they have no objection to this application, but that full notification was not required or performed for this application; 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 19, 1977, so that as amended this portion of the resolution shall read: “to extend the term for ten years from July 19, 2010, to expire on July 19, 2020; *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; *on condition* that the use and operation of the site shall substantially conform to approved plans dated “Received July 23, 2009”-(3) sheets; and *on further condition*:

THAT the term of the grant shall expire on July 19, 2020;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect; 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) and/or configuration(s) not related to the relief granted.” (DOB Application No. 120039680)

Adopted by the Board of Standards and Appeals, October 20, 2009.

194-97-BZ

APPLICANT – Sheldon Lobel, P.C., for Auto Service Management Corporation, owner.

SUBJECT – Application April 22, 2009 – Extension of Term for a Variance (§72-21) for an automotive repair facility (UG 16B), which expired on November 29, 2007; Extension of Time to obtain a certificate of occupancy which expired on December 22, 1999; Waiver of the Rules. R4B zoning district.

PREMISES AFFECTED – 84-12 164th Street, northwest corner of 84th Road and 164th Street, Block 9792, Lot 31,137, Borough of Queens.

COMMUNITY BOARD #8Q

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 the continued operation of an automotive repair shop (Use Group 16), an extension of time to obtain a certificate of occupancy, and an amendment to permit the no-build condition of the previously approved addition of a service bay on the south end of the service station building; and

WHEREAS, a public hearing was held on this application on August 25, 2009, after due notice by publication in *The City Record*, with a continued hearing on September 22, 2009, and then to decision on October 20, 2009; and

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

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

WHEREAS, the site is located on the northwest corner of 164th Street and 84th Road, within an R4B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 13, 1953 when, under BSA Cal. No. 735-52-BZ, the Board granted a variance to permit the construction and maintenance of a gasoline service station, lubritorium, car wash, motor vehicle repairs, office,

sales and storage of accessories, and parking and storage of motor vehicles, 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 22, 1998, under the subject calendar number, the Board granted a variance to permit a change in use from a motor vehicle repair shop and gasoline service station to a motor vehicle repair shop with automobile sales, the addition of a new lubritorium and inspection area, and the legalization of the expansion of the facility onto adjacent Lot 137, to expire on November 29, 2007; a condition of the grant was that a new certificate of occupancy be obtained by December 22, 1999; and

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

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the stipulated date due to administrative oversight by the prior owner; and

WHEREAS, the applicant also seeks to amend the prior resolution to acknowledge that the previously approved addition of a service bay on the south end of the service station building will not be constructed; and

WHEREAS, at hearing, the Board directed the applicant to: (1) improve the condition of the property’s landscaped areas and repair the chain-link fence located at the southwest corner of the site; (2) revise the site plan to reflect the chain link fence with a height of six feet on the western portion of the site, and the curb cut that provides access to the asphalt driveway along the site’s western lot line; and (3) revise the site plan to incorporate the proposed trees to be planted in the property’s landscaped areas as specified on the previously approved plans; and

WHEREAS, in response, the applicant submitted photographs reflecting that the landscaped areas have been improved and the fence has been repaired, and submitted a revised site plan which identifies the chain link fence on the western portion of the site, the curb cut providing access to the driveway along the site’s western lot line, and the proposed trees to be planted in the property’s landscaped areas; and

WHEREAS, the applicant requested additional time to enable the owner to plant the proposed trees during the appropriate planting season; 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 amendment to the previously 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 December 22, 1998, so that as amended this portion of the resolution shall read: “to extend the term for ten years from November 29, 2007, to expire on November 29, 2017, to grant an extension of time to obtain a certificate of occupancy to July 20, 2010, and to permit certain

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amendments to the previously approved site plan; *on condition* that all use and operations shall substantially conform to drawings filed with this application marked “Received July 27, 2009”-(2) sheets and “October 5, 2009”-(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on November 29, 2017;

THAT a certificate of occupancy shall be obtained by July 20, 2010;

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. 410231976)

Adopted by the Board of Standards and Appeals, October 20, 2009.

272-07-BZ

APPLICANT – Ellen Hay, Wachtel & Masyr, LLP, for Amsterdam & 76th Associates, LLC, owner; Equinox 76th Street, Inc., lessee.

SUBJECT – Application November 28, 2007 – Amendment of a Special Permit (§73-36) to allow an enlargement of a Physical Culture Establishment. C2-7A and C4-6A zoning districts.

PREMISES AFFECTED – 344 Amsterdam Avenue, aka 205 W. 76th Street aka 204 W. 77th Street, west side of Amsterdam Avenue, between West 76th and West 77th Streets, Block 1168, Lots 1001, 1002, 30, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Jodi Siegel-Stein.

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 amendment to permit an extension of the physical culture establishment (“PCE”) use at the cellar level and first floor of the subject site; and

WHEREAS, a public hearing was held on this application on September 2, 2009, after due notice by publication in *The City Record*, and then to decision on October 20, 2009; and

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

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

WHEREAS, the site is located on the west side of Amsterdam Avenue, between West 76th Street and West 77th Street, partially within a C2-7A zoning district and partially within a C4-6A zoning district; and

WHEREAS, the site is occupied by a 13- and 18-story mixed-use commercial/residential building; and

WHEREAS, the PCE use is located on the cellar level, first floor and second floor, and occupies a total floor area of 27,907 sq. ft. with an additional 5,302 sq. ft. of floor space in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 13, 2008 when, under the subject calendar number, the Board granted a special permit for the establishment of the PCE, to expire on May 13, 2018; and

WHEREAS, the applicant now seeks an amendment to extend the PCE from 5,302 sq. ft. to 20,116 sq. ft. of floor space at the cellar level, and from 3,433 sq. ft. to 3,837 sq. ft. of floor area on the first floor; and

WHEREAS, the applicant states that the increased space at the cellar level will be occupied by locker rooms, offices, storage space, and yoga studios for the PCE, and the increased floor area on the first floor is necessary to provide a second entrance to the PCE on West 77th Street; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment to the previous grant 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 May 13, 2008, so that as amended this portion of the resolution shall read: “to permit the extension of the PCE use at the cellar level and first floor, *on condition* that the use and operation of the site shall substantially conform to approved plans dated “Received September 17, 2009”-(4) sheets; and *on further condition*:

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

THAT 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. 110021146)

Adopted by the Board of Standards and Appeals, October 20, 2009.

115-53-BZ

APPLICANT – Eric Palatnik, P.C., for Theodoras Zorbas, owner.

SUBJECT – Application July 8, 2009 – Extension of Term and Waiver of the Rules for the continued use of a Gasoline Service Station (*Mobil*) which expired on July 11, 2008. C2-

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2/R3-2 zoning district.
PREMISES AFFECTED – 252-02 Union Turnpike, southwest corner of Little Neck Parkway, Block 8565, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Paltnik.

ACTION OF THE BOARD – Laid over to November 17, 2009, at 10 A.M., for continued hearing.

1715-61-BZ

APPLICANT – Mitchell S. Ross, for 21st Century Cleaners Corporation, owner.

SUBJECT – Application July 17, 2009 – Extension of Term (§11-411) for a dry cleaning establishment (UG 6A), which expired on June 5, 2007; Extension of Time to obtain a certificate of occupancy, which expired on December 14, 2000; Waiver of the Rules. R3X zoning district.

PREMISES AFFECTED – 129-02 Guy R. Brewer Boulevard, a/k/a 129-02 New York Boulevard, south west corner of 129th Avenue and Guy R. Brewer Boulevard, Block 2276, Lot 59, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Mitchell S. Ross.

ACTION OF THE BOARD – Laid over to November 17, 2009, at 10 A.M., for continued hearing.

1038-80-BZ

APPLICANT – Davidoff Malito & Hutcher LLP, for Feinrose Downing LLC, owner; Expressway Arcade Corporation, lessee.

SUBJECT – Application August 28, 2009 – Extension of Term of a Special Permit for the continued operation of a UG15 Amusement Arcade (*Smile Arcade*) which expired on January 6, 2009. M2-1 zoning district.

PREMISES AFFECTED – 31-07/09/11 Downing Street, Block 427, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Ron Mandel.

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 November 10, 2009, at 10 A.M., for decision, hearing closed.

1016-86-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Opera Owner Incorporated, owner; TSI West 76 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application August 13, 2009 – Extension of

Term for a special permit (§73-36) which expired on May 5, 2007 for the operation of a Physical Culture Establishment (*New York Sports Club*); Extension of Time to obtain a Certificate of Occupancy which expired on October 26, 2000; and Waiver of the Rules. C4-6A zoning district.

PREMISES AFFECTED – 2162-2166 Broadway, easterly side of Broadway 26 feet north of West 76th Street, Block 1168, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to November 17, 2009, at 10 A.M., for continued hearing.

311-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Block 2285 Lite Corporation, owner.

SUBJECT – Application July 8, 2009 – Amendment to a previously granted Variance (§72-21) for a proposed one family dwelling which is contrary to lot coverage (§105-33) and maximum height (§23-631) regulations. R1-2(NA-1) zoning district.

PREMISES AFFECTED – 380 Lighthouse Avenue, south side of Lighthouse Avenue, 579' west of Winsor Avenue, Block 2285, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

For Opposition: Sue Castellaneta.

ACTION OF THE BOARD – Laid over to November 17, 2009, at 10 A.M., for continued hearing.

197-05-BZ

APPLICANT – Marvin Mitzner, Esq., for B&E 813 Broadway Realty, owner.

SUBJECT – Application April 17, 2009 – Amendment to a variance (§72-21) to allow full commercial coverage on the ground floor and an increase in commercial FAR in a mixed use building. C6-1 zoning district.

PREMISES AFFECTED – 813/815 Broadway, west side of Broadway, 42' south of East 12th Street, Block 563, Lots 33 & 34, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Marvin Mitzner.

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 November 24, 2009, at 10 A.M., for decision, hearing closed.

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APPEALS CALENDAR

140-08-BZY

APPLICANT – Eric Palatnik, P.C., for 1016 East 13th Realty, LLC, owner.

SUBJECT – Application April 5, 2008 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 zoning district. R5 zoning district.

PREMISES AFFECTED – 1016 East 13th Street, between Avenue J and K, Block 6714, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Todd Dale.

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, October 20, 2009.

178-09-A

APPLICANT – Marvin B. Mitzner, Esq., for 120 St. Marks LLC, owner;

O. Moscovich, D.V.M., P.C., lessee.

SUBJECT – Application June 1, 2009 – Appeal contesting an Order of Closure issued by the Department of Buildings that the use of the cellar at the subject premises as a Veterinarian's Office (UG6) constitutes an illegal use in a residential district pursuant to Administrative Code Section 28-212.1. R8B zoning district.

PREMISES AFFECTED – 120 St. Marks Place (East 8th street), south side of St. Marks Place, Block 435, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES – None.

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Negative:.....0

Adopted by the Board of Standards and Appeals, October 20, 2009.

233-09-BZY

APPLICANT – Sheldon Lobel, P.C., for 175th Street Associates, LLC, owner.

SUBJECT – Application July 24, 2009 – Application to complete construction of a minor development (§11-332) commenced under the prior R6 Zoning District. R4-1 zoning district.

PREMISES AFFECTED – 91-12 175th Street, west side of 175th Street, Block 9809, Lot (Tent. 70), Borough of

Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Josh Rinesmith.

ACTION OF THE BOARD – Application granted.

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; and

WHEREAS, a public hearing was held on this application on October 6, 2009, after due notice by publication in *The City Record*, and then to decision on October 20, 2009; 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, Queens, recommends disapproval of this application; and

WHEREAS, the subject site is located on the west side of 175th Street, between 91st Avenue and Jamaica Avenue, in an R4-1 zoning district; and

WHEREAS, the subject site has 80 feet of frontage along 175th Street, a depth of approximately 117 feet, and a total lot area of 9,370 sq. ft.; and

WHEREAS, the site is proposed to be developed with an eight-story mixed-use residential/community facility building (the "Building"); and

WHEREAS, the Building is proposed to have a total floor area of 29,045 sq. ft. (3.1 FAR); and

WHEREAS, the development complies with the former R6 zoning district parameters; and

WHEREAS, however, on September 10, 2007 (hereinafter, the "Enactment Date"), the City Council voted to adopt The Jamaica Plan Rezoning, which rezoned the site from R6 to R4-1; and

WHEREAS, on July 25, 2007, New Building Permit No. 402581167-01-NB (hereinafter, the "New Building 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

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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 September 30, 2009, DOB stated that the New Building 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 New Building 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 September 10, 2009 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes 100 percent of the superstructure and masonry, 95 percent of the rough carpentry, 80 percent of the electrical work, plumbing work and mechanical work, and 20 percent of the finishing work; and

WHEREAS, in support of this statement, the applicant has submitted the following: construction contracts, a construction schedule detailing the work completed since the issuance of the New Building Permit; a breakdown of the construction costs by line item and percent complete; an affidavit from the general contractor enumerating the completed work; copies of lien waivers evidencing payments made by the applicant; invoices; and photographs of the building’s interior and exterior; 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 September 10, 2009; and

WHEREAS, the Board notes that, based on visual inspections, a substantial amount of physical construction has been completed; and

WHEREAS, as to costs, the applicant represents that the total expenditures and irrevocable commitments for the development to date are \$5,584,635, or approximately 90 percent of the \$6,215,000 cost to complete; and

WHEREAS, as noted, the applicant has submitted construction contracts, copies of lien waivers, and invoices; 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

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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. 402581167-01-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 October 20, 2011.

Adopted by the Board of Standards and Appeals, October 20, 2009.

Jeff Mulligan, Executive Director

Adjourned: P.M.

REGULAR MEETING TUESDAY AFTERNOON, OCTOBER 20, 2009 1:30 P.M.

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

147-07-BZY

APPLICANT – Cozen O’Connor Attorneys, for Gabriel Realty, LLC, owner.

SUBJECT – Application August 27, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 (M1-2) district regulations. R6B zoning district.

PREMISES AFFECTED – 144 North 8th Street, south side of North 8th Street, 100’ east of Berry Street, Block 2319, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Peter Geis.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez.....4

Recused: Commissioner Hinkson.....1

Negative:.....0

ACTION OF THE BOARD – Laid over to November 17, 2009, at 10 A.M., for decision, hearing closed.

249-09-A

APPLICANT – Bryan Cave LLP, for 363 Lafayette Street, LLC, owner.

SUBJECT – Application August 27, 2009 – 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 Administrative Code.

PREMISES AFFECTED – 363 Lafayette (371 Lafayette Street, 21 Great Jones Street) east side of Lafayette Street, between Bond and Great Jones Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 10, 2009, at 10 A.M., for postponed hearing.

ZONING CALENDAR

210-08-BZ

CEQR #09-BSA-017Q

APPLICANT – Sheldon Lobel, P.C., for Samaritan Foundation, Inc., owner.

SUBJECT – Application August 15, 2009 – Variance (§72-21) to permit two-story enlargement to an existing two-story building for a UG 3 drug treatment facility with sleeping accommodations (*Samaritan Village*), contrary to use regulations (ZR §43-00). M1-1 district.

PREMISES AFFECTED – 130-15 89th Road, north side of 89th Road, approximately 125’ east of 130th Street, Block 9338, Lot 147, Borough of Queens.

COMMUNITY BOARD #9Q

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 Queens Borough Commissioner, dated July 8, 2009, acting on Department of Buildings Application No. 410106683, reads in pertinent part: “A use group 3 community facility; a nursing home and health-related facility as defined in the New York State Hospital Code is not a permitted use in a M1-1 zoning district. The proposed alteration and change of use group would create a new [non] conforming use which is contrary to ZR 42-00.

The proposed community facility building does not provide the required minimum setback as per ZR Section 43-43;” and

WHEREAS, this is an application under ZR § 72-21, to legalize an existing drug treatment center with sleeping accommodations (Use Group 3) and to permit a two-story enlargement of the existing facility, contrary to ZR §§ 42-00 and 43-43; and

WHEREAS, a public hearing was held on this

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application on June 9, 2009, after due notice by publication in the *City Record*, with continued hearings on July 14, 2009 and August 25, 2009, and then to decision on October 20, 2009; 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, this application is brought on behalf of Samaritan Village, Inc. ("Samaritan Village"), a not-for-profit entity; and

WHEREAS, Community Board 9, Queens, recommends approval of the proposed application; and

WHEREAS, the site is located on the north side of 89th Road, approximately 125 feet east of 130th Street, in an M1-1 zoning district; and

WHEREAS, the subject zoning lot has 132 feet of frontage on 89th Road, a depth of 100 feet, and a total lot area of 11,349 sq. ft.; and

WHEREAS, the site is currently occupied by a two-story 10,234 sq. ft. research laboratory building; and

WHEREAS, the building, which has been modified, is currently occupied by a drug treatment center (Use Group 3) operated by Samaritan Village, which is a non-conforming use in the subject M1-1 zoning district; and

WHEREAS, the applicant proposes to legalize the existing facility and build a two-story enlargement to create a four-story 19,176 sq. ft. facility with a setback of ten feet at the fourth floor (a setback of 15 feet is required at a height of 30 feet); 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 building is obsolete for modern manufacturing and commercial uses; and (2) the site is adjacent to a railroad embankment with a height of 20 feet, which creates a dead end; and

WHEREAS, as to the obsolescence of the building, the applicant states that the existing building is sub-standard for modern manufacturing or commercial use, as it was constructed more than 45 years ago as a research laboratory and cannot feasibly be adapted to a modern conforming use; and

WHEREAS, the applicant states that the existing building is also sub-standard with regard to its current use as a community facility, as it does not provide the amenities associated with a modern drug treatment facility; and

WHEREAS, the applicant represents that the requested waivers will enable Samaritan Village to update the facility to provide much needed recreational space, improved outdoor space, group rooms, counseling offices and single beds, as well as to modernize the kitchen, bathrooms, and plumbing at the facility; and

WHEREAS, as to the site's location, the applicant states that the eastern side of the site is directly adjacent to a railroad embankment with a height of 20 feet; and

WHEREAS, the railroad embankment cuts across the site diagonally, leaving it with an irregular shape and creating a dead end on 89th Road to the east of 130th Street; and

WHEREAS, the dead end limits maneuverability and access to the site, which is only accessible from 89th Road; and

WHEREAS, as to the uniqueness of this condition, the land use map reflects that the site is one of only three wholly within a 400-ft. radius of the site which abuts the railroad embankment and can only be accessed from a dead end street; and

WHEREAS, the applicant represents that this condition limits the viability of a conforming manufacturing use; and

WHEREAS, the applicant also states that the existing building cannot accommodate Samaritan Village's programmatic needs of providing drug treatment services to war veterans, and that the proposed enlargement of the site is necessary to accommodate an increase in demand at the facility; and

WHEREAS, the applicant states that Samaritan Village operates a drug treatment facility on the site which provides treatment solely to war veterans; and

WHEREAS, the applicant submitted an existing contract between Samaritan Village and the New York State Office of Alcoholism and Substance Abuse Services to provide such services; and

WHEREAS, the applicant represents that an increase in the number of veterans returning from overseas has resulted in a corresponding increase in demand for the services offered by the facility; and

WHEREAS, specifically, the applicant states that Samaritan Village's programmatic needs now require the accommodation of 50 in-patients; and

WHEREAS, the applicant states that the existing building is undersized and inadequate to accommodate the programmatic needs of Samaritan Village, as it is only able to provide treatment for 32 in-patients at full capacity; and

WHEREAS, the applicant further states that the requested variance will enable Samaritan Village to expand its services by providing room for 18 additional in-patients; and

WHEREAS, the applicant represents that the requested setback waiver is necessary to provide an efficient interior layout on the fourth floor and adequate space to accommodate Samaritan Village's programmatic needs; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate and in conjunction with the programmatic needs of Samaritan Village, create practical difficulties and unnecessary hardships in developing the site in strict conformity with current zoning; and

WHEREAS, the applicant need not address ZR § 72-21(b) since Samaritan Village 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 variance, if granted, will not negatively impact the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant states that a community facility use has existed on the site for more than 40 years, and

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the current and proposed use has operated on the site since 1992; and

WHEREAS, the applicant further states that the lot located directly across 89th Road from the site is similarly occupied by a community facility use; and

WHEREAS, the applicant submitted a 400-foot radius diagram, which reflects that there is significant residential development within the R4 zoning district located across the railroad tracks to the east and in the R5 zoning district located across 130th Street to the west; and

WHEREAS, the applicant represents that the proposed use would be permitted as-of-right in the adjacent R4 and R5 zoning districts; and

WHEREAS, as to bulk, the applicant represents that the proposed floor area and height of the building are permitted as-of-right in the M1-1 zoning district; and

WHEREAS, the applicant states that the subject site is located at the end of a dead end street along a railroad embankment, which will minimize any impact of the requested setback waiver to the east of the site; and

WHEREAS, the applicant further states that there is no through traffic travelling along the subject portion of 89th Road; and

WHEREAS, the applicant represents that the plans reflect that the proposed parking complies with the zoning requirements; 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 setback waiver is minimal, as it only applies to the fourth floor of the building along 89th Road, which will be set back ten feet, rather than 15 feet; and

WHEREAS, based upon the above, the Board finds that this proposal is the minimum necessary to afford Samaritan Village 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 6NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09BSA017Q dated October 16, 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; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the Department of Environmental Protection's Office of Environmental Planning and Assessment (DEP) has reviewed the following submissions from the Applicant: February 2009 Environmental Assessment Statement; March 2009 Phase I Environmental Site Assessment; and September 11, 2009 Air Quality and Noise submissions; and

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

WHEREAS, DEP requested that a Construction Health & Safety Plan (CHASP) (for hazardous materials and asbestos) be submitted to DEP for review and approval prior to the time building permits are issued; and

WHEREAS, DEP states that based on the air quality submissions that significant air quality impacts from surrounding manufacturing/industrial uses on the proposed project are not anticipated; and

WHEREAS, the following proposed noise attenuation was reviewed and approved by DEP for the building: the installation of double-glazed windows (providing an OITC rating of 35 dBA) on the second through fourth stories of the north, south and east (facing the rail tracks) building frontages; an alternate means of ventilation (central air conditioning or individual air conditioning units); and window-wall attenuation; and

WHEREAS, DEP has determined that the proposed project would not generate sufficient vehicular traffic to have the potential to cause a significant air quality or noise impact from mobile sources; 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, 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 legalization of an existing drug treatment center with sleeping accommodations (Use Group 3) and to permit, in an M1-1 zoning district, a two-story enlargement of the existing facility, contrary to ZR §§ 42-00 and 43-43; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 19, 2009"– (12) sheets; and *on further condition*;

THAT the following shall be the bulk parameters of the building: a floor area of 19,176 sq. ft. (1.69 FAR); a total height of 48 feet; and a setback of ten feet at the fourth floor;

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

THAT the applicant shall submit a CHASP to DEP for

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review and approval prior to the time building permits are issued;

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 building design shall include: (1) the installation of double-glazed windows (providing an OITC rating of 35 dBA) on the second through fourth stories of the north, south and east building frontages; (2) Alternate means of ventilation (central air conditioning or individual air conditioning units); and (3) window-wall attenuation;

THAT this approval 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 20, 2009.

297-08-BZ

APPLICANT – Lewis E. Garfinkel, for Itzhak Bardror, owner.

SUBJECT – Application December 4, 2008 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141(a)) and rear yard (§23-47) regulations. R2 zoning district.

PREMISES AFFECTED – 3496 Bedford Avenue, between Avenue M and Avenue N, Block 7660, Lot 78, 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 Superintendent, dated November 6, 2008, acting on Department of Buildings Application No. 310208628, reads in pertinent part:

- “1. Proposed plans are contrary to ZR 23-141(A) in that the proposed floor area ratio (FAR) exceeds the permitted 50%.
2. Proposed plans are contrary to ZR 23-141(A) in that the proposed open space ratio (OSR) is less than the required 150%.

3. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30’-0”;

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of a single-family 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 May 12, 2009 after due notice by publication in *The City Record*, with continued hearings on June 23, 2009, August 25, 2009 and October 6, 2009, and then to decision on October 20, 2009; 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 disapproval of this application; and

WHEREAS, certain neighbors provided testimony in opposition to the application; and

WHEREAS, the adjacent neighbor, represented by counsel, provided testimony and submissions in opposition to the application (hereinafter, the “Opposition”); and

WHEREAS, the Opposition raised the following primary concerns: (1) the proposed home is not compatible with the essential character of the neighborhood; and (2) the drawings submitted by the applicant are incomplete and inaccurate; and

WHEREAS, the subject site is located on the west side of Bedford Avenue, between Avenue M and Avenue N, in 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 1,875 sq. ft. (0.46 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 to increase the floor area from 1,875 sq. ft. (0.46 FAR) to 3,684 sq. ft. (0.93 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.5 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of 71 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will maintain the existing rear yard with a depth of 29’-10” (a rear yard with a depth of 30’-0” is the minimum required); and

WHEREAS, pursuant to ZR § 73-622, the Board must find that the enlarged building will not alter the essential character of the neighborhood or district in which the building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, the applicant states that the shape and form of the proposed home is consistent with the character of the surrounding neighborhood, which consists of two- and three-story detached single-family homes; and

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WHEREAS, the applicant further states that the proposed home complies with all bulk requirements related to height, lot coverage, side yards and front yard and that the rear yard, which is only two inches shallower than the minimum required 30 feet, is a pre-existing non-complying condition that will be maintained; and

WHEREAS, the Opposition contends that the proposed building fails to meet the requirement of the special permit because it will alter the essential character of the neighborhood, raising specific concerns related to: (1) the proposed front yard with a depth of 15 feet; (2) the proposed construction of a front porch; and (3) the massing of the proposed home; and; and

WHEREAS, the Opposition represents that 27 out of 33 homes on the subject block front provide front yards with depths of at least 17 feet and that the average front yard depth exceeds 20 feet; and

WHEREAS, in response, the applicant states that, even assuming the Opposition's calculations are correct, the result is that at least six homes on the subject block have a front yard depth of less than 17 feet; and

WHEREAS, the applicant further states that the fact that at least six buildings have a front yard depth of less than 17 feet indicates that there is a great degree of variation in front yard depth on the subject block, as the only way the average depth could exceed 20 feet is if many front yards were much greater in depth; thus, the applicant concludes that consistency of front yard depths is not essential to the character of the district; and

WHEREAS, the applicant also submitted photographs reflecting that a number of the front yards on the subject block contain permitted obstructions including masonry walls, hedges, terraces, porches and stairs, which compromise and diminish the significance of the depth of the front yards; and

WHEREAS, the Board notes that the applicant and the Opposition submitted surveys in support of their positions regarding the front yard conditions of homes on the subject block front; and

WHEREAS, the Board notes that the parties' surveys were initially in conflict, but both have submitted subsequent surveys which reflect the same conditions; and

WHEREAS, accordingly, the Board accepts the subsequent surveys as evidence of the front yard conditions; and

WHEREAS, Board notes that the surveys reflect that there is a home on a lot with a width of 80 feet, directly across the street from the subject home, which has a front yard with a depth of approximately 17 feet (Block 7661, Lot 9) and that there are two homes, two lots away from the subject site with front yard depths of 14.9 feet (Block 7660, Lot 68) and 15.2 feet (Block 7660, Lot 70); the latter also has a lot width of 80 feet, which is twice the width of the subject lot and, accordingly, establishes a more significant presence than a narrower home on a narrower lot; and

WHEREAS, the Board notes that a front yard with a depth of 15 feet is a complying condition within the as-of-right building envelope and no waiver is sought for that

condition; and

WHEREAS, additionally, the Board's review of photographs and visual observations made at site visits support the conclusion that the proposed front yard with a depth of 15 feet is compatible with the existing conditions; and

WHEREAS, the Opposition asserts that the massing of the enlargement along the Bedford Avenue frontage is not compatible with the neighborhood character; and

WHEREAS, in support of this assertion, the Opposition provided an analysis of the setback conditions of the homes on the subject block front and concluded that the majority of other homes provide a set back at the second floor; and

WHEREAS, the Opposition acknowledges that visual inspection is not an adequate means of ascertaining this information; and

WHEREAS, in response, the applicant submitted photographs of several homes on the subject block with massing similar to the proposed enlargement; and

WHEREAS, the Board notes that neighborhood character is reflected in a confluence of conditions and that certain homes such as the adjacent home to the south on the subject site, may provide a front yard with a depth of 24.6 feet, but its presence and massing are substantial given its considerably wider frontage; and

WHEREAS, the Opposition also asserts that the applicant has not appropriately measured the level of the front yard and thus it appears that the proposed building height exceeds 30 feet; and

WHEREAS, the Board notes that this is speculation, which is not supported by any evidence; and

WHEREAS, the Board notes that Board staff directed the applicant to add grade elevations to the proposed plans; and

WHEREAS, the Board notes that the proposed plans are signed and sealed by a registered architect and that the height and elevations are subject to DOB review; and

WHEREAS, additionally, the Board notes that the permitted obstructions, including porches and dormers are contemplated by the ZR and are subject to DOB's review; and

WHEREAS, the Board notes that the reference to porches on the proposed plans is in sketch form and, as noted on the proposed plans, their construction and final form are subject to DOB's review; and

WHEREAS, further, the Board notes that permitted obstructions, like the front yard with a depth of 15 feet, are permitted as of right and do not require any waiver from the Board; and

WHEREAS, accordingly, the Board finds that it is appropriate for permitted obstructions, the measurement of which may be highly technical, to be subject to DOB, rather than the Board's, review; and

WHEREAS, the Board notes that a property owner must submit a series of detailed drawings to reflect building infrastructure, room layout, egress, and fenestration, among other conditions, which are all subject to DOB review for

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zoning and Building Code compliance; and

WHEREAS, the Board notes that it is DOB's role, and not the Board's, to review construction and enforce compliance with the approved plans and with relevant zoning and Building Code regulations; and

WHEREAS, the Board recognizes that there is a self-certification process which allows a project architect to approve his own plans, but the Board notes that any construction project remains subject to DOB's review at any time; and

WHEREAS, accordingly, the Board rejects the Opposition's assertion that permitted obstructions must be reviewed by the Board within the context of the subject special permit; 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, 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 September 24, 2009"-(13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,684 sq. ft. (0.93 FAR); an open space ratio of 71 percent; a side yard with a minimum width of 8'-6" along the southern lot line; a side yard with a minimum width of 6'-11" along the northern lot line; and a rear yard with a minimum depth of 29'-10", as illustrated on the BSA-approved plans;

THAT DOB shall review all porches and other permitted obstructions for compliance;

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 20, 2009.

183-09-BZ
CEQR #09-BSA-116M

APPLICANT – The Law Office of Fredrick A. Becker, for 1400 5th Commercial LLC, owner; TSI West 115th Street LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application June 4, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*NY Sports Club*) on a portion of the ground floor and cellar in an eight-story mixed-use building. C4-5X zoning district.

PREMISES AFFECTED – 1400 5th Avenue, Northeast corner of 5th Avenue and West 115th Street. Block 1599, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #10M

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

Negative:.....5

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated May 5, 2009, acting on Department of Buildings Application No. 110144264, reads in pertinent part:

“Proposed physical culture establishment is not permitted as of right in C4-5X zoning districts. This use is contrary to Section 32-10 ZR and requires a special permit from the BSA under Section ZR 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C4-5X zoning district, the legalization of a physical culture establishment (PCE) at the cellar level and first floor of an eight-story mixed-use commercial/residential/community facility building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 11, 2009, after due notice by publication in the *City Record*, with a continued hearing on September 15, 2009, and then to decision on October 20, 2009; and

MINUTES

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Vice-Chair Collins; and

WHEREAS, Community Board 10, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on a through block, bounded by West 116th Street to the north, Fifth Avenue to the east, and West 115th Street to the south, in a C4-5X zoning district; and

WHEREAS, the site is occupied by an eight-story mixed-use commercial / residential / community facility building; and

WHEREAS, the PCE has a total floor area of 3,886 sq. ft. on the first floor, with an additional 9,230 sq. ft. of space located in the cellar; and

WHEREAS, the PCE is operated as New York Sports Club; 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.; Saturday, from 7:00 a.m. to 6:00 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, 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 November 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 November 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. 09BSA116M, dated June 4, 2009; 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 C4-5X zoning district, the legalization of a physical culture establishment at the cellar level and first floor of an existing eight-story mixed-use commercial/residential/community facility building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 4, 2009"-Four (4) sheets; "Received September 1, 2009"-One (1) sheet; and "Received October 15, 2009"-One (1) sheets and *on further condition*:

THAT the term of this grant shall expire on November 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 cellar and first floor shall be finished with 3/8-inch rubber flooring;

THAT the aerobics studio and all free weights shall be located in the cellar level;

THAT limiters shall be installed on the stereo systems in the aerobics studio and club;

THAT speakers for the PCE shall not be mounted on the ceiling;

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

MINUTES

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 20, 2009.

63-08-BZ

APPLICANT – Eric Palatnik for Royal Palace, lessee. Manton Holding, owner.

SUBJECT – Application March 27, 2008 – Special Permit (§73-244) to legalize an eating and drinking establishment with entertainment and a capacity of more than 200 persons with dancing. C4-2 zoning district.

PREMISES AFFECTED – 116-33 Queens Boulevard, Between 77th and 78th Avenues, Block 2268, Lot 23, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO REOPEN HEARING –

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

Negative:.....0

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 November 10, 2009, at 1:30 P.M., for decision, hearing closed.

254-08-BZ

APPLICANT – Eric Palatnik, P.C., for Yeshiva Ohr Yitzchok, owner.

SUBJECT – Application October 15, 2008 – Variance (§72-21) to legalize and enlarge a Yeshiva (*Yeshiva Ohr Yitzchok*) contrary to §42-11 (use regulations), §43-122 (floor area), §43-43 (wall height, number of stories, and sky exposure plane). §43-301 (required open area). M1-1D zoning district.

PREMISES AFFECTED – 1214 East 15th Street, Western side of East 15th Street between Avenue L and Locust Avenue. Block 6734, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD # 14BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to December 15, 2009, at 1:30 P.M., for adjourned hearing.

37-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Shirley Ades and Moshe Ades, owners.

SUBJECT – Application March 3, 2009 – Special Permit (§73-622) for the in-part legalization and enlargement of an existing single family home, contrary to floor area, open space and lot coverage (ZR §23-141(b)); side yard (ZR §23-461(a)) & (ZR §23-48); rear yard (ZR §23-47), and perimeter wall height (§23-631) regulations. R3-2 zoning district.

PREMISES AFFECTED – 3950 Bedford Avenue, Bedford Avenue between Avenue R and Avenue S, Block 6830, Lot 26, 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 November 10, 2009, at 1:30 P.M., for decision, hearing closed.

54-09-BZ

APPLICANT – Juan D. Reyes, III/Riker Danzig et al, for Lord Shivas Properties, LLC, owner; Gab & Aud, Inc., lessee.

SUBJECT – Application April 8, 2009 – Special Permit (§73-36) to allow a physical culture establishment (*Haven Day Spa*) on the cellar level of a four-story mixed-use building. M1-5B district.

PREMISES AFFECTED – 150 Mercer Street (a/k/a 579 Broadway) Mercer Street between Prince and Houston in SoHo, block 512, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 17, 2009, at 1:30 P.M., for deferred decision.

56-09-BZ

APPLICANT – Omnipoint Communications, Inc., for The South Shore Swimming Club, Inc., owner.

SUBJECT – Application April 15, 2009 – Special Permit (§73-30) to allow a proposed non-accessory radio tower and related equipment. R3X zoning district.

PREMISES AFFECTED – 6736 Hylan Boulevard, south side of Hylan Boulevard between Culotta Lane and Page Avenue, Block 7734, Lot 50, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Robert Gaudio.

For Opposition: Julia Chazov.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

MINUTES

Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to November 17, 2009, at 1:30 P.M., for decision, hearing closed.

180-09-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Steven Smith, owner.

SUBJECT – Application June 1, 2009 – Variance (§72-21) to allow for a commercial building (UG6) contrary to use regulations (§22-00). R3-1 zoning district.

PREMISES AFFECTED – 1735 Richmond Avenue, 296.35’ north of the intersection of Richmond Avenue and Croft Place, block 2072, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam Rothkrug.

For Administration: Anthony Scaduto, FDNY.

ACTION OF THE BOARD – Laid over to November 24, 2009, at 1:30 P.M., for continued hearing.

187-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Torath Israel Sephardic Congregation, owner.

SUBJECT – Application June 9, 2009 – Variance (§72-21) to permit the construction of a mikvah (ritual bath) in the proposed building (*Torath Israel Sephardic Congregation*), contrary to FAR and lot coverage (§24-11), side yard (§24-35) and rear yard (§24-36). R3-1 zoning district.

PREMISES AFFECTED – 94 Amherst Street, west side of Amherst Street, between Shore Boulevard and Hampton Avenues, Block 8726, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman, David Steiner.

For Opposition: Francene Olk.

ACTION OF THE BOARD – Laid over to November 17, 2009, at 1:30 P.M., for continued hearing.

198-09-BZ

APPLICANT – Eric Palatnik, P.C., for Chelsea Lofts Corp., owner; Personal Training Institute, lessee.

SUBJECT – Application June 29, 2009 – Special Permit (§73-36) to allow the operation of the proposed physical culture establishment (*Personal Training Institute*) on the first floor of an eight-story building. C6-3A zoning district.

PREMISES AFFECTED – 143 West 19th Street, between Sixth and Seventh Avenues, Block 795, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #4M

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 November 17, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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November 5, 2009

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DOCKET

New Case Filed Up to October 27, 2009

298-09-A

436 Beach 129th Street, East side of Beach 217 Street 160', south of Breezy Point Boulevard., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14.** Construction not fronting a mapped street, contrary to Section 36, Article 3 of the General City Law. R4 district.

299-09-A

4 Lincoln Walk, East side of Beach 217 Street 160', south of Breezy Point Boulevard., Block 16350, Lot(s) 400, Borough of **Queens, Community Board: 14.** Construction not fronting a mapped street, contrary to Section 36, Article 3 of the General City Law. 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

NOVEMBER 17, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 17, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

240-55-BZ

APPLICANT – Joseph P. Morsellino, Esq., for DLC Properties LLC, owner; Helms Brother's, lessee.
SUBJECT – Application March 11, 2009 – Extension of Time to complete construction of a second story addition (5,000sf) to an existing commercial building in a C2-2(R6B) & R4 zoning district which expired on February 13, 2009.
PREMISES AFFECTED – 207-22 Northern Boulevard, Northern Boulevard and 208th Street, Block 7305, Lot 19, Borough of Queens.
COMMUNITY BOARD #11Q

217-96-BZ

APPLICANT – Joseph P. Morsellino, for Silverbell Investments, owner; Enterprise Rent a Car, lessee.
SUBJECT – Application September 15, 2009 – Extension of Term of a previously granted Variance (§72-21) for the continued use of an existing car rental facility (Enterprise) with accessory outdoor storage of rental cars (UG 8) which expired on October 7, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on October 7, 1998; and Waiver of the Rules. C1-2/R-2 zoning district.
PREMISES AFFECTED – 165-01 Northern Boulevard, northeast corner 165th Street and Northern Boulevard, Block 53340, Lot 8, Borough of Queens.
COMMUNITY BOARD #7Q

195-99-BZ

APPLICANT – Eric Palatnik, P.C., for Theodore Zorbas, owner.
SUBJECT – Application September 18, 2009 – Extension of Term (§11-411) for the continued use of a Gasoline Service Station (Shell) which expires on November 10, 2009. R-6 zoning district.
PREMISES AFFECTED – 112 Atlantic Avenue, south east corner of Atlantic Avenue and Henry Street, Block 285, Lot 6, Borough of Brooklyn.
COMMUNITY BOARD #6BK

APPEALS CALENDAR

315-08-A

APPLICANT – Stuart A. Klein, Esq., for Bayrock/Sapir Organization, LLC., owner.
SUBJECT – Application December 23, 2008 – An appeal seeking the revocation of permits for the construction of a condominium hotel on the basis that the approved plans allow for a Floor area far exceeding the permitted applicable zoning regulations. M1-6 zoning.
PREMISES AFFECTED – 246 Spring Street, between Varick Street and Hudson Street, block 491, Lot 36, Borough of Manhattan.
COMMUNITY BOARD #2M

243-09-BZY

APPLICANT – Gouranga C. Kundu, for Azharul Islam, owner.
SUBJECT – Application August 19, 2009 – Application to complete construction of a minor development §11-332 commenced under the prior R6 zoning district. R4-1 zoning district.
PREMISES AFFECTED – 87-12 175th Street, corner of 175th Street and Warwick, Block 9830, Lot 32, Borough of Queens.
COMMUNITY BOARD #12Q

NOVEMBER 17, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 17, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

239-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York University, owner.
SUBJECT – Application August 5, 2009 – Variance (§72-21) to allow for the development of a 6 story community facility building (NYU Center for Academic and Spiritual Life) contrary to lot coverage (ZR §24-11) and height and setback regulations (ZR §24-522, §33-431). R7-2/C1-5 and R7-2 Districts.
PREMISES AFFECTED – 238 Thompson Street, aka 56 Washington Square South, block bounded by Thompson and West 3rd Streets, Laguardia Place, Washington Square South Block 538, Lot 27, Borough of Manhattan.
COMMUNITY BOARD #2M

CALENDAR

269-09-BZ

APPLICANT – Dennis D. Dell'angelo, R.A., for Jehoshua Cohen, owner.

SUBJECT – Application September 21, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to lot coverage (§23-141); side yard (§23-461) and less than the required rear yard (§23-47). R-5 zoning district.

PREMISES AFFECTED – 1938 East 12th Street, west side of East 12th Street, between Avenue S and Avenue T, Block 7290, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #15BK

279-09-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Rifki Zoneshayn, owner.

SUBJECT – Application October 1, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 2709 Avenue M, between East 27th and East 28th Street, Block 7645, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, OCTOBER 27, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

321-63-BZ

APPLICANT – Slater & Beckerman, LLP, for Verizon New York, owner.

SUBJECT – Application September 15, 2009 – Amendment of Special Permit (§73-65) which allowed the enlargement of a telephone exchange facility (UG 6D). The amendment would allow change of use from telephone exchange to UG 6 on the first floor, from UG 4A to a school (UG 3) on the fourth floor, from telephone exchange to a school (UG 3) on the fifth and sixth floors, from offices (UG 6B) to school accessory offices (UG 6B) on the seventh and eighth floors, and the creation of rooftop recreation space for the school (UG 3). R8/Special Grand Concourse Preservation District. PREMISES AFFECTED – 1775 Grand Concourse, 100 East 175th Street and 1730 Walton Avenue, Corner lot with frontages on the south side of East 175th Street, east side of Walton Avenue and west side of Grand Concourse, Block 2822, Lot 27, Borough of Bronx.

COMMUNITY BOARD #5BX

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, October 27, 2009.

684-64-BZ

APPLICANT – George E. Berger, for 360 East 72nd Street Owners Corporation owner.

SUBJECT – Application July 30, 2009 – Extension of Term permitting the use of no more than 45 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 is set to expire on October 23, 2009. C1-5 in a R10A & R8B zoning district. PREMISES AFFECTED – 360 East 72nd Street, East side of 1st Avenue between East 71st Street and East 72nd Street, Block 1446, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: George E. Berger.

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 October 23, 2009; and

WHEREAS, a public hearing was held on this application on October 6, 2009, after due notice by publication in *The City Record*, and then to decision on October 27, 2009; and

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

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

WHEREAS, the subject premises is located on a through block bounded by East 71st Street to the south, First Avenue to the east, and East 72nd Street to the north; and

WHEREAS, the site is located within R8B, R10A and C1-5(R10A) zoning districts, and is occupied by a 34-story residential building; and

WHEREAS, the cellar and sub-cellar are occupied by a 268-space accessory garage, with 89 spaces in the cellar and 179 spaces in the sub-cellar; and

WHEREAS, on October 20, 1964, 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 45 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 7, 1999, the Board granted a ten-year extension of term, which expired on October 23, 2009; 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 October 20, 1964, so that, as amended, this portion of the resolution shall read: “to permit the extension of the term of the grant for an additional ten years from October 23, 2009, to expire on October 23, 2019; *on condition* that all work shall substantially conform to drawings filed with this application and marked ‘Received July 30, 2009’-(2) sheets; and ‘October 8, 2009’ -(1) sheet; and *on further condition*:

THAT this term shall expire on October 23, 2019;

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;

MINUTES

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. 120059989)

Adopted by the Board of Standards and Appeals, October 27, 2009.

1259-79-BZ

APPLICANT – Sheldon Lobel, P.C., for Arabara, LLC, owner.

SUBJECT – Application August 13, 2009 – Extension of Time to complete construction and obtain a certificate of occupancy and Waiver of the Rules of a previously granted Variance (§72-21) for the conversion of all floors above the first floor from manufacturing lofts into residential dwellings which expired on October 6, 1984. M1-6 zoning district.

PREMISES AFFECTED – 29 West 26th Street, north side of West 26th Street, 350’ east of Sixth Avenue, Block 826, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #5M

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 Montanez.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, an extension of time to complete the conversion of a portion of a seven-story building from manufacturing use to residential use, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on September 15, 2009 after due notice by publication in *The City Record*, with a continued hearing on October 6, 2009, and then to decision on October 27, 2009; 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 north side of West 26th Street, between Broadway and the Avenue of the Americas, within an M1-6 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 8, 1980 when, under the subject calendar number, the Board granted a variance pursuant to ZR § 72-21, to permit the conversion of all floors above the first floor from manufacturing lofts into a multiple dwelling; and

WHEREAS, subsequently, the time to complete construction was extended at various times; and

WHEREAS, most recently, on January 24, 1984, the Board granted a one-year extension of time to complete construction, to expire on October 6, 1984; and

WHEREAS, the applicant states that the second, third, fifth, and seventh floors of the subject building have been converted to residential use pursuant to the Board’s grant, and that the fourth and sixth floors are in the process of being converted to residential use; and

WHEREAS, the applicant represents that construction has not been completed due to financing issues and a change in ownership of the building and because the Department of Buildings (“DOB”) has issued a stop work order preventing the owner from continuing construction pursuant to the prior Board grant; and

WHEREAS, the applicant states that all violations will be resolved when construction re-commences; and

WHEREAS, thus, the applicant now requests a two-year extension of time to complete construction and obtain a certificate of occupancy; and

WHEREAS, at hearing, the Board questioned whether the applicant has complied with the fire safety conditions in the original grant; and

WHEREAS, in response, the applicant submitted photographs and a letter from the architect reflecting that smoke detectors, fire alarms, and fire escapes have been installed in the subject building, as required by the Board’s original grant; and

WHEREAS, at hearing, the Board raised concerns regarding the substandard condition of the door buzzers for the individual tenants of the building; and

WHEREAS, in response, the applicant stated that an integrated buzzer system will be installed in the building which will comply with any Building Code requirements; 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 July 8, 1980, so that as amended this portion of the resolution shall read: “to grant a two-year extension of time to complete construction and obtain a certificate of occupancy, to expire on October 27, 2011; *on condition*:

THAT construction shall be substantially complete by April 27, 2011;

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THAT a certificate of occupancy shall be obtained by October 27, 2011;

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. 100561429)

Adopted by the Board of Standards and Appeals, October 27, 2009.

193-97-BZ

APPLICANT – Fredrick A. Becker, for 29 Great Jones Corporation owner.

SUBJECT – Application July 22, 2009 – Extension of Term for a special permit (§73-36) which expired on April 1, 2008 for the operation of a Physical Culture Establishment (Great Jones Spa); Waiver of the Rules. M1-5B zoning.

PREMISES AFFECTED – 27-29 Great Jones Street, Southerly side of Great Jones Street 69' easterly of the corner of Great Jones Street and Lafayette Street, Block 530, Lot 20, 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 term of a previously granted special permit for a physical culture establishment (PCE), which expired on April 21, 2008; and

WHEREAS, a public hearing was held on this application on October 6, 2009, after due notice by publication in *The City Record*, and then to decision on October 27, 2009; 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 2, Manhattan, recommends approval of this application; and

WHEREAS, the PCE is located on the south side of Great Jones Street, between Lafayette Street and The Bowery, within an M1-5B zoning district; and

WHEREAS, the site is occupied by adjacent five-story

and six-story mixed-use buildings; and

WHEREAS, the PCE use is located in the cellar, sub-cellar, cellar mezzanine, first floor and first floor mezzanine, and occupies a total floor area of 2,906 sq. ft. with an additional 9,035 sq. ft. of floor space in the cellar, sub-cellar and cellar mezzanine; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 21, 1998 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 April 21, 2008; and

WHEREAS, subsequently, the Board approved by letter minor adjustments of the interior layout and floor area of the PCE; and

WHEREAS, most recently, on April 29, 2003, the Board approved by letter the creation of an upper mezzanine in the rear of the structure, resulting in an increase in the total floor space of the PCE from 11,182 sq. ft. to 11,941 sq. ft., and a decrease in occupancy from 213 persons to 180 persons; 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 *waives* the Rules of Practice and Procedure, *reopens* and *amends* the resolution, as adopted on April 21, 1998, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from April 21, 2008, to expire on April 21, 2018, *on condition* that the use and operation of the site shall substantially conform to the previously approved plans; *on condition* that all work shall substantially conform to drawings filed with this application and marked ‘Received July 22, 2009’-(7) sheets; and *on further condition*:

THAT the term of this grant shall expire on April 21, 2018;

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. 101276799)

Adopted by the Board of Standards and Appeals, October 27, 2009.

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826-86-BZ, 827-86-BZ and 828-86-BZ

APPLICANT – Eric Palatnik, P.C. for North Shore Tower Apartments, Incorporated, owner; Continental Communications, lessee.

SUBJECT – Application April 3, 2009 – Extension of Term for a Special Permit (§73-11) to allow non-accessory radio towers and transmitting equipment on the roof of a 33-story multiple dwelling (*North Shore Towers*) which expired on March 28, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on March 6, 2003; an Amendment to eliminate the condition that a new Certificate of Occupancy be obtained; and Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 269-10, 270-10, 271-10 Grand Central Parkway, Northeast corner of 26th Street. Block 8489, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Barbara Leonardi and Dianne Stromfeld.

ACTION OF THE BOARD – Laid over to December 8, 2009, at 10 A.M., for continued hearing.

60-82-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application September 22, 2009 – Extension of Time to obtain a Certificate of Occupancy for a gasoline service station (*BP North America*) which expired on December 13, 2007; Waiver of the Rules. C2-3/R7X zoning district.

PREMISES AFFECTED – 60-11 Queens Boulevard, between 60th Street and 61st Street, Block 1338, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: 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 November 17, 2009, at 10 A.M., for decision, hearing closed.

140-92-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Evangel Church, owner.

SUBJECT – Application December 19, 2008 – Amendment of variance (§72-21) which allowed an enlargement of an existing school (UG 3). The amendment would further enlarge the school, contrary to height and setback (§43-43). M1-2/R5D & M1-2/R5B (Special Long Island City Mixed Use District).

PREMISES AFFECTED – 39-21 Crescent Street, southerly

side of Crescent Street between 39th Avenue and 40th Avenue, Block 396, Lot 10 & 36, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to November 24, 2009, at 10 A.M., for continued hearing.

16-95-BZ

APPLICANT – Akerman Senterfitt, LLP, for STA Parking Group, owner.

SUBJECT – Application July 24, 2009 – Extension of Term and Waiver of the Rules of a previously granted Variance (§72-21) for a UG8 parking garage with accessory auto repairs which expired on March 23, 2009. R-8B zoning district.

PREMISES AFFECTED – 434 East 77th Street, between 76th and 77th Street, Block 1471, Lot 31, Borough of Manhattan.

COMMUNITY BOARD #8M

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 November 17, 2009, at 10 A.M., for decision, hearing closed.

172-96-BZ

APPLICANT – Law Office of Mitchell Ross, Esquire, for Don Mitchell owner.

SUBJECT – Application April 17, 2009 – Extension of Term for a variance (§72-21) which expired on May 11, 2009 allowing the operation of a welding shop (UG 16A) contrary to §32-00; Waiver of the Rules. C6-6 zoning district.

PREMISES AFFECTED – 597/99 Marcy Avenue, Southeast corner of Marcy and Vernon Avenues., Block 1759, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #3BK

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 November 17, 2009, at 10 A.M., for decision, hearing closed.

MINUTES

3-04-BZ

APPLICANT – Eric Palatnik, P.C., for Rushikesh Trivedi, owner.

SUBJECT – Application September 22, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for a two story, two family dwelling which expires on November 29, 2009; Waiver of the Rules. R-2 zoning district.

PREMISES AFFECTED – 147-08 46th Avenue, between Parsons Boulevard and 149th Street, Block 5452, Lot 3, 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 November 10, 2009, at 10 A.M., for decision, hearing closed.

19-05-BZ

APPLICANT – Slater & Beckerman, LLP, for Groff Studios Corporation, owner.

SUBJECT – Application September 18, 2009 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the change in use of portions of an existing nine-story, mixed-use building to residential use which expires on October 18, 2009. M1-6 zoning district.

PREMISES AFFECTED – 151 West 28th Street, north side of West 28th Street, 101’ east of Seventh Avenue, Block 804, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #5M

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 November 10, 2009, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

197-09-A

APPLICANT – Paul Russo, Breezy Point Cooperative Inc., owner; Paul Armour, lessee.

SUBJECT – Application June 26, 2009 – Proposed reconstruction and enlargement of an existing building located within the bed of a mapped street, contrary to General City Law Section 35, and the upgrade of the private disposal system located within the bed of a mapped street, contrary to Section 35 General City Law and the Department of Buildings Policy. R4 zoning district.

PREMISES AFFECTED – 518 Browns Boulevard, southwest side of Browns Boulevard, 366.43’ east of Bayside Drive, Block 16340, Lot 50, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Michael Harley.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated June 18, 2009, acting on Department of Buildings Application No. 420016627, reads in pertinent part:

- “A1- The proposed reconstruction of the existing building located on a site where the building and lot are located partially in the bed of a mapped street therefore no permit or certificate of Occupancy can be issued as per Article 3, Section 35 of the General City Law.
- A2- The proposed upgraded private disposal system is in the bed of the mapped street and is contrary to Department of Buildings’ policy;”
- and

WHEREAS, a public hearing was held on this application on October 27, 2009, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated August 5, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated July 22, 2009, the Department of Environmental Protection (“DEP”) states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated September 15, 2009, 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

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Borough Commissioner, dated June 18, 2009, acting on Department of Buildings Application No. 420016627, 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 26, 2009" – 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, October 27, 2009.

313-08-A

APPLICANT – Howard Goldman , LLC & Berger & Kramer , LLP for Chuck Close, for Proprietary Lessee of Studio and Basement Cooperative at 20 Bond Street , lessee. SUBJECT – Application December 22, 2008 – Appeal to Department of Building’s refusal to revoke permits and approvals for a six-story commercial building. M1-5B zoning district.

PREMISES AFFECTED – 363-371 Lafayette Street, east side of Lafayette Street between Great Jones and Bond Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to December 15, 2009, at 10 A.M., for an adjourned hearing.

159-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLC, for 2nd Street Development Corp., owner.

SUBJECT – Application April 16, 2009 – Proposed construction of a single family home located within the bed of a mapped street (Doane Avenue), contrary to General City Law §35. R2 zoning district.

PREMISES AFFECTED – 85 Woodland Avenue, 175’ east of the intersection of Colon Avenue and Woodland Avenue, Block 5442, Lot 44, Borough of Staten Island.

COMMUNITY BOARD #3SI

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 November 10, 2009, at 10 A.M., for decision, hearing closed.

232-09-A

APPLICANT – New York City Fire Department.

OWNER OF PREMISES: Martin Goldstein.

LESSEE: Romar Check Cashing.

SUBJECT – Application July 23, 2009 – Appeal seeking a modification of the Certificate of Occupancy to require an approved automatic wet sprinkler system installed throughout the entire building. R5 zoning district.

PREMISES AFFECTED – 1775 Flatbush Avenue, Brooklyn Avenue and East 36th Street, Block 7618, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Anthony Scaduto, Fire Department and Oliver Spector.

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 November 10, 2009, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, OCTOBER 27, 2009
1:30 P.M.**

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

ZONING CALENDAR

73-06-BZ

CEQR #07-BSA-077K

APPLICANT – Eric Palatnik, P.C., for John J. Freeda, owner; Elite Fitness, lessee.

SUBJECT – Application April 21, 2006 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Elite Fitness*) in a portion of cellar and first floor in a three-story building. C2-3 zoning district.

PREMISES AFFECTED – 111 Union Street, northwest corner of Union Street and Columbia Street, Block 335, Lot 7501, Borough of Brooklyn.

COMMUNITY BOARD #6BK

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

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Superintendent, dated April 11, 2006, acting on Department of Buildings Application No. 301131521, reads in pertinent part:

“Legalization of physical culture establishment within C2-3 zoning district requires a special permit from the NYC BSA pursuant to ZR Section 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C2-3(R6) zoning district, the legalization of a physical culture establishment (PCE) on the cellar level and 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 February 13, 2007 after due notice by publication in *The City Record*, with continued hearings on March 13, 2007, April 24, 2007, June 12, 2007 and October 6, 2009, and then to decision on October 27, 2009; and

WHEREAS, at the time the application was initially filed, a portion of the subject premises along the western lot line was located in an R6 zoning district; and

WHEREAS, the Board noted that the special permit is not available in R6 zoning districts and directed the

applicant to revise the plans to comply with the requirements of ZR § 73-36; and

WHEREAS, in response, the applicant stated that it would seek to have the zoning district boundary line for the commercial overlay extended to the entire depth of the site; and

WHEREAS, thus, the applicant pursued a revision to the zoning map to rezone the R6 portion of the site such that the entire site is now located in a C2-3(R6) zoning district, where the special permit is available; and

WHEREAS, the City Council passed Resolution No. 2025, approving the decision of the City Planning Commission on ULURP No. C 070504 ZMK to rezone the portion of the premises within an R6 district; the Resolution became effective on June 10, 2009; 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; and

WHEREAS, the subject site is located on the northwest corner of the intersection at Union Street and Columbia Street, entirely within a C2-3(R6) zoning district; and

WHEREAS, the site is occupied by a three-story mixed-use commercial/residential building; and

WHEREAS, the PCE has a total floor area of 2,631 sq. ft. on the first floor, with an additional 4,682 sq. ft. of floor space in the cellar; and

WHEREAS, the PCE is operated as Elite Fitness; and

WHEREAS, the hours of operation are: Monday through Thursday, 5:30 a.m. to 10:00 p.m.; Friday, 5:30 a.m. to 8:30 p.m.; and Saturday and Sunday, 8:00 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

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operation since May 15, 2004, 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 15, 2004 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. 06BSA077K, dated December 3, 2006; 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 C2-3(R6) zoning district, the legalization of a physical culture establishment on the cellar level and first floor of an existing 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 October 27, 2009"- Six (6) sheets and *on further condition*:

THAT the term of this grant shall expire on May 15, 2014;

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

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

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

THAT a certificate of occupancy shall be obtained by April 27, 2010;

THAT sound attenuation measures shall be installed and maintained as reflected on the BSA-approved plans;

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, October 27, 2009.

**226-09-BZ
CEQR #09-BSA-129M**

APPLICANT – Mitchell S. Ross, Esq., for Fraydun Enterprises, LLC, owner; New York Health and Racquet Club, lessee.

SUBJECT – Application June 19, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*New York Health & Racquet Club*) on the cellar through second floors of a six-story mixed-use building. C6-1 zoning district.

PREMISES AFFECTED – 24 East 13th Street, south side of East 13th Street, 142'-2 & 3/4" west of University Place, Block 570, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Mitchell S. Ross.

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 May 20, 2009, acting on Department of Buildings Application No. 120023385, reads in pertinent part:

"ZR 73-36. Commercial physical culture or health establishment is allowed only by special permit issued 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 within a C6-1 zoning district, the legalization of a physical culture establishment (PCE) on the third floor 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 September 15, 2009, after due notice by publication in the *City Record*, with a continued hearing on October 6, 2009, and then to decision on October 27, 2009; and

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

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Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

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

WHEREAS, the subject site is located on the south side of East 13th Street between Fifth Avenue and University Place, in a C6-1 zoning district; and

WHEREAS, the site is occupied by a six-story mixed-use commercial/residential building; and

WHEREAS, the PCE has a total floor area of 11,701 sq. ft. on the first floor, first floor mezzanine, second floor, and third floor of the building, with an additional 3,425 sq. ft. of space located in the cellar; and

WHEREAS, the applicant submitted evidence that the PCE use on the cellar level through second floor pre-dated the adoption of ZR § 73-36, and that the Department of Buildings (“DOB”) accepted the pre-existing Use Group 9 uses on those floors; therefore a special permit is not required for the continued operation of the PCE at the cellar through second floor; and

WHEREAS, however, the applicant states that the PCE use was extended onto the third floor in 1996, and therefore a special permit pursuant to ZR § 73-36 is required for the continued operation of the PCE on the third floor; and

WHEREAS, the PCE has a floor area of 3,204 sq. ft. on the third floor; and

WHEREAS, the PCE is operated as New York Health and Racquet Club; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 6:00 a.m. to 11:00 p.m.; and Saturday and Sunday, from 8:00 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 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, at hearing, the Board questioned whether the large sign located on the east side of the subject building was in compliance with zoning requirements; and

WHEREAS, in response, the applicant submitted photographs reflecting that the sign has been removed and

states that the remaining signage complies with the zoning requirements; and

WHEREAS, the Board notes that the PCE has been in operation since 1996, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be limited to two years from 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. 09BSA129M, dated June 26, 2009; 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 C6-1 zoning district, the legalization of a physical culture establishment on the third floor of an existing 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 June 19, 2009”- Six (6) sheets and “Received September 11, 2009”- One (1) sheet and *on further condition*:

THAT the term of this grant shall expire on October 27, 2011;

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

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

THAT one-inch thick rubber flooring shall be installed throughout the third floor, in accordance with the BSA-approved plans;

THAT a suspended ceiling shall be installed on the third floor, in accordance with the BSA-approved plans;

THAT the above conditions shall appear on the

MINUTES

Certificate of Occupancy;

THAT a certificate of occupancy shall be obtained by April 27, 2010;

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, October 27, 2009.

195-07-BZ

APPLICANT – Greenberg Traurig by Deirdre A. Carson, for Bond Street Partners LLC (as to lot 64) c/o Convermat, owner.

SUBJECT – Application August 9, 2007 – Variance (§72-21) to allow hotel and retail uses below the floor level of the second story, contrary to use regulations (§42-14(d)(2)). M1-5B zoning district.

PREMISES AFFECTED – 8-12 Bond Street, Northwest corner of Bond and Lafayette Streets, Block 530, Lot 62 & 64, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Diedra Carson.

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 December 15, 2009, at 1:30 P.M., for decision, hearing closed.

256-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP for Hayden Rester, owner.

SUBJECT – Application November 5, 2007 – Variance (§72-21) to permit a three-story, five-unit residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 1978 Atlantic Avenue, Southern side of Atlantic Avenue, 180 feet west of the intersection of Atlantic and Ralph. Block 1339, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD # 8BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to December 8, 2009, at 1:30 P.M., for adjourned hearing.

100-08-BZ & 101-08-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) for the construction of a two-story with basement single family residence, contrary to front yard regulations (§23-45) and within the bed of a mapped, un-built street, contrary to General City Law Section 35. R2 zoning district.

PREMISES AFFECTED – 205 Wolverine Street, northwest of intersection of Wolverine Street and Thomas Street, Block 4421, Lot 167, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Todd Dale.

For Opposition: Carol Donovan.

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 December 8, 2009, at 1:30 P.M., for decision, hearing closed.

187-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation and Yeshiva Machzikei Hadas, Inc., owner.

SUBJECT – Application July 11, 2008 – Variance (§72-21) to permit the construction of a six-story community facility building (*Congregation & Yeshiva Machzikei Hadas*), contrary to ZR §42-00. M2-1 zoning district.

PREMISES AFFECTED – 1247 38th Street, east side of 38th Street, between 13th and 12th Avenue, Block 5295, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 24, 2009, at 1:30 P.M., for adjourned hearing.

220-08-BZ

APPLICANT – Moshe M. Friedman, for Samuel Jacobowitz, owner.

SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the enlargement of a non-conforming one-family dwelling, contrary to §42-10. M1-1 zoning district.

PREMISES AFFECTED – 95 Taaffe Place, east side, 123'-3.5" south of intersection of Taaffe Place and Park Avenue, Block 1897, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to December 15, 2009, at 1:30 P.M., for adjourned hearing.

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249-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Gee Jay Real Estate Development Company, owner.

SUBJECT – Application October 6, 2008 – Variance (§72-21) for the construction of a single family residence, contrary to floor area and open space (§23-141); required front yard (§23-45), rear yard (§23-47), side yard (§23-46) and off street parking (§25-622) regulations. R2 (LDGM) zoning district.

PREMISES AFFECTED – 130 Adelaide Avenue, west side of Adelaide Avenue, 497' south of intersection with Guyon Avenue, Block 4705, Lot 151, Borough of Staten Island.

COMMUNITY BOARD #3SI

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 November 10, 2009, at 1:30 P.M., for decision, hearing closed.

314-08-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 437-51 West 13th Street, LLC, owner.

SUBJECT – Application December 22, 2008 – Variance (§72-21) to allow for the construction of a 12-story commercial building (office and UG10 retail), contrary to FAR, height and setback and rear yard regulations (§43-12, §43-43, §43-26) and use regulations (§42-12). M1-5 zoning district.

PREMISES AFFECTED – 437-447 West 13th Street, 862-868 Washington Street, southeast portion, block bounded by West 13th, West 14th and Washington Streets, Tenth Avenue, Block 646, Lots 19, 20, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Gary Tarnoff, Jack Freeman and Jeff Rubin.
For Opposition: Miranda Mancuso on behalf of Christine Gachob.

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 November 24, 2009, at 1:30 P.M., for decision, hearing closed.

14-09-BZ

APPLICANT – Eric Palatnik, P.C., for Orenstein Brothers, owner; ExxonMobil Corporation, lessee.

SUBJECT – Application January 26, 2009 – Special Permit (§73-211) to allow an automotive service station with an accessory convenience store and automotive laundry (UG 16B). C2-1/R3-2 zoning district.

PREMISES AFFECTED – 2294 Forest Avenue, Southeast intersection of Forest Avenue and South Avenue, Block 1685, Lot 15, 20, Borough of Staten Island.

COMMUNITY BOARD #1SI

APPEARANCES –

For Applicant: Eric Palatnik, Hiram Rothkrug and Lawrence O'Brien.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 1:30 P.M., for continued hearing.

182-09-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Mita, Inc., owner.

SUBJECT – Application June 4, 2009 – Variance (§72-21) to legalize the existing UG 3 novitiate and UG 4 house of worship (*Congregation Mita*), contrary to §§ 24-35 (side yard) and 24-36 (rear yard). R7-2 zoning district.

PREMISES AFFECTED – 612 West 180th Street, 180th Street between Wadsworth and St. Nicholas Avenues, Block 2162, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Eric Palatnik, Victor Pagan and Carlo Nuzzi.
For Administration: Sahne Hoelzel.

ACTION OF THE BOARD – Laid over to December 15, 2009, at 1:30 P.M., for continued hearing.

215-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 92-16 95th Avenue Realty Corporation By: Alfred Smith, owner.

SUBJECT – Application July 6, 2009 – Special Permit (§11-411 & §11-413) for reinstatement and change of use from a wholesale (UG7) to retail (UG6) on the ground floor of a three story building, which expired on March, 2002; Extension of Time to obtain a certificate of occupancy, which expired March 1993; and 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 J. Altman.

ACTION OF THE BOARD – Laid over to November 17, 2009, at 1:30 P.M., for continued hearing.

MINUTES

218-09-BZ

APPLICANT – Jeffrey A. Chester, for Rich Gene Realty Corporation, owner; McDonald's Corporation, lessee.

SUBJECT – Application July 8, 2009 – Special Permit (§73-243) to allow an accessory drive-through facility to an eating and drinking establishment (*McDonald's*). C1-3/C8-2 zoning district.

PREMISES AFFECTED – 57 Empire Boulevard, between Mckeever Place and Bedford Avenue, bounded by Sullivan Place on south, Block 1306, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jeffrey A. Chester.

ACTION OF THE BOARD – Laid over to November 24, 2009, at 1:30 P.M., for continued hearing.

247-09-BZ

APPLICANT – Michael T. Sillerman, Esq., c/o Kramer Levin et al, for Central Synagogue, owner.

SUBJECT – Application August 26, 2009 – Variance (§72-21) to allow for expansion of the community house for the Central Synagogue (UG 4), contrary to floor area and height and setback regulations. (§§33-12, 81-211, 33-432). C5-2, C5-2.5 MiD zoning districts.

PREMISES AFFECTED – 123 East 55th Street, north side of East 55th Street between Park Avenue and Lexington Avenue, 127.5', Block 1310, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Michael Sillerman and Samuel G. White.

For Opposition: Steven Greystein.

ACTION OF THE BOARD – Laid over to November 24, 2009, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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November 19, 2009

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DOCKET

New Case Filed Up to November 10, 2009

300-09-A

635 Highland Place, East side of Highland Place partially in the bed of mapped Beach 202nd Street., Block 16350, Lot(s) p/o 300, Borough of Queens, Community Board: 14. Construction within a bed of a mapped street, contrary to Section 35, Article 3 of the General City Law R4 district.

301-09-BZY

539 59th Street, 320.0 feet north from 5th Avenue., Block 856, Lot(s) 60, Borough of Brooklyn, Community Board: 7. Extension of Time (11-332 to complete construction under the prior zoning. R6 district.

302-09-BZ

820 39th Street, South side, 150'0" east of 8th Avenue between 8th Avenue and 9th Avenue., Block 916, Lot(s) 12, Borough of Brooklyn, Community Board: 12. Special Permit (73-50) for the rear enlargement to existing one story. M1-2 district.

303-09-BZY

517 53rd Street, Between 5th & 6th Avenue., Block 808, Lot(s) 69, Borough of Brooklyn, Community Board: 7. Extension of Time (11-332) to complete construction under the prior zoning. C4-3 district.

304-09-BZ

75-121 Junius Street, Junis Street, bounded by Glenmore Avenue and Liberty Avenue., Block 3696, Lot(s) 1,10, Borough of Brooklyn, Community Board: 16. Variance to allow a mixed use building, contrary to use regulations. M1-4 district.

305-09-BZ

110-04 Atlantic Avenue, Southeast corner of Atlantic Avenue and 110th Street., Block 9396, Lot(s) 1, Borough of Queens, Community Board: 9. Variance to permit the enlargement of an existing community facility building. C2-2/R5 district.

306-09-A

37-48 60th Street, West side of 60th Street 38th and 37th Avenues., Block 1214, Lot(s) 84, Borough of Queens, Community Board: 1. Appeal seeking to revoke the certificate of occupancy and permit were approved in error. R5 district.

307-09-BZ

1358-1360 East 28th Street, West side of East 28th Street between Avenue M and Avenue N., Block 7663, Lot(s) 73 & 75, Borough of Brooklyn, Community Board: 14. Special Permit (73-622) for the enlargement of a single family home. 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

NOVEMBER 24, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 24, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

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 – 31-08 to 31-12 45th Street, southwest corner of 45th Street and 31st Avenue, Block 710, Lot 5, 6, 17, 18, 19, Borough of Queens.

COMMUNITY BOARD #1Q

389-85-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for ExxonMobil Corporation, owner; Mobil On The Run, lessee.
SUBJECT – Application October 5, 2009 – Extension of Time to obtain a Certificate of Occupancy for a UG16 Automotive Service Station (Mobil) which expires on December 9, 2009. C2-3/R7-1 zoning district.
PREMISES AFFECTED – 2090 Bronxdale Avenue, bounded by Brady Avenue, White Plains Road and Bronx Park East, Block 4283, Lot 1, Borough of The Bronx.

COMMUNITY BOARD #11BX

68-03-BZ

APPLICANT – Stuart A. Klein, Esq., for Torah M. Sinai, Incorporated, owner.
SUBJECT – Application October 20, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the conversion of an existing manufacturing building to a (UG3) day care center and (UG6) office use which expired on August 10, 2008 and a Waiver of the Rules. M1-2 zoning district.
PREMISES AFFECTED – 649 39th Street, northwest corner of the intersection of 39th street and 7th Avenue, Block 903, Lot 79, 80, 83, Borough of Brooklyn.

COMMUNITY BOARD #7BK

326-04-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sephardic Center of Mill Basin, owner.
SUBJECT – Application October 29, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a new Synagogue (Sephardic Center of Mill Basin) which expired on October 18, 2009. R-2 zoning district.
PREMISES AFFECTED – 6208-6216 Strickland Avenue, northeast corner of the intersection of Strickland Avenue and Mill Avenue, Block 8656, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEALS CALENDAR

244-09-BZY

APPLICANT – Sheldon Lobel, P.C., for Polven, LLC, owner.
SUBJECT – Application August 21, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6/C1-3 zoning district. R6B/C2-4 Zoning District.
PREMISES AFFECTED – 175 Vanderbilt Avenue, east side of Vanderbilt Avenue and Myrtle Avenue, Block 1901, Lots 19, 20, Borough of Brooklyn.

COMMUNITY BOARD #2BK

245-09-BZY

APPLICANT – Sheldon Lobel, P.C., for Adelphi Luxury Development, LLC, owner.
SUBJECT – Application August 21, 2009 – Extension of time (§11-332) to complete construction of a minor development (11-332) commenced under the prior R6 zoning district. R6B Zoning District.
PREMISES AFFECTED – 120 Adelphi Street, west side of Adelphi Street, 252' north of the intersection of Adelphi Street and Myrtle Avenue, Block 2044, Lots 74 and 75, Borough of Brooklyn.

COMMUNITY BOARD #2BK

301-09-BZY

APPLICANT – Nelson A. Padilla, for Nelson A. Padilla, owner.
SUBJECT – Application October 29, 2009 – Extension of time (§11-332) to complete construction of an enlargement commenced prior to the text amendment on September 30, 2009. R6B Zoning district.
PREMISES AFFECTED – 539 59th Street, 320' north from 5th Avenue, Block 856, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #7BK

CALENDAR

NOVEMBER 24, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 24, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

43-09-BZ

APPLICANT – Harold Weinberg, P.E., for Paul S. Grosman, owner.

SUBJECT – Application March 10, 2009 – Special Permit (§73-19) to allow a school (Southside Charter High School) contrary to use regulations. M1-2 district.

PREMISES AFFECTED – 198 Varet Street, southside 170'-6" west of White Street, between White Street and Bushwick Avenue, Block 3117, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #1BK

224-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Springfield-Hempstead Realty, LLC, owner; Walgreens Company, lessee.

SUBJECT – Application July 8, 2009 – Special Permit (§73-52) to allow for accessory commercial parking to be located in the residential portion of a split zoning lot. C2-3/R3-2 and R3-2 zoning districts.

PREMISES AFFECTED – 218-51 aka 218-59 Hempstead Avenue, Northwest corner of intersection of Hempstead Avenue, Block 10766, Lot 38, 46, 48, 51, Borough of Queens.

COMMUNITY BOARD #13Q

246-09-BZ

APPLICANT – Jordan Most of Sheldon Lobel, P.C., for Louisiana Purchase, LLC, owner.

SUBJECT – Application August 21, 2009 – Variance pursuant to ZR §72-21 to allow for the construction of a four story assisted living facility (Brooklyn Boulevard ALP) contrary to floor area, dwelling units and parking regulations (ZR §23-141 §62-321, §23-22, §25-23). R5 district.

PREMISES AFFECTED – 636 Louisiana Avenue, western side of Louisiana Avenue at its intersection with Twin Pines Drives, Block 8235, Lot 140, Borough of Brooklyn.

COMMUNITY BOARD #18BK

250-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP., for 532 Madison Syndicate, owner; Madison/Fifth Associates LLC c/o Stahl Real Estate, lessee.

SUBJECT – Application August 28, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment on the sixth and seventh floors in an existing seven-story commercial building. C5-3 (MiD) zoning district.

PREMISES AFFECTED – 532 Madison Avenue, East 54th Street, Fifth Avenue; East 55th Street, Block 1290, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #6M

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, NOVEMBER 10, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

1038-80-BZ

APPLICANT – Davidoff Malito & Hatcher LLP, for Feinrose Downing LLC, owner; Expressway Arcade Corporation, lessee.

SUBJECT – Application August 28, 2009 – Extension of Term of a Special Permit for the continued operation of a UG15 Amusement Arcade (*Smile Arcade*) which expires on January 6, 2010. M2-1 zoning district.

PREMISES AFFECTED – 31-07/09/11 Downing street, Block 4367, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Ron Mandel.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, 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 expires on January 6, 2010; and

WHEREAS, a public hearing was held on this application on October 20, 2009 after due notice by publication in *The City Record*, and then to decision on November 10, 2009; and

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

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

WHEREAS, on January 6, 1981, the Board granted a special permit, under the subject calendar number, for the operation of an amusement arcade on the subject premises; and

WHEREAS, on May 13, 1986, the special permit was amended to increase the number of amusement arcade games from 112 to 130; and

WHEREAS, subsequently, the term of the special permit has been extended at various times; and

WHEREAS, most recently, on March 31, 2009, the term was extended for one year from the expiration of the prior grant, to expire on January 6, 2010; and

WHEREAS, the Board finds that the instant application is appropriate to grant, based upon the evidence submitted.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated January 6, 1981, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for an additional one (1) year from January 6, 2010, to expire on January 6, 2011; *on condition* that all conditions and drawings associated with the previous grant remain in effect; and *on further condition*:

THAT the premises shall be maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT there shall be no more than 130 amusement games on the subject premises;

THAT the above conditions and all conditions from prior resolutions shall appear on the certificate of occupancy;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.” (DOB Alt. No. 435/81)

Adopted by the Board of Standards and Appeals, November 10, 2009.

3-04-BZ

APPLICANT – Eric Palatnik, P.C., for Rushikesh Trivedi, owner.

SUBJECT – Application September 22, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for a two story, two family dwelling which expires on November 29, 2009; Waiver of the Rules. R-2 zoning district.

PREMISES AFFECTED – 147-08 46th Avenue, between Parsons Boulevard and 149th Street, Block 5452, Lot 3, 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 of a previously granted variance to permit, within an R2 zoning district, the development of a two-family dwelling, which expires on November 29, 2009; and

WHEREAS, a public hearing was held on this application on October 27, 2009 after due notice by

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publication in *The City Record*, and then to decision on November 10, 2009; and

WHEREAS, Community Board 7, Queens, recommends disapproval 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 southeast corner of Parsons Boulevard and 46th Avenue, within an R2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 29, 2005 when, under the subject calendar number, the Board granted a variance to permit the development of a two-family dwelling; and

WHEREAS, substantial construction is to be completed by November 29, 2009, 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 November 29, 2005, 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 expiration of the previous grant, to expire on November 29, 2013; *on condition*:

THAT substantial construction shall be completed by November 29, 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. 4022158121)

Adopted by the Board of Standards and Appeals, November 10, 2009.

19-05-BZ

APPLICANT – Slater & Beckerman, LLP, for Groff Studios Corporation, owner.

SUBJECT – Application September 18, 2009 – Extension of Time to complete construction of a previously granted Variance (§72-21) for the change in use of portions of an existing nine-story, mixed-use building to residential use which expires on October 18, 2009. M1-6 zoning district.

PREMISES AFFECTED – 151 West 28th Street, north side of West 28th Street, 101’ east of Seventh Avenue, Block 804, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #5M

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 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 M1-6 zoning district, the change in use of portions of an existing nine-story, mixed-use building to residential use (Use Group 2), which expired on October 18, 2009; and

WHEREAS, a public hearing was held on this application on October 27, 2009 after due notice by publication in *The City Record*, and then to decision on November 10, 2009; 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 north side of West 28th Street, between Sixth Avenue and Seventh Avenue, within an M1-6 zoning district; and

WHEREAS, the site is currently occupied by a nine-story mixed-use commercial/ residential building, with a total floor area of 39,950 sq. ft.; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 24, 1981 when, under BSA Cal. No. 768-81-ALC, the Board granted an application pursuant to ZR § 15-021 to permit the conversion of 24,776 sq. ft. of commercial floor area on the second through ninth floors of the subject building to residential floor area, with the exception of half-floor units on the second, third, fifth and seventh floors; and

WHEREAS, on October 18, 2005, under the subject calendar number, the Board granted a variance to permit the conversion of four units constituting 8,750 sq. ft. of floor area on the second, third, fifth and seventh floors from commercial use to residential use; and

WHEREAS, substantial construction was to be completed by October 18, 2009, in accordance with ZR § 72-23; and

WHEREAS, the applicant represents that building permits have been obtained for the fifth and seventh floor units that are proposed to be converted, and a portion of the construction has been completed on them, but due to a series of delays including the continued occupancy of the second and third floor units that are proposed to be converted, 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

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below.

Therefore it is Resolved that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated October 18, 2005, 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 10, 2013; *on condition*:

THAT substantial construction shall be completed by November 10, 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. 103993270)

Adopted by the Board of Standards and Appeals, November 10, 2009.

728-29-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; ExxonMobil Franchisee, lessee.

SUBJECT – Application August 31, 2009 – Extension of Term for the continued use of a gasoline service station (*Mobil*) which expires on March 19, 2010. R4 zoning district.

PREMISES AFFECTED – 154-04 Horace Harding Expressway, bounded easterly by Kissena Boulevard, northerly by Horace Harding Expressway and southerly by 64th Street, Block 6744, Lot 71, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Cindy Bachan.

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 November 24, 2009, at 10 A.M., for decision, hearing closed.

467-58-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Nor-Topia Service Station, lessee.

SUBJECT – Application September 14, 2009 – Extension of Term for the continued operation of a Gasoline Service Station (*Mobil*) which expires on December 4, 2009. R3-2 zoning district.

PREMISES AFFECTED – 172-11 Northern Boulevard, northside blockfront between 172nd Street & Utopia Parkway, Block 5363, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Cindy Bachan.

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 November 24, 2009, at 10 A.M., for decision, hearing closed.

149-01-BZ

APPLICANT – Eric Palatnik, P.C. for Jane Street Realty LLC, owner.

SUBJECT – Application March 26, 2009 – Amendment to a previously issued resolution that seeks to remove the condition that a residential unit be occupied by a qualified senior citizen at a subsidized rate for a term of 10 years, from the date of the issuance of the Certificate of Occupancy. R6 zoning district.

PREMISES AFFECTED – 88 Jane Street, between Washington and Greenwich Streets, Block 641, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

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 November 24, 2009, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

216-09-A

APPLICANT – Gary D. Lenhart, RA, for The Breezy Point Cooperative, Incorporated, owner; Thomas Fitzgerald, lessee.

SUBJECT – Application July 7, 2009 – Proposed reconstruction and enlargement of a single family home and the proposed upgrade of an existing non-conforming private disposal system located in the bed of a mapped street, contrary to General City Law Section 35. R4 zoning district. PREMISES AFFECTED – 51 West Market Street, North side of Rockaway Point Boulevard at the intersection of mapped Bayside Drive. Block 16350, Lot p/o 300, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary D. Lenhart.

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, the decision of the Queens Borough Commissioner, dated June 8, 2009, and acting on Department of Buildings Application No. 410052240 reads, in pertinent part:

- “A1- 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.
- A2- The proposed upgraded private disposal system is in the bed of the mapped street and/or service lane is contrary to Department of Buildings’ policy;” and

WHEREAS, a public hearing was held on this application on November 10, 2009, 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 16, 2009, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated July 16, 2009, the Department of Environmental Protection states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated November 9, 2009, 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 June 8, 2009, acting on Department of Buildings Application No. 410052240, 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 7, 2009”–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 10, 2009.

232-09-A

APPLICANT – New York City Fire Department.

OWNER OF PREMISES: Martin Goldstein.

LESSEE: Romar Check Cashing.

SUBJECT – Application July 23, 2009 – Appeal seeking a modification of the Certificate of Occupancy to require an approved automatic wet sprinkler system installed throughout the entire building. R5 zoning district.

PREMISES AFFECTED – 1775 Flatbush Avenue, Brooklyn Avenue and East 36th Street, Block 7618, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Anthony Scaduto, Fire Department.

ACTION OF THE BOARD – Application granted.

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 certificate of occupancy of the subject premises to reflect a requirement for an automatic wet sprinkler system throughout the entire building; and

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

“You are hereby directed and required to comply with the following order within (30) days.

Install an approved Automatic Wet Sprinkler System throughout the building arranged and equipped as per Title 27, Chapter 1, and Subchapter 17 of the NYC Administrative Code.

Note: Plans shall be filed and approved by the Department of Buildings before work commences;” and

WHEREAS, a public hearing was held on this application on October 27, 2009, after due notice by publication in the *City Record*, and then to decision on November 10, 2009; and

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

WHEREAS, the subject premises is located on the north side of Flatbush Avenue, between Brooklyn Avenue and East 36th Street, within an R5 zoning district; and

WHEREAS, the subject site is occupied by a check cashing business; and

WHEREAS, the current Certificate of Occupancy Number 31724 (the “Current CO”) reflects the use of the

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building as a public market; and

WHEREAS, the Current CO does not reflect that sprinklers are required; and

WHEREAS, the Fire Department performed an inspection of the building on February 20, 2009 and submitted a Sprinkler System Recommendation Report for the subject site which explained the need for the proposed automatic wet sprinkler system throughout the building; and

WHEREAS, the Fire Department asserts that the proposed modification to the Current CO is necessary in the interest of public safety because fire protection within the subject building is deemed inadequate; and

WHEREAS, specifically, the Fire Department states that an automatic wet sprinkler system is required throughout the building for the following reasons: (1) the subject building is a non-fireproof building; (2) the building is constructed with steel plating which inhibits fire-fighting operations including ventilation, immediate suppression, and entry; and (3) the building does not provide a secondary means of egress; and

WHEREAS, pursuant to the Administrative Code § 27-4265, the Fire Department requests to modify the certificate of occupancy to reflect that an automatic wet sprinkler system be installed throughout the building; and

WHEREAS, the Board agrees with the Fire Department that, given the use and construction of the building, automatic sprinklers are required in the entire building as per the Building Code; and

WHEREAS, thus, based on the evidence in the record, the Board finds that the installation of an automatic wet sprinkler system, as requested by the Fire Department, is necessary to protect life and property at the premises in the event of fire; and

WHEREAS, the owner testified at hearing and provided a letter, dated October 23, 2009, agreeing to install a sprinkler configuration, in consultation with DOB, which would satisfy the Fire Department's requirements; and

WHEREAS, the Board notes that the ultimate configuration of the sprinkler system may differ from what the Fire Department initially requested, but it will be approved by DOB and the Fire Department prior to installation.

Therefore it is Resolved that the application of the Fire Commissioner, dated July 23, 2009, seeking the modification of Certificate of Occupancy No. 31724 is hereby granted.

Adopted by the Board of Standards and Appeals, November 10, 2009.

62-08-A

APPLICANT – Eric Palatnik, P.C. for Benny Ulloa, owner.
SUBJECT – Application March 27, 2009 – Proposed construction not fronting on a legally mapped street, contrary to General City Law, Section 36. R1-2 zoning district.

PREMISES AFFECTED – 398 Nugent Street, Nugent Street, North of Saint George Road, Block 2284, Lot 25, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 10 A.M., for continued hearing.

159-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLC, for 2nd Street Development Corp., owner.

SUBJECT – Application April 16, 2009 – Proposed construction of a single family home located within the bed of a mapped street (Doane Avenue), contrary to General City Law §35. R2 zoning district.

PREMISES AFFECTED – 85 Woodland Avenue, 175' east of the intersection of Colon Avenue and Woodland Avenue, Block 5442, Lot 44, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to November 17, 2009, at 10 A.M., for deferred decision.

167-09-A

APPLICANT – Harold Weinberg, P.E., for Yi Fu Rong, owner.

SUBJECT – Application May 5, 2009 – Appeal challenging Department of Building's determination that the reconstruction of non-complying building must be done in accordance with §54-41 and be required to provide a 30 foot rear yard. M1-2 zoning district.

PREMISES AFFECTED – 820 39th Street, south side, 150' east of 8th Avenue, Block 916, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Laid over to February 23, 2010, at 10 A.M., for continued hearing.

228-09-A & 229-09-A

APPLICANT – Jordan Most of Sheldon Lobel, P.C., for Selvakumar Rajaratnam, owner.

SUBJECT – Application July 16, 2009 – An Appeal seeking a common law vested right to complete construction commenced under the prior R6B zoning district. R5 zoning district.

PREMISES AFFECTED – 37-45 and 37-47 98th Street, east side of 98th Street, Block 1761, Lots 48 and 49, Borough of Queens.

COMMUNITY BOARD #3Q

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

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ACTION OF THE BOARD – Laid over to November 24, 2009, at 10 A.M., for decision, hearing closed.

241-09-BZY

APPLICANT – Gouranga Kundu, for 170-22 93rd Property LLC, owner.

SUBJECT – Application August 12, 2009 – Extension of time to complete construction of a minor development (§11-332) commenced under the prior R6 Zoning district. R4-1 Zoning District.

PREMISES AFFECTED – 87-26 175th Street, (aka 88-04 175th Street) west side of 175th Street, 100’ north of corner of 89th Avenue and 175th Street, Block 9830, Lot 41, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Gouranga Kundu.

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 December 8, 2009, at 10 A.M., for decision, hearing closed.

249-09-A

APPLICANT – Bryan Cave LLP, for 363 Lafayette Street, LLC, owner.

SUBJECT – Application August 27, 2009 – Appeal challenging Department of Building's determination that 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 Administrative Code.

PREMISES AFFECTED – 363 Lafayette Street (371 Lafayette Street, 21 Great Jones Street) east side of Lafayette Street, between Bond and Great Jones Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 10 A.M., for postponed hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

**REGULAR MEETING
TUESDAY AFTERNOON, NOVEMBER 10, 2009
1:30 P.M.**

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

ZONING CALENDAR

220-07-BZ

CEQR #08-BSA-021K

APPLICANT – Moshe M. Friedman, P.E., for Relly Bodansky, owner.

SUBJECT – Application September 25, 2007 – Variance (§72-21) to allow the erection of a new four-story residential building containing four dwelling units, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 847 Kent Avenue, east side of Kent Avenue, 300’ north of intersection of Kent Avenue and Myrtle Avenue, Block 1898, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: ?

For Opposition: 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 Montanez.....5

Negative:.....0

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 30, 2007, acting on Department of Buildings Application No. 310020410 reads, in pertinent part:

“Proposed multiple dwelling (UG 2) in the subject M1-1 district is contrary to ZR 42-10, and must be referred to the Board of Standards and Appeals. There are no applicable bulk, parking or yard regulations”; and

WHEREAS, this is an application under ZR § 72-21 to permit, within an M1-1 zoning district, the construction of a four-story, four-unit residential building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on September 16, 2008, after due notice by publication in the *City Record*, with continued hearings on

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November 25, 2008 and January 27, 2009, at which point the decision was deferred pending environmental review, and then to decision on November 10, 2009; 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, Council Member Letitia James testified in opposition to this application, citing concerns about the potential displacement of current tenants of the existing building; and

WHEREAS, certain neighbors testified in opposition to this application, raising the following primary concerns: (1) that the site does not suffer from a unique hardship; and (2) that demolition of the existing building would damage the adjacent building; and

WHEREAS, the site is located on the east side of Kent Avenue between Park Avenue and Myrtle Avenue within an M1-1 zoning district; and

WHEREAS, the subject site has a width of 25 feet, a depth of 120 feet, and a total lot area of 3,000 sq. ft.; and

WHEREAS, the site is occupied by a non-conforming three-story three-family residential building with a floor area of 1,613 sq. ft. (0.54 FAR) (the “existing building”), which is proposed to be demolished; and

WHEREAS, the applicant represents that the current residential use has existed without interruption since approximately 1887, and is therefore a legal non-conforming use; and

WHEREAS, the applicant proposes to build a four-story four-unit residential building with a floor area of 6,600 sq. ft. (2.2 FAR); and

WHEREAS, residential use is not permitted in the M1-1 district; therefore, the applicant seeks a variance to permit the non-conforming use; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in conformance with applicable regulations: (1) the site’s narrow width; and (2) the obsolescence of the existing building; and

WHEREAS, the applicant represents that the 25-ft. width of the subject site is too narrow to accommodate a building with a loading dock or adequately sized floor plates to support a commercial or manufacturing use; and

WHEREAS, as to the uniqueness of this condition, the applicant submitted a land use map indicating that all conforming developments in the surrounding area were located on lots with widths exceeding that of the subject site; and

WHEREAS, the applicant represents that such analysis is indicative that the size of the site is infeasible for conforming manufacturing or commercial development; and

WHEREAS, the Board notes that while the surrounding area includes several lots of similar size, such lots are primarily occupied by residential uses; and

WHEREAS, however, unlike other such lots occupied by residential buildings, the applicant represents that the subject building is obsolete for its intended purpose and therefore must be demolished; and

WHEREAS, as to the functional obsolescence of the existing building, the applicant represents that it is no longer suitable for residential use due to its age, construction, floor plate, floor-to-ceiling heights, size, and structural condition; and

WHEREAS, the applicant further represents that the above-mentioned features of the existing building make it similarly unsuitable for any conforming use; and

WHEREAS, the applicant states that the existing building was built prior to 1887 and is the only frame multiple dwelling in the surrounding area; and

WHEREAS, the applicant submitted a certificate of occupancy search which reported that the subject site was occupied by a three-unit dwelling on the date of a November 19, 1902 Housing Department inspection and that a three-story frame building was recorded on a 1918 Sanborn map; and

WHEREAS, the applicant states that the subject site was originally occupied by two homes and the existing building was built with an open alley leading to the home in the rear which is overhung by the second and third floors; and

WHEREAS, the applicant states that the existing building is the only building in the surrounding area with such an internal alleyway and that the width of the first floor is consequently reduced to 17 feet; and

WHEREAS, the applicant represents that due to the building’s alleyway and shallow depth, the floor area and FAR of the existing building is substantially less than that of surrounding properties on Kent Avenue; and

WHEREAS, specifically, the applicant states that the depth of the existing building is 29’-9” at the first floor and is 24’-6” at the second and third floors; and

WHEREAS, the applicant submitted a study dated January 12, 2009 (the “Neighborhood Study”) comparing the existing building to all other buildings located on Kent Avenue between Park Avenue and Myrtle Avenue; and

WHEREAS, according to the Neighborhood Study, the floor area, FAR, and overall building height of the existing building is substantially smaller than virtually every other residential building in the surrounding area; and

WHEREAS, the Neighborhood Study indicates that the existing building has the lowest floor-to-ceiling heights of any residential building in the surrounding area, and that only one other building has ceiling heights below 8’-0”; and

WHEREAS, specifically, the applicant states that the floor-to-ceiling heights of 7’-11” on the first floor, 6’-11” on the second floor, and 7’-2” on the third floor fail to comply with the Building Code and represent a unique substandard physical condition; and

WHEREAS, the applicant represents that the existing building cannot be renovated or rehabilitated for residential use due to its poor structural condition; and

WHEREAS, at hearing, the Board requested that the applicant provide evidence of the building’s structural obsolescence; and

WHEREAS, in response, the applicant submitted a report by a consulting engineer (the “Engineer’s Report”) identifying ten structural issues which included: (i) the substandard floor-to-ceiling heights; (ii) a need to replace the left wall at the

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second and third floors which leans outward; (iii) the antiquated electrical system and plumbing; (iv) the lack of windows in two first floor bedrooms which would require a major renovation to correct; (v) unbraced block walls which lean inwards at the rear requiring new foundations and walls; (vi) the lack of a firewall; and (vii) a dilapidated chimney; and

WHEREAS, the Engineer's Report concluded that the existing building was built to obsolete standards and would require demolition to meet current Building Code requirements; and

WHEREAS, further, the applicant states that on July 22, 2008, DOB rejected a pre-consideration application requesting to rebuild the existing non-conforming residential building on the basis that ZR § 54-41 requires a conforming use in a reconstructed building; and

WHEREAS, at hearing, neighborhood residents testified that the property was not unique; and

WHEREAS, the Board notes that, under New York law, a finding of uniqueness does not require that a given parcel be the only property so burdened by the condition(s) giving rise to the hardship, only that the condition is not so generally applicable as to dictate that the grant of a variance to all similarly situated properties would effect a material change in the district's zoning (see Douglaston Civ. Assn. v. Klein, 51 N.Y.2d 963, 965 (1980)); and

WHEREAS, notwithstanding the absence of a requirement that a site be the only one so situated in order to meet the standard for uniqueness, the Board notes that the applicant has submitted evidence to support the assertion that the combination of the noted site conditions is in fact unique to this site; 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 that analyzed: (1) an "as-is" option for the existing non-conforming three-story residential building; (2) a conforming one-story manufacturing building with a total floor area of 3,000 sq. ft.; and (3) the proposed four-story residential building; and

WHEREAS, the feasibility study concluded that neither the as-is scenario nor the conforming scenario would realize 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 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 represents that the surrounding area is a mix of residential, commercial, and manufacturing

uses; and

WHEREAS, the applicant states that the proposed residential use is consistent with the character of the area, which includes many residential buildings; and

WHEREAS, in support of the above statements, the applicant submitted a land use survey map showing the various uses in the vicinity of the site, which indicates that a number of residential buildings are located in the area surrounding the subject site; and

WHEREAS, the Board agrees that there is a context for residential use in the area and finds that the introduction of four dwelling units will not impact nearby conforming uses; and

WHEREAS, as to bulk, the applicant notes that the proposed 2.2 FAR is within the zoning district parameters of the adjacent R6 district and that no bulk waivers are requested; and

WHEREAS, at hearing, an adjacent neighbor raised concerns that demolition of the existing building would damage the adjacent building at 845 Kent Avenue; and

WHEREAS, in response, the applicant stated that construction will comply with the Building Code and be carefully monitored to ensure that the adjacent building is protected; and

WHEREAS, at hearing, Council Member James raised concerns with displacement of current tenants due to redevelopment of the site; and

WHEREAS, the applicant submitted an affidavit executed by the building's managing agent stating that current tenants would be offered new apartments at 1056 Willoughby Avenue at their current rents; and

WHEREAS, the Board notes that three tenants of the existing building testified that they are willing to relocate to 1056 Willoughby Avenue; and

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

WHEREAS, accordingly, 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 Board observes that the proposed four-unit residential building results in the addition of only one dwelling unit as compared to the existing three-unit residential building, and is therefore limited in scope and compatible with nearby development; and

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

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

WHEREAS, the project is classified as a 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. 08BSA310K, dated September 25, 2009; and

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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 following submissions from the Applicant: an August 2009 Environmental Assessment Statement (EAS); March 2008 Phase I Environmental Site Assessment Report, October 2008 Phase II Workplan and Health and Safety Plan (HASP), July 2009 Phase II Site Investigation Report; February 3, 2009, August 5, 2009, August 27, 2009 and September 21, 2009 air quality reports; and February 12, 2009 noise report; and

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

WHEREAS, DEP approved of the Phase II Workplan and HASP on December 10, 2008; and

WHEREAS, DEP finds the vapor barrier for the proposed project acceptable and finds that a P.E.-certified Remedial Closure Report should be submitted to DEP for review and approval, documenting that all remedial requirements have been properly implemented (i.e. soil disposal manifests/certificates, proof of vapor barrier installation in accordance with the manufacturer's specifications and importing/grading two feet of DEP-approved certified clean fill /top soil in landscaped areas, capping, etc.); and

WHEREAS, the applicant conducted an assessment of potential industrial sources of air emissions in the vicinity of the subject site; and

WHEREAS, no emission sources within 400 feet of the site were reported in databases maintained by the Environmental Protection Agency, NYS Department of Environmental Protection or DEP; and

WHEREAS, field reconnaissance by the applicant within 400 feet of the subject site found that existing industrial uses were primarily warehouse/wholesale uses which do not involve industrial emissions and that no industrial emissions permits were held by the three existing industrial or automotive uses; and

WHEREAS, no potential for adverse impacts related to industrial air emissions are projected; and

WHEREAS, based on noise measurements performed, the environmental assessment determined that a noise attenuation of 30 dBA would be required to achieve an interior noise level of 45 dBA or less in a closed window condition when the ambient noise levels are between 70 and 75 dBA; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-1 zoning district, the construction of a four-story, four-unit residential building, which is contrary to ZR § 42-10, *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 25, 2007"-(2) sheets, "February 17, 2009"-(4) sheets and "October 13, 2009"-(2) sheets"-(*) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the proposed building: four stories, a maximum floor area of 6,600 sq. ft. (2.2 FAR); a height of 44'-0"; and a rear yard with a depth of 54'-0", as shown on the BSA-approved plans;

THAT a Remedial Closure Report shall be submitted to DEP for review and approval and an approved vapor barrier system shall be installed for the proposed project prior to the issuance of building permits;

THAT windows achieving a noise attenuation of 30 dBA shall be installed on the façade of the proposed building;

THAT a central air-conditioning system shall be installed in the residential units in order to maintain a closed window condition; 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 approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT this grant is contingent upon final approval from the Department of Environmental Protection before an issuance of construction permits other than permits needed for soil remediation;

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, November 10, 2009.

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63-08-BZ

CEQR #08-BSA-070Q

APPLICANT – Eric Palatnik for Royal Palace, lessee. Manton Holding, owner.

SUBJECT – Application March 27, 2008 – Special Permit (§73-244) to legalize an eating and drinking establishment with entertainment and a capacity of more than 200 persons with dancing. C4-2 zoning district.

PREMISES AFFECTED – 116-33 Queens Boulevard, Between 77th and 78th Avenues, Block 2268, Lot 23, Borough of Queens.

COMMUNITY BOARD #6Q

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: Vice-Chair Collins.....1

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated March 4, 2008, acting on Department of Buildings Application No. 400520851 reads:

“Proposed cabaret U.G. 12 is within 100’ from a residential district boundary and contrary to 32-21 ZR and 73-244 ZR;” and

WHEREAS, this is an application under ZR §§ 73-244 and 73-03 to permit, within a C4-2 zoning district, a Use Group 12 eating and drinking establishment with entertainment and dancing on the first floor and mezzanine of the subject building, contrary to ZR § 32-21; and

WHEREAS, a public hearing was held on this application on January 13, 2009, after due notice by publication in the *City Record*, with continued hearings on February 10, 2009, March 31, 2009, May 19, 2009, and June 23, 2009, and then set for decision on August 11, 2009; and

WHEREAS, on August 11, 2009, the hearing was reopened to allow additional submissions and testimony by the parties, and then set for decision on October 20, 2009; and

WHEREAS, on October 20, 2009, the hearing was reopened to allow additional submissions by the parties, and then set for decision on November 10, 2009; 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; and

WHEREAS, City Council Member Melinda Katz provided written testimony in opposition to this application; and

WHEREAS, the Queens Borough President provided written testimony in opposition to this application; and

WHEREAS, members of Forest Hills South Owners, Inc., represented by counsel, and other community members, collectively known as the “Opposition,” provided written and oral testimony in opposition to this application; and

WHEREAS, the Opposition raised the following primary concerns based partly on the current operation (UG 9 catering) of the site: (1) the proposed use does not provide parking and therefore will cause traffic congestion on surrounding streets; (2) the proposed use will generate noise impacts; (3) the proposed use will result in stacking of garbage on the sidewalk and pick up at unreasonable hours; and (4) the applicant will continue to operate Use Group 9 catering on the first floor; and

WHEREAS, the subject site is located on the north side of Queens Boulevard, between 77th Avenue and 78th Avenue, and has a lot area of 26,542 sq. ft.; and

WHEREAS, the zoning lot is currently occupied by a one- and two-story commercial building; the one-story building is operated by Royal Palace of Queens (“Royal Palace”), with a Use Group 9 catering establishment on the cellar level and first floor; and

WHEREAS, the applicant proposes to use the first floor of the one-story building at the above address as a Use Group 12 eating and drinking establishment with entertainment and dancing; and

WHEREAS, the applicant initially proposed a Use Group 12 eating and drinking establishment with entertainment and dancing at both the cellar level and first floor, then changed the proposal to a Use Group 12 eating and drinking establishment with entertainment and dancing on the first floor to be used in conjunction with the existing Use Group 9 catering establishment in the cellar; and

WHEREAS, during hearing and at the Board’s direction, the applicant revised its proposal by limiting the Use Group 12 eating and drinking establishment with entertainment and dancing to the first floor and mezzanine and separating its operation from the Use Group 9 catering establishment occupying the cellar level; and

WHEREAS, the applicant notes that the Use Group 12 eating and drinking establishment with entertainment and dancing will be limited to a total of approximately 5,470 sq. ft. on the first floor and mezzanine; and

WHEREAS, the Board notes that at the time the applicant filed this application, its Temporary Certificate of Occupancy reflected a Use Group 12 eating and drinking establishment with entertainment and dancing at both the cellar level and first floor; and

WHEREAS, in response to the Board’s concern that the applicant was representing that the Board was legalizing the uses at both the cellar and first floor level, the applicant provided a revised Temporary Certificate of Occupancy with a Use Group 9 catering establishment at the cellar level and a Use Group 6 eating and drinking establishment on the first floor; and

WHEREAS, the Board notes that the proposed Use Group 9 catering establishment at the cellar level is permitted as-of-right under the Zoning Resolution; and

WHEREAS, the Board further notes that under ZR § 73-244, its review is limited to the applicant’s request to operate a Use Group 12 eating and drinking establishment with entertainment and dancing in a C4-2 zoning district; and

WHEREAS, thus, the Use Group 9 catering establishment located at the cellar level is not under review by

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the Board in this application; 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 C4-2 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 first floor use is 245 persons, and therefore the minimum required size of the waiting area is 980 sq. ft.; and

WHEREAS, the Board notes that the applicant initially proposed an unenclosed waiting area that did not meet all the requirements of ZR § 73-244(a); and

WHEREAS, during hearing, the applicant revised its plans to provide a 1,000 sq. ft. waiting area which accommodates a minimum of four square feet per person, in an enclosed lobby, and provided a plan to ensure that the operation of the proposed use will not result in the gathering of crowds or the formation of lines on the street; and

WHEREAS, specifically, the plan proposes a waiting area that is located in a contiguous, enclosed lobby of 1,000 sq. ft., which: (a) is not occupied by stairs, corridors or restrooms; (b) does not provide seating or the serving of beverages; and (c) is accessed directly from the sidewalk, and serves as the only entrance to the establishment, thereby ensuring that crowds will not gather and lines will not form on the street; 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 radius diagram reflecting that the entrance to the premises is located at the property line on Queens Boulevard, which is 100 feet from the nearest residence district boundary located between Queens Boulevard and 113th Street; 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 Queens Boulevard is a heavily trafficked eight-lane commercial thoroughfare will prevent the creation of undue vehicular or pedestrian congestion on local streets; and

WHEREAS, the applicant provided a traffic study that analyzed the impact of the proposed special permit use as compared to an as-of-right use and notes that the amount of vehicular traffic generated by the proposed use would be less than that generated by an as-of-right use; and

WHEREAS, at hearing, the Board raised concerns that the Use Group 12 use would have different peak hours than an as-of-right use; and

WHEREAS, in response, the applicant notes that, while the proposed use may have different peak hours than an as-of-right use, it would not generate traffic during peak periods that would cause an impact at any intersection; and

WHEREAS, as to parking demand, the applicant provided a parking demand study reflecting that the proposed use would add no more than seven additional vehicles during peak periods; and

WHEREAS, the applicant also submitted a traffic and parking analysis indicating that 170 on-street parking spaces are located within a 400-foot radius of the subject site; and

WHEREAS, the traffic and parking analysis further indicates that a minimum of 38 on-street parking spaces are available during the weekday peak hour time period and a minimum of 14 on-street parking spaces are available during the weekend peak hour time period; and

WHEREAS, the applicant also submitted an affidavit from Sylvan Parking Company Inc., indicating that a total of 100 parking spaces will be available to Royal Palace patrons at two nearby parking garages on a daily basis; 50 parking spaces will be available at 80-02 Kew Gardens Road, and 50 parking spaces will be available at 112-01 Queens Boulevard; and

WHEREAS, the traffic and parking analysis submitted by the applicant concludes that sufficient parking is provided for the proposed first floor use of the site as a Use Group 12 eating and drinking establishment with entertainment, and no significant adverse impacts related to traffic and parking conditions are anticipated to occur; and

WHEREAS, the Opposition argues that the affidavit from Sylvan Parking Company, Inc., does not establish a clear contractual relationship between the applicant and the parking company, and that the two garages are not located within 600 feet of the subject premises, as required; and

WHEREAS, in response, the applicant submitted a correspondence from its traffic and parking consultant stating that, pursuant to the CEQR Technical Manual, all on-street and off-street parking within a ¼ mile radius, or 1,320 feet, from the project site is to be considered; and

WHEREAS, the Board considers the affidavit submitted by the applicant sufficient to establish that off-street parking will be made available to Royal Palace at the aforementioned parking facilities; and

WHEREAS, the Opposition asserts that the subject site is required to provide parking pursuant to ZR § 36-21, which requires accessory parking for all new development, including the use of a tract of land for a new use; and

WHEREAS, in response, and at the request of the Board, the applicant provided a Reconsideration from the Department of Buildings ("DOB") reflecting that the subject site is exempt from the parking requirement under ZR § 36-21; and

WHEREAS, the Opposition contends that the Reconsideration submitted by the applicant did not address the fact that the first floor of the subject site will be occupied by a Use Group 12 eating and drinking establishment rather than a Use Group 6 eating and drinking establishment, and that for a

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Use Group 12 eating and drinking establishment a parking requirement is triggered where there has been an increase in the floor area of the premises or the permissible number of patrons at the premises; and

WHEREAS, the Opposition argues that the proposed construction of the mezzanine in the subject building will increase the square footage of the premises and if the subject special permit is granted there will be an increase in the permissible number of patrons at the premises, and therefore the applicant is required to provide accessory parking pursuant to ZR § 36-21; and

WHEREAS, in response, the applicant submitted correspondence and a subsequent Reconsideration from DOB reaffirming that the parking requirement for the subject site is waived; and

WHEREAS, the Board notes that even if the proposed use did generate a parking requirement, the Zoning Resolution would require 31 parking spaces for a Use Group 12 use of this size, and the applicant has already secured ample parking from the two above-mentioned parking facilities; 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 Queens Boulevard is a heavily-trafficked eight-lane thoroughfare that is characterized by a mix of commercial and residential development, and that in particular, the ground floor uses along Queens Boulevard are predominantly commercial; and

WHEREAS, the applicant provided photographs and a map reflecting that there are 11 other restaurants with commercial kitchens along Queens Boulevard within eight blocks of the subject site; and

WHEREAS, the Board notes that the proposed hours of operation for the first floor Use Group 12 eating and drinking establishment with entertainment and dancing are similar to the hours of operation of a Use Group 6 eating and drinking establishment, and the occupancy of the Use Group 12 use is limited to 250 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 masonry construction of the walls of the building and the attenuation measures that will be undertaken will prevent the sound level of any of the surrounding residential units to exceed the limits

set forth in the Noise Code; and

WHEREAS, the applicant states that the nearest residential building is 11 feet from the western wall of Royal Palace and approximately 25 feet from the nearest speaker on the first floor; and

WHEREAS, the applicant submitted a noise analysis indicating that the distance from the speaker to the residential building, the concrete construction of the western wall of Royal Palace, and the brick construction of the nearby residential building all contribute to provide significant noise attenuation for the surrounding residential units; and

WHEREAS, the noise analysis concluded that Royal Palace is in compliance with the noise level of 42 dBA for indoor residential noise levels specified in the Noise Code, but is up to seven dBA higher than the noise exposure guidelines in the NYC CEQR Technical Manual of 55 dBA (L10) for outdoor noise levels after 10:00 p.m.; and

WHEREAS, in order to ensure that the noise levels comply with the Noise Code and the noise exposure guidelines in the NYC CEQR Technical Manual, the noise analysis made specific recommendations to further minimize any sound/vibration transmissions, including: (1) installing a floor-to-ceiling plexiglass wall with 15 DB noise reduction of low frequency noise as the partition for the required waiting area on the first floor; (2) installing a compressor delimiter to the sound board on the western side of the first floor stage; (3) adding acoustical shielding with DB 13 reduction of low frequency noise to the portion of the western mezzanine wall constructed of drywall; and (4) keeping the exterior doors closed during events; and

WHEREAS, the applicant represents that it will comply with the recommendations of the noise analysis; and

WHEREAS, the Opposition contends that the aforementioned noise analysis was conducted during an event that consisted of a single violinist and singer and was therefore not representative of the type of music, magnitude of amplification, or number of customers that would be typical of the proposed use; and

WHEREAS, in response, the applicant's noise consultant states that while a violinist and singer performed the night that the noise analysis was conducted, the relevant testing did not occur until later in the night when a full band with singers and amplified music was performing; and

WHEREAS, the Opposition also testified that a significant amount of noise is created by patrons of Royal Palace because they congregate outside the building when entering and leaving the premises; and

WHEREAS, in response, the applicant states that the aforementioned waiting area on the first floor will provide a place for patrons to congregate without creating unnecessary noise outside the building; 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

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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 Z.R. §73-244; and

WHEREAS, the applicant represents that the hazards or disadvantages of the proposed special permit use to the community at large are outweighed by the advantages to be derived by the community by the grant of the special permit; and

WHEREAS, the applicant further represents that the proposed use will provide a service to the community in that it caters to the heavy Russian/Jewish population in the surrounding area and serves as a venue for many community-oriented events within that population; and

WHEREAS, the Opposition provided written and oral testimony that Royal Palace currently places large amounts of garbage on the Queens Boulevard sidewalk underneath residential windows and in the alley next to the adjacent residential building for pickup, creating foul odors and unsanitary conditions; and

WHEREAS, in response, the applicant revised its plans to include a refrigerated garbage storage area on the first floor of the proposed building so that garbage will no longer be stored on the sidewalk for extended periods prior to pickup by the carting company; and

WHEREAS, the Opposition also testified that the garbage is removed by the carting company at approximately 4:00 a.m., six days a week, resulting in excessive noise at an unreasonable hour; and

WHEREAS, in response, the applicant submitted a letter from Royal Waste Services, Inc., stating that it has a contract with Royal Palace to remove garbage bags and recycling materials and that the account was recently upgraded to seven days per week with pickups at 7:00 a.m. on a daily basis; and

WHEREAS, the Opposition argues that the correspondence from the carting company does not establish that a contract has been made between the parties for the amended pickup time, and claims that garbage removal still occurs between 2:00 a.m. and 4:00 a.m.; and

WHEREAS, in response, the applicant states that it has repeatedly requested that Royal Waste Services, Inc., amend their hours of pick up to accommodate the neighbors, and the carting company has assured the applicant that it will do so; and

WHEREAS, the Board finds the letter furnished by Royal Waste Services, Inc., to be sufficient evidence that the carting company has agreed to amend its pick up schedule to 7:00 a.m., seven days per week; and

WHEREAS, the Opposition claims that Royal Palace's rooftop ventilation shaft emits foul odors into the windows of the adjacent residential units; and

WHEREAS, in response, the applicant states that it has not been issued any violations by the Department of Environmental Protection ("DEP") pertaining to the emission of odors, and represents that the disturbance caused by any emissions by Royal Palace stems from the

fact that it is a one-story building adjacent to a six-story residential building; and

WHEREAS, the applicant also submitted a receipt reflecting that the rooftop ductwork was extended by forty feet in 2006 to re-route the discharge away from the residential units, and provided drawings and photographs reflecting that the rooftop ventilation is located as far from the adjacent residential units as possible; and

WHEREAS, the Board notes that its staff requested that DOB inspect the rooftop mechanicals and ventilation at the site for code compliance and that DOB informed the Board that it had inspected the site and confirmed that the rooftop mechanical and ductwork are in compliance and that the Equipment Use Permits are valid; and

WHEREAS, the Board notes that prior to this application the Use Group 9 catering establishment was operating in contravention to ZR § 32-423, which prohibits a Use Group 9 catering establishment from operating within 50 feet of the street wall on the first floor of a building; and

WHEREAS, during hearing, the applicant agreed to cease operating the existing Use Group 9 catering establishment within 50 feet of the street wall on the first floor of the building, in compliance with ZR § 32-423; and

WHEREAS, the Opposition testified that during the course of this application the applicant continued to operate the Use Group 9 catering establishment within 50 feet of the street wall on the first floor of the building; and

WHEREAS, during a Board member's site visit, it was revealed that the Use Group 9 catering establishment was operating within 50 feet of the street wall on the first floor of the building; and

WHEREAS, therefore, the Opposition argues that the applicant will not operate the proposed Use Group 12 use on the first floor and the existing Use Group 9 use at the cellar level as separate facilities, as it has represented to the Board, but rather will operate a Use Group 9 catering establishment on both the cellar and first floors without the required 50-foot setback from the street wall at the first floor; and

WHEREAS, in response to the concerns raised by the Opposition and at the Board's direction, the applicant revised its plans several times to help ensure that the two uses will be operated separately; and

WHEREAS, specifically, the applicant revised its plans to: (1) provide separate entrances from the street for the first floor and cellar use; (2) enclose the proposed first floor waiting room so that it only services that floor; (3) remove all notes referring to the combined use of the two floors; (4) add a mezzanine level with bathrooms to service the first floor; and (5) remove a dumbwaiter between the cellar level and first floor; and

WHEREAS, the applicant states that there are also separate commercial kitchens located on the cellar level and the first floor, which will operate independently to service only that respective floor; and

WHEREAS, the applicant also submitted a letter from the operator of Royal Palace, stating that the proposed business plan is to operate a full-time, full-service restaurant on the first floor during lunch and dinner hours, which will

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be separate from the catering use in the cellar; and

WHEREAS, at the request of the Board, the applicant provided Royal Palace's datebook and a list of past events held at the site as evidence of the types of catering events which are currently held at the site; and

WHEREAS, the Opposition argues that the maximum occupancy for the catering use in the cellar is 200 people and that the datebook and list of past events submitted by Royal Palace indicate that it has provided catering for more than 200 people in the past, and that therefore the catering use will be extended to the first floor for future events with more than 200 people; and

WHEREAS, in response, the applicant states that Royal Palace will limit the size of future catering events to a maximum of 200 people, to further ensure that the uses remain separate; and

WHEREAS, while the catering use at the cellar level and its capacity is not before the Board, the Board notes that the catering use will not be permitted within the space that is the subject of the special permit for the Use Group 12 use; and

WHEREAS, the Board further notes that it is prohibited from denying a special permit based on a speculative future illegal use (citing 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 applicant has agreed to implement a number of measures to ensure that the Use Group 12 eating and drinking establishment with entertainment and dancing is operated separately from the Use Group 9 catering establishment, including: (1) providing separate entrances; (2) providing an adequate waiting area; (3) securing off-street parking; (4) providing noise attenuation; (5) committing to more reasonable hours for garbage pick-up; (6) providing an enclosed, refrigerated garbage holding area; (7) providing separate restrooms; and (8) limiting the hours of operation for the Use Group 12 use; and

WHEREAS, the Board notes that pursuant to ZR § 73-04, it has the authority to prescribe conditions and safeguards to the grant of a special permit, 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, 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. 08-BSA-070Q, dated April 22, 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, 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 C4-2 zoning district, a Use Group 12 eating and drinking establishment with entertainment and dancing on the first floor and mezzanine of the subject building, 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 November 2, 2009" – three (3) sheets and *on further condition*:

THAT the Use Group 12 eating and drinking establishment with entertainment and dancing use shall be limited to a maximum of 5,470 sq. ft., located on the first floor and mezzanine of the subject building;

THAT the term of this grant shall expire on November 10, 2010;

THAT there shall be no change in ownership of the site or the building without prior application to and approval from the Board;

THAT there shall be no commercial catering use within the Use Group 12 area;

THAT the maximum occupancy for the first floor and mezzanine shall be 245 persons;

THAT the hours of operation for the Use Group 12 eating and drinking establishment with entertainment and dancing shall be: Sunday through Thursday, from 11:00 a.m. to 11:00 p.m.; Friday, from 11:00 a.m. to 9:00 p.m.; and Saturday from 5:00 p.m. to 11:00 p.m.;

THAT the following noise attenuation measures shall be installed in accordance with the BSA-approved plans: (1) a floor-to-ceiling plexiglass wall with 15 DB noise reduction of low frequency noise shall be installed as the partition for the required waiting area on the first floor; (2) a compressor delimiter for sound board shall be installed on the western side of the stage on the first floor; and (3) acoustical shielding with 13 DB reduction of low frequency noise shall be added to the portion of the western mezzanine wall constructed of drywall;

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THAT an enclosed, refrigerated garbage storage area shall be provided;

THAT garbage pick-up shall not take place between the hours of 7:00 p.m. and 7:00 a.m.;

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

THAT a certificate of occupancy shall be obtained by May 10, 2010;

THAT DOB shall review zoning compliance of the recently constructed mezzanine and compliance with Administrative Code regulations for ADA compliance and egress;

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, November 10, 2009.

249-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Gee Jay Real Estate Development Company, owner.

SUBJECT – Application October 6, 2008 – Variance (§72-21) for the construction of a single family residence, contrary to floor area and open space (§23-141); required front yard (§23-45), rear yard (§23-47), side yard (§23-46) and off street parking (§25-622) regulations. R2 (LDGM) zoning district.

PREMISES AFFECTED – 130 Adelaide Avenue, west side of Adelaide Avenue, 497' south of intersection with Guyon Avenue, Block 4705, Lot 151, Borough of Staten Island.

COMMUNITY BOARD #3SI

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 Staten Island Borough Commissioner, dated October 2, 2009, acting on Department of Buildings Application No. 510052728, reads in pertinent part:

1. Proposed floor area exceeds the maximum permitted, which is contrary to ZR 23-141.
Proposed open space is contrary to ZR 23-141.

2. Proposed front yard is contrary to ZR 23-45.

3. Proposed rear yard is contrary to ZR 23-47.

4. Proposed lot area is contrary to section 23-32 of ZR...”; and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R2 zoning district within a Lower Density Growth Management Area, the proposed construction of a two-story single-family home, which does not comply with the zoning requirements for floor area, open space, front yard, rear yard, and lot area, contrary to ZR §§ 23-141, 23-45, 23-47, and 23-32; and

WHEREAS, a public hearing was held on this application on August 18, 2009 after due notice by publication in *The City Record*, with continued hearings on September 22, 2009 and October 27, 2009, and then to decision on November 10, 2009; 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 3, Staten Island, recommends disapproval of this application; and

WHEREAS, Councilman James S. Oddo 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 the proposal are the “Opposition;” and

WHEREAS, specifically, the Opposition raised the following primary concerns: (1) the proposed home would have a negative impact on neighborhood character; and (2) the claimed hardship was self-created based on the purchase of the lot; and

WHEREAS, the site is located on the west side of Adelaide Avenue, 497 feet south of the intersection with Guyon Avenue, in an R2 zoning district within a Lower Density Growth Management Area; and

WHEREAS, the site consists of an irregularly-shaped lot, with 43’-2” of frontage on Adelaide Avenue, a depth of between 36 and 51 feet, and a total lot area of approximately 2,004 sq. ft.; the minimum required lot area is 3,800 sq. ft.; and

WHEREAS, the Board notes that ZR § 23-33 eliminates a lot area requirement for single-family homes in a Lower Density Growth Management Area where the zoning lot was owned separately and individually from all adjoining tracts of land both on December 8, 2005 and on the date of the application for a building permit; and

WHEREAS, the applicant submitted deeds and a title report reflecting that the subject lot (Lot 151) was owned separately and individually from all adjoining lots on December 8, 2005, however, the owner acquired the 50’-0” by 1’-0” lot (Lot 150) located adjacent to the west of the subject lot in April 2007, prior to the filing of its application for a building permit; accordingly, a waiver of the minimum lot requirements of ZR § 23-32 is required because the subject site does not qualify for exemption from those requirements pursuant to ZR § 23-33; and

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WHEREAS, the applicant states that Lot 150 consists of a strip with a width of 1'-0" along the rear of Lot 151, which results in a 1'-0" increase in the depth of the property and a 50 sq. ft. increase in lot area; and

WHEREAS, therefore, the applicant states that the commonality of ownership of Lots 150 and 151 does not affect the substance of this application; and

WHEREAS, the Board agrees that the merger of two undersized lots to create a larger undersized lot is not contrary to the intent of ZR § 23-33 and notes that it actually results in a slight decrease in the yard and floor area waivers sought by the owner in order to construct a viable single-family home on the site; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story single-family home with the following parameters: a floor area of approximately 1,211 sq. ft. (the maximum permitted floor area is 1,002 sq. ft.); an FAR of 0.60 (the maximum permitted FAR is 0.50); an open space of 1,399 sq. ft. (1,504 sq. ft. is the minimum required); a front yard with a depth of 8'-0" (a depth of 15'-0" is the minimum required); a rear yard with a depth of 10'-0" (30'-0" is the minimum required); and a lot area of 2,004 sq. ft. (3,800 sq. ft. is the minimum required); and

WHEREAS, the applicant originally proposed to construct a home with a floor area of 1,343 sq. ft. (0.67 FAR) and with additional waivers for side yards and parking; and

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 shallow depth, irregular shape, and small size of the subject site; and

WHEREAS, the applicant states that the site is a vacant, irregularly-shaped shallow lot that cannot feasibly accommodate as-of-right development; and

WHEREAS, the Board notes that the subject site is the smallest and shallowest site located wholly within a 400-foot radius of the site; and

WHEREAS, the applicant represents that the requested floor area, open space, front yard and rear yard waivers are necessary to develop the site with a habitable home; and

WHEREAS, as to the front and rear yard waivers, the Board observes that if the applicant were to provide the required front yard of 15'-0" and the required rear yard of 30'-0", the result would be a home with a maximum depth of approximately 2'-0"; and

WHEREAS, further, the front yard waiver is necessary in order to create a home with a viable depth while still providing a rear yard that would provide a reasonable distance between the proposed home and the adjacent lot to the rear of the site; and

WHEREAS, as to the floor area waiver, the applicant submitted plans reflecting that a home with an as-of-right floor area could not accommodate viable rooms and sufficient interior corridors and circulation space; and

WHEREAS, the applicant represents that the proposed footprint of 606 sq. ft. is the minimum necessary to accommodate a modestly-sized living room and kitchen on the first floor; and

WHEREAS, the applicant further represents that in order to provide a home with an as-of-right floor area while still accommodating the necessary first floor footprint, there would only be an additional 396 sq. ft. of floor area on the second floor, and setting back the second floor to accommodate such limited floor area would not be practical from an engineering and design standpoint; 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 district regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant notes that the surrounding area is characterized by residential uses and that the proposed bulk is compatible with the nearby residential development; and

WHEREAS, the applicant submitted a sales report reflecting that the majority of all homes within one-half mile of the subject site that were sold during the past 24 months exceeded the floor area of the proposed home, with floor areas ranging from 1,300 sq. ft. to 2,300 sq. ft., and approximately half of those homes have FARs comparable to the proposed home; and

WHEREAS, the applicant represents that, due to the site's location along the arced section of Adelaide Avenue, there is no established front setback line along the street that would be interrupted by the proposed home; and

WHEREAS, the applicant states that the rear yard of the proposed home abuts a vacant lot with a width of 20 feet, such that there will be a separation of approximately 30 feet between the proposed home and the side yard of the nearest dwelling to the rear; and

WHEREAS, the applicant notes that the proposed home complies with the R2 zoning district regulations for use, side yards, height, and parking; 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 shallow depth, irregular shape, and small size; and

WHEREAS, the Opposition contended that the applicant's hardship was instead created by its purchase of the subject lot, which requires the requested variances to build a habitable home; and

WHEREAS, the Board notes that the (d) finding under ZR § 72-21 specifies that the purchase of a zoning lot subject

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to the cited hardship shall not constitute a self-created hardship; 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 applicant originally proposed a home with a width of 32 feet and a floor area of 1,343 sq. ft. (0.67 FAR), and requested additional waivers for side yards and parking; and

WHEREAS, the applicant modified the proposal during the course of the hearing process by reducing the width of the home to 29 feet and the floor area to 1,211 sq. ft. (0.60 FAR) and eliminating the waivers for side yards and parking; 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, in an R2 zoning district within a Lower Density Growth Management Area, the proposed construction of a two-story single-family home, which does not comply with the zoning requirements for floor area, open space, front yard, rear yard, and lot area, contrary to ZR §§ 23-141, 23-45, 23-47, and 23-32; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 10, 2009" – (11) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: approximately 1,211 sq. ft. of floor area (0.60 FAR); an open space of 1,399 sq. ft.; a front yard with a minimum depth of 8'-0"; a rear yard with a minimum depth of 10'-0"; a side yard with a minimum width of 5'-0" along the northern lot line and a side yard with a minimum width of 8'-0" along the southern lot line; a wall height of 24'-10"; a total height of 31'-4"; 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,

November 10, 2009.

37-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Shirley Ades and Moshe Ades, owners.

SUBJECT – Application March 5, 2009 – Special Permit (§73-622) for the in-part legalization and enlargement of an existing single family home, contrary to floor area, open space and lot coverage (ZR §23-141(b)); side yard (ZR §23-461(a)) & (ZR §23-48); rear yard (ZR §23-47), and perimeter wall height (ZR §23-631) regulations. R3-2 zoning district.

PREMISES AFFECTED – 3950 Bedford Avenue, Bedford Avenue between Avenue R and Avenue S, Block 6830, Lot 26, 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 September 3, 2009, acting on Department of Buildings Application No. 310218831, reads:

- "1) Proposed legalization and enlargement increases the degree of non-compliance of an existing building with respect to floor area ratio, which is contrary to ZR Section 23-141(b)
- 2) Proposed legalization and enlargement increases the degree of non-compliance of an existing building with respect to open space and lot coverage, which are contrary to ZR Section 23-141(b)
- 3) Proposed legalization and enlargement increases the degree of non-compliance of an existing building with respect to a side yard less than 5'-0", which is contrary to ZR Section 23-461(a) & 23-48
- 4) Proposed legalization and enlargement results in a rear yard of less than 30 feet, which is contrary to ZR Section 23-47;" and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an R3-2 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"), lot coverage, open space, side yard 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 August 25, 2009 after due notice by publication in *The City Record*, with continued hearings on September 22, 2009 and October 20, 2009, and then to decision on November 10, 2009; and

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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, the subject site is located on the west side of Bedford Avenue, between Avenue R and Avenue S, in 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 2,775.5 sq. ft. (0.69 FAR); and

WHEREAS, the premises is within the boundaries of a designated area in which the subject special permit is available; and

WHEREAS, the subject home initially had a floor area of approximately 2,196.5 sq. ft. (0.55 FAR), and was subsequently enlarged to its current floor area of 2,775.5 sq. ft. (0.69 FAR); and

WHEREAS, the applicant now seeks to legalize the prior enlargement and to permit a further increase in the floor area from 2,775.5 sq. ft. (0.69 FAR) to 3,886 sq. ft. (0.97 FAR); the maximum permitted floor area is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide a lot coverage of approximately 40 percent (35 percent is the maximum permitted); and

WHEREAS, the applicant proposes to provide an open space of approximately 60 percent (65 percent is the minimum required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard with a width of 3'-3" along the northern lot line (a minimum width of 5'-0" is required) and will provide a complying side yard of 9'-9¾" along the southern lot line; and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 21'-3¾" (a minimum rear yard depth of 30'-0" is required); and

WHEREAS, at hearing, the Board directed the applicant to provide evidence establishing that the prior enlargement only took place at the rear of the home; and

WHEREAS, in response, the applicant submitted historic photographs of the original home, reflecting that the façade and front portion of the building have remained and only the rear of the home has been enlarged; 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 and partial legalization of a single-family home, which does not comply with the zoning requirements for FAR, lot coverage, open space, side yards and rear yards, 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 August 13, 2009"-(7) sheets, "September 9, 2009"-(2) sheets and "October 6, 2009"-(5) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,886 sq. ft. (0.97 FAR); a lot coverage of approximately 40 percent; an open space of approximately 60 percent; a side yard with a minimum width of 3'-3" along the northern lot line; a side yard with a minimum width of 9'-9¾" along the southern lot line; a rear yard with a minimum depth of 21'-3¾"; a perimeter wall height of 21'-0", and a total height of 35'-0", as illustrated on the BSA-approved plans;

THAT DOB shall review and approve the elevations and compliance with wall height regulations;

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 10, 2009.

51-09-BZ

APPLICANT – Eric Palatnik, P.C., for Shiranian Nizi, owner.

SUBJECT – Application April 3, 2009 – Special Permit (§73-622) for the legalization of an enlargement to an existing single family home, contrary to side yard requirements (§461). R-5 zoning district.

PREMISES AFFECTED – 2032 East 17th Street, East 17th

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Street and Avenue T, Block 7321, Lot 20, 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 Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, November 10, 2009.

97-08-BZ

APPLICANT – Eric Palatnik, P.C., for Chesky Berkowitz, owner; Central UTA, lessee.

SUBJECT – Application April 18, 2008 – Special Permit (§73-19) to allow the legalization of an existing school (*Central UTA*) (UG 3). M1-1 district.

PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik, Charles Sosik, David Shteikman and Hiram Rothkrug.

ACTION OF THE BOARD – Laid over to December 15, 2009, at 1:30 P.M., for continued hearing.

160-08-BZ

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 Angelino, Jack Freeman, Hiram Rothkrug, Kassandra Brown, Michelle Grimsley, Eurice Solig, Joyce Youmans, Todd Farber and Frank Puledino.

For Opposition: Ronald J. Dillon.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 1:30 P.M., for continued hearing.

171-08-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for York Prep Realty, LLC., owner.

SUBJECT – Application June 26, 2008 – Variance (§72-21) to allow the enlargement of an existing school (*York Prep*) contrary to ZR §74-95 (City Planning Commission Housing Quality Special Permit). R8 zoning district.

PREMISES AFFECTED – 40 West 68th Street, between Central Park West and Columbus Avenue, Block 1120, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Howard Goldman.

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 December 8, 2009, at 1:30 P.M., for decision, hearing closed.

197-08-BZ

APPLICANT – Stuart A. Klein, for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application July 23, 2008 – Variance (§72-21) to permit a four-story and penthouse residential building, contrary to §23-141 (FAR, open space ratio), §23-22 (number of dwelling units), §23-45 (front yard), §23-462 (side yard), and §23-631 (wall height). R4 district.

PREMISES AFFECTED – 341/349 Troy Avenue, aka 1515 Carroll Street, corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Stuart A. Klein.

For Opposition: Jos Scott.

ACTION OF THE BOARD – Laid over to December 15, 2009, at 1:30 P.M., for continued hearing.

299-08-BZ

APPLICANT – Sheldon Lobel, P.C., for The Lantern Group, Inc., owner.

SUBJECT – Application December 4, 2008 – Variance (§72-21) to allow for a nine-story, 104 unit community facility building (non profit institution with sleeping accommodations), contrary to floor area and use regulations (ZR §24-111, §42-00). R6/C1-4, R6/C2-4 and M1-4 zoning districts.

PREMISES AFFECTED – 3857-3861 Third Avenue, northwest intersection of Claremont Parkway and Third Avenue, block 2919, Lots 39, 42, 43, 44, Borough of Bronx.

COMMUNITY BOARD #3BX

APPEARANCES –

For Applicant: Richard Lobel and Carrol Jackson.

For Opposition: Mary Walker, Erma Peterkin, Eunice Rurse, Lori Giles.

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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 December 15, 2009, at 1:30 P.M., for decision, hearing closed.

23-09-BZ

APPLICANT – Eric Palatnik, P.C., for Alla Simirnov, owner.

SUBJECT – Application February 12, 2009 – Special Permit (§73-622) for the enlargement of an existing one family home, contrary to open space, lot coverage and floor area (§23-141(b)) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 114 Amherst Street, west side of Amherst Street between Hampton Avenue and Oriental Boulevard, Block 8732, Lot 71, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

ACTION OF THE BOARD – Laid over to November 24, 2009, at 1:30 P.M., for decision, hearing closed.

53-09-BZ

APPLICANT – Harold Weinberg, P.E., for David Salamon, owner.

SUBJECT – Application April 6, 2009 – Variance (§72-21) for the construction of a three-family home on a vacant undersized lot. This application seeks to vary floor area (§23-141); front yard (§23-45) side yard (§23-461) and parking (§25-161) in an R5 zoning district.

PREMISES AFFECTED – 540 Schenck Avenue, southwest corner of Dumont Avenue, between Schenck Avenue and Hendrix Street, Block 4075, Lot 118, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Harold Weinberg.

For Opposition: Elaine Smith Carvaway.

ACTION OF THE BOARD – Laid over to December 15, 2009, at 1:30 P.M., for continued hearing.

164-09-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Palanker, owner.

SUBJECT – Application April 29, 2009 – Special Permit (§73-622) for enlargement of an existing two-family home, contrary to floor area, lot coverage and open space (§23-

141) and rear yard (ZR §23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 124 Irwin Street, between Hampton Avenue and Oriental Boulevard, Block 8751, Lot 416, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO REOPEN HEARING –

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

Negative:.....0

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 November 24, 2009, at 1:30 P.M., for decision, hearing closed.

214-09-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for LAL Astor Avenue Management Co., LLC, owner.

SUBJECT – Application June 29, 2009 – Special Permit (§73-125) to allow for a 9,996 sq ft ambulatory diagnostic or treatment center which exceeds the 1,500 sq ft maximum allowable floor area set forth in ZR §22-14. R4-1 zoning district.

PREMISES AFFECTED – 1464 Astor Avenue, south side of Astor Avenue, 100' east of intersection with Fenton Avenue, Block 4389, Lot 26, 45, Borough of Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Todd Dale.

For Opposition: Thomas Lucania, Anjali Kochar, Frank Tirabasso, Michael Frittola, Delfina Franco, Karen Evangeliou, Bret Collazzi, Sal Castorina and Michael McCabe.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 1:30 P.M., for continued hearing.

225-09-BZ

APPLICANT – Antonio S. Valenziano, AIA, for Beacon Luigi, LLC, owner.

SUBJECT – Application July 14, 2009 – Variance (§72-21) for the construction of a single family residence on a vacant undersized lot, contrary to front yard (§23-45) regulations. R2 (LDGM) zoning district.

PREMISES AFFECTED – 45 Beacon Avenue, Beacon Avenue c/o Luigi Place, Block 948, Lot 27, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Antonio S. Valenzino.

MINUTES

For Opposition: Mary Ann Clark.

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 December
8, 2009, at 1:30 P.M., for decision, hearing closed.

231-09-BZ

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 and Alan Poeppel.

ACTION OF THE BOARD – Laid over to December
8, 2009, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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November 26, 2009

DIRECTORY

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Tuesday, November 17, 2009**

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115-53-BZ	252-02 Union Turnpike, Queens
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60-82-BZ	60-11 Queens Boulevard, Queens
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DOCKET

New Case Filed Up to November 17, 2009

NONE

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 8, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 8, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

603-86-BZ

APPLICANT – H. Irving Sigman, P.E., for 8826 Parsons LLC, owner.

SUBJECT – Application September 3, 2009 – Extension of Term for a Variance (§72-21) allowing the construction of retail stores (UG 6), which expired on September 8, 2007; Amendment for minor modifications to the accessory open parking area and refuse area; Amendment requesting the elimination of a term; Waiver of the Rules. R7A (Downtown Jamaica Special Distrit) zoning district.

PREMISES AFFECTED - 88-34 Parsons Boulevard, a/k/a 88-26/34 Parsons Boulevard. North west corner of Parsons Boulevard and 89th Avenue, Block 9762, Lot 41, Borough of Queens.

COMMUNITY BOARD #12Q

813-87-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Gwynne Five LLC, owner; TSI Cobble Hill LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 8, 2009 – Extension of Term for a special permit (§73-36) which expired on April 12, 2008 for the operation of a Physical Culture Establishment (New York Sports Club); Waiver of the Rules. C2-3 (R6) zoning district.

PREMISES AFFECTED – 110 Boerum Place, Westerly side of Boerum Place 0 feet northerly of Dean Street, Block 279, Lot 1, Borough of Brooklyn

COMMUNITY BOARD #2BK

21-91-BZ

APPLICANT – Sheldon Lobel, P.C., for Hadarth Latchininarain, owner.

SUBJECT – Application September 21, 2009 – Extension of Term (§72-01 & 72-22) to extend the term of the previously granted variance that permits the operation of an automotive glass and mirror repair establishment (UG 7D) and used car sales (UG 16B) which expired on July 24, 2009; Waiver for not filing within thirty days of the expiration of the term. Located in a R5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, located on the northern corner corner of Linden Boulevard and Montauk Avenue, Block 4478, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #5BK

75-95-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for The Ruprert Yorkville Towers Condominium, owner; TSI East 91 d/b/a New York Sports Club, lessee.

SUBJECT – Application October 8, 2009 – Extension of Term for a special permit (§73-36) which expired on January 28, 2006 for the operation of a Physical Culture Establishment (New York Sports Club); Waiver of the Rules. C2-8 zoning district.

PREMISES AFFECTED – 1635 Third Avenue, Easterly side of Third Avenue between East 91st Street and East 92nd Street. Block 1537, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #8M

136-01-BZ

APPLICANT – Eric Palatnik, P.C., for Cel-Net Holding, Incorporated, owner.

SUBJECT – Application April 25, 2008 – Extension of Time to complete construction and obtain a Certificate of Occupancy for a Variance (§72-21) which permitted non-compliance in commercial floor area and rear yard requirements; Amendment seeks to reduce the previously approved 55,752 square feet of commercial floor area to the proposed 31,784 square feet of proposed commercial floor area which in permitted in the district. Waiver of the Rules. M1-4/R7A (Hunters Point Subdistrict) zoning district.

PREMISES AFFECTED – 11-11 44th Drive, Northside between 11th and 21st Streets. Block 447, Lot 13, Borough of Queens.

COMMUNITY BOARD #2Q

APPEALS CALENDAR

199-09-A thru 213-09-A

APPLICANT – Eric Palatnik, P.C., for Gino Savo, owner.

SUBJECT – Application June 29, 2009 – Proposed construction of 15 (2) story one family homes not fronting on a mapped street contrary to General City Law Section 36. R3A /R3-2 Zoning District. Series Cal. Nos. 199-213-09-A

PREMISES AFFECTED – 165, 161, 159, 155, 153, 151, 149, 145, 143, 141, 137, 135, 131, 129, 127, Roswell Avenue, Block 2641, Lot 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, Borough of Queens.

COMMUNITY BOARD #2Q

257-09-BZY & 258-09-BZY

APPLICANT – Gouranga C. Kundu, for Isteak Rum, owner.

SUBJECT – Application September 9, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 Zoning district. R5 Zoning District.

PREMISES AFFECTED – 88-36 & 88-38 144th Street,

CALENDAR

86.63' from corner of 88th Road and 144th Street, Block 9683, Lot 15 & 16, Borough of Queens.

COMMUNITY BOARD #12Q

259-09-BZY & 261-09-BZY

APPLICANT – Gouranga C. Kundu, for Isteak Rum, owner.
SUBJECT – Application September 9, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 Zoning district. R5 zoning District.

PREMISES AFFECTED – 139-48 88th Road, 88-30 144th Street and 88-34 144th Street, corner of 88th Road and 144th Street, Block 9683, Lot 13 & 14, Borough of Queens.

COMMUNITY BOARD #12Q

DECEMBER 8, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 8, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

44-09-BZ

APPLICANT – Philip L. Rampulla, for Tony Chrampanis, owner.

SUBJECT – Application March 11, 2009 – Variance (§72-21) to allow for a two-story commercial building (UG 6) with accessory parking, contrary to use regulations (22-00). R3-1 district.

PREMISES AFFECTED – 2175 Richmond Avenue, Eastside of Richmond Avenue 39.80' south of Saxon Avenue, Block 2361, Lot 12(tent), 14, 17, 22, Borough of Staten Island.

COMMUNITY BOARD #2SI

162-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Steinway 30-33, LLC, owner; Steinway Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application April 27, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (Planet Fitness) in the cellar, first, and second floors in an existing two-story building. Special Permit (73-52) to extend the C4-2A zoning district regulations 25 feet into the adjacent R5 zoning district. C4-2A/R5 zoning districts.

PREMISES AFFECTED – 30-33 Steinway Street, east side of Steinway Street, south of 30th Avenue, Block 680, Lot 32, Borough of Queens.

COMMUNITY BOARD #1Q

264-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for Joseph Ashkenaki, owner; LRHC Flatbush NY, LLC, lessee.

SUBJECT – Application September 15, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (Lucille Roberts) on the second and third floors of a three-story commercial building. C4-4A zoning district.

PREMISES AFFECTED – 927 Flatbush Avenue, aka 927-933 Flatbush Avenue, aka 21-33 Snyder Avenue, Block 5103, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #14BK

292-09-BZ

APPLICANT – Martyn & Don Weston, for Barbara Aal-Albar LLC, owner; Third Avenue Auto Corporation, lessee.

SUBJECT – Application October 15, 2009 – Special Permit (§11-411, §11-413 & §73-03) Amendment to change of use from a gasoline service station (UG16B) to automotive repair establishment (UG16B), Re-instatement of the term which expired on December 7, 1999; Waiver of the Boards Rules. C1-3/R6A & R5B(Special Bay Ridge District).

PREMISES AFFECTED – 9310-9333 Third Avenue, North east corner of 94th Street, Block 6107, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #10BK

293-09-BZ

APPLICANT – Eric Palatnik, Esq., for Rami Esses, owner.

SUBJECT – Application October 15, 2009 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted into a single family home contrary to open space and floor area (23-141(a)). R-2 zoning district.

PREMISES AFFECTED – 2501 Avenue M, northeast corner of Avenue M and Bedford Avenue, Block 7643, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #8BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, NOVEMBER 17, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

395-60-BZ

APPLICANT – Sheldon Lobel, P.C., for Ali A. Swati, owner.

SUBJECT – Application December 22, 2006 – Extension of Term (§11-411, §11-413) for change of use from a gasoline service station (UG16) to automotive repair establishment (UG16), which expired on December 9, 2005; Amendment to reduce the size of the subject lot and to request a UG6 designation for the convenience store; and an Extension of Time to obtain a certificate of occupancy which expired on January 19, 2000. R5 zoning district.

PREMISES AFFECTED – 2557-2577 Linden Boulevard, north side of Linden Boulevard between Euclid Avenue and Pine Street, Block 4461, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Elizabeth Safian.

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, which expired on December 9, 2005; an extension of time to obtain a certificate of occupancy, which expired on January 19, 2000; an amendment to allow for the subdivision of the lot; and an amendment to allow changes in use within Use Group 16 and from Use Group 16 to Use Group 6 on a portion of the site; and

WHEREAS, a public hearing was held on this application on November 25, 2008 after due notice by publication in *The City Record*, with continued hearings on January 13, 2009, February 10, 2009, April 21, 2009, June 23, 2009, August 11, 2009, and September 22, 2009, and then to decision on November 17, 2009; 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 5, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the northwest corner of

Linden Boulevard and Euclid Avenue, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 1, 1960, 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, the grant was most recently extended on January 19, 1999 for a term of ten years from the expiration of the prior grant, to expire on December 9, 2005; the grant also allowed for the legalization of an enlargement of the accessory building for use as a convenience store; and

WHEREAS, the applicant represents that an extension of term and a certificate of occupancy were not obtained in a timely manner due to administrative oversight; and

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

WHEREAS, the applicant seeks an amendment to (1) subdivide the lot, (2) permit a change in use from a gasoline service station (Use Group 16) to automotive repair establishment (Use Group 16) and (3) permit a change in use from accessory Use Group 16 to Use Group 6 for the existing convenience store; and

WHEREAS, with regard to the subdivision of the lot, the applicant submitted (1) site plans, which reflect the proposed configuration of the subject site and the adjacent lots; and (2) proof of ownership of the lots; and

WHEREAS, based on its review of the lot configuration, use of the site, and visual inspection of the site, the Board does not find that such a change, which would result in a substandard, irregularly-shaped lot is appropriate; and

WHEREAS, at hearing, the Board stated that it would not consider any of the proposed amendments or requested extensions until the applicant had demonstrated good faith efforts to remedy the poor site conditions; and

WHEREAS, specifically, the Board directed the applicant to improve the conditions of the site, including (1) remove the portion of the one-story frame enlargement to the existing building, which is not reflected on the BSA-approved plans; (2) improve site conditions, which includes the removal of graffiti, any signs not approved by the Board, and debris; (3) repair and install new fencing; and (4) re-pave the parking lot; and

WHEREAS, in response, the applicant submitted (1) evidence that the property owner has engaged an architect and applied for permits to demolish the existing enlargement to the building, which is contrary to the prior Board approvals; (2) photographs of the site, which reflect the removal of graffiti, the non-complying billboard, and debris; and (3) photographs of improved fence conditions; and

WHEREAS, the applicant also submitted a letter from the project architect stating that the removal of the one-story frame enlargement to the western side of the building would not compromise the structure of the remaining building; and

MINUTES

WHEREAS, the applicant proposes to re-pave the parking lot; and

WHEREAS, the Board accepts the submitted evidence as verification that the applicant is pursuing the required site improvements in good faith; and

WHEREAS, with regard to the proposed change in use from a gasoline station to an automotive repair establishment, the Board has determined that the change in use from one Use Group 16 use to another Use Group 16 use is appropriate; and

WHEREAS, the Board notes that the applicant must comply with all Department of Environmental Protection requirements associated with the termination of the gasoline service station use at the site; and

WHEREAS, with regard to the applicant's request to change the designation of the existing convenience store from an accessory Use Group 16 use to a Use Group 6 use, the Board has determined that this is appropriate; 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 § 52-31; and

WHEREAS, based upon the above, the Board denies the applicant's request to subdivide the lot, but finds that the other requested 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 November 1, 1960, so that as amended this portion of the resolution shall read: "to extend the term for ten years from December 9, 2005, to expire on December 9, 2015; to grant an extension of time to obtain a certificate of occupancy to May 17, 2010, and to permit the noted use changes and site modifications; *on condition* that the use and operation shall substantially conform to the previously approved drawings; and *on further condition*:

THAT the term of the grant shall expire on December 9, 2015;

THAT a certificate of occupancy shall be obtained by May 17, 2010;

THAT Department of Environmental Protection approval shall be obtained for any work associated with the termination of the gasoline service station use at the site;

THAT the site shall be maintained free of debris;

THAT all graffiti shall be removed within 48 hours;

THAT all signage shall comply with C1 zoning district sign regulations;

THAT all fencing shall be maintained in good condition;

THAT the parking lot shall be paved and maintained in good condition;

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. 320008120)

Adopted by the Board of Standards and Appeals, November 17, 2009.

16-95-BZ

APPLICANT – Akerman Senterfitt, LLP, for STA Parking Group, owner.

SUBJECT – Application July 24, 2009 – Extension of Term and Waiver of the Rules of a previously granted Variance (§72-21) for a UG8 parking garage with accessory auto repairs which expired on March 23, 2009. R-8B zoning district.

PREMISES AFFECTED – 434 East 77th Street, between 76th and 77th Street, Block 1471, Lot 31, Borough of Manhattan.

COMMUNITY BOARD #8M

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, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a previously granted variance for a parking garage (Use Group 8) with accessory auto repairs, which expired on March 23, 2009; and

WHEREAS, a public hearing was held on this application on October 6, 2009, after due notice by publication in *The City Record*, with a continued hearing on October 27, 2009, and then to decision on November 17, 2009; and

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

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

WHEREAS, the subject site is located on a through block bounded by East 77th Street to the north and East 76th Street to the south, between First Avenue and York Avenue, within an R8B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 7, 1921 when, under BSA Cal. No. 396-21-BZ, the Board permitted the conversion of the subject building from a horse stable to a public parking garage; and

WHEREAS, on November 14, 1922, under BSA Cal. No. 1061-22-BZ, the Board permitted an enclosed third-story enlargement of the subject building, which was not built; and

WHEREAS, on March 23, 1999, under the subject calendar number, the Board permitted the enlargement of the existing building pursuant to ZR § 11-412 for a term of ten years, which expired on March 23, 2009; at that time, the Board also granted an appeal, under BSA Cal. No. 17-95-A, regarding required egress and fire ratings; and

MINUTES

WHEREAS, subsequently, the grant has been amended at various times; and

WHEREAS, most recently, on January 9, 2007, the Board granted an extension of time to complete construction and permitted modifications to the BSA-approved plans; and

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

WHEREAS, at hearing, the Board questioned whether the existing illuminated sign at the site's East 77th Street frontage complies with C1 zoning district regulations; and

WHEREAS, in response, the applicant states that the sign projects more than 18 inches beyond the street line, and therefore does not satisfy ZR § 32-622; and

WHEREAS, the applicant further states that the owner has agreed to modify the subject sign so that it does not project more than 18 inches beyond the street line; and

WHEREAS, the applicant submitted a revised sign plan which reflects a sign that complies with C1 sign regulations; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on March 23, 1999, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for ten years from March 23, 2009, to expire on March 23, 2019, *on condition* that the use and operation shall substantially conform to the previously approved drawings and to the drawings filed with this application marked "Received November 4, 2009"-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on March 23, 2019;

THAT signage shall comply with C1 zoning district regulations;

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

THAT a new certificate of occupancy shall be obtained by May 17, 2010;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (N.B. 100664372)

Adopted by the Board of Standards and Appeals, November 17, 2009.

172-96-BZ

APPLICANT – Law Office of Mitchell Ross, Esquire, for Don Mitchell owner.

SUBJECT – Application April 17, 2009 – Extension of Term for a variance (§72-21) which expired on May 11, 2009 allowing the operation of a welding shop (UG 16A) contrary to §32-00; Waiver of the Rules. C6-6 zoning district.

PREMISES AFFECTED – 597/99 Marcy Avenue, Southeast corner of Marcy and Vernon Avenues., Block 1759, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Mitchell Ross.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair 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 a previously granted variance for a welding shop (Use Group 16A), which expired on May 11, 2009; and

WHEREAS, a public hearing was held on this application on October 6, 2009, after due notice by publication in *The City Record*, with a continued hearing on October 27, 2009, and then to decision on November 17, 2009; and

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

WHEREAS, at hearing, the Board requested that the applicant: (1) clarify whether the mezzanine space within the subject building is affiliated with the welding shop use; (2) remove the graffiti on the site; and (3) limit the hours of operation for the welding shop; and

WHEREAS, in response, the applicant submitted an affidavit from the owner, stating that the mezzanine space is operated as accessory office space to the welding shop, all graffiti will be removed from the site in the spring of 2010 pursuant to a city-sponsored graffiti abatement program, and the hours of operation for the welding shop are Monday through Saturday, from 7:00 a.m. to 6:00 p.m., and Sunday,

MINUTES

from 9:00 a.m. to 4:00 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 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 extend the term for ten years from May 11, 2009, to expire on May 11, 2019, on condition that all use and operations shall substantially conform drawings filed with this application marked "Received July 17, 2009"-(7) sheets and "October 20, 2009"-(1) sheet; and on further condition:

THAT the term of this grant shall expire on May 11, 2019;

THAT the hours of operation shall be limited to Monday through Saturday, from 7:00 a.m. to 6:00 p.m., and Sunday, from 9:00 a.m. to 4:00 p.m.;

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

THAT a new certificate of occupancy shall be obtained by May 17, 2010;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (N.B. 100664372)

Adopted by the Board of Standards and Appeals, November 17, 2009.

115-53-BZ

APPLICANT – Eric Palatnik, P.C., for Theodoras Zorbas, owner.

SUBJECT – Application July 8, 2009 – Extension of Term and Waiver of the Rules for the continued use of a Gasoline Service Station (*Mobil*) which expired on July 11, 2008. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 252-02 Union Turnpike, southwest corner of Little Neck Parkway, Block 8565, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

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 December 8, 2009, at 10 A.M., for decision, hearing closed.

240-55-BZ

APPLICANT – Joseph P. Morsellino, Esq., for DLC Properties LLC, owner; Helms Brother's, lessee.

SUBJECT – Application March 11, 2009 – Extension of Term (§11-411) for the continued operation of a UG16 auto repair shop with sales, exchange of vehicles and products which expired on November 3, 2008. C2-2(R6B) & R-4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard, Northern Boulevard and 208th Street, Block 7305, Lot 19, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

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 December 8, 2009, at 10 A.M., for decision, hearing closed.

1715-61-BZ

APPLICANT – Mitchell S. Ross, for 21st Century Cleaners Corporation, owner.

SUBJECT – Application July 17, 2009 – Extension of Term (§11-411) for a dry cleaning establishment (UG 6A), which expired on June 5, 2007; Extension of Time to obtain a certificate of occupancy, which expired on December 14, 2000; Waiver of the Rules. R3X zoning district.

PREMISES AFFECTED – 129-02 Guy R. Brewer Boulevard, a/k/a 129-02 New York Boulevard, south west corner of 129th Avenue and Guy R. Brewer Boulevard, Block 2276, Lot 59, Borough of Queens.

COMMUNITY BOARD #12Q

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 December 8, 2009, at 10 A.M., for decision, hearing closed.

60-82-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application September 22, 2009 – Extension of Time to obtain a Certificate of Occupancy for a gasoline service station (*BP North America*) which expired on December 13, 2007; Waiver of the Rules. C2-3/R7X zoning district.

PREMISES AFFECTED – 60-11 Queens Boulevard, between 60th Street and 61st Street, Block 1338, Lot 1,

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Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to November 24, 2009, at 10 A.M., for deferred decision.

1016-86-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Opera Owner Incorporated, owner; TSI West 76 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application August 13, 2009 – Extension of Term for a special permit (§73-36) which expired on May 5, 2007 for the operation of a Physical Culture Establishment (*New York Sports Club*); Extension of Time to obtain a Certificate of Occupancy which expired on October 26, 2000; and Waiver of the Rules. C4-6A zoning district.

PREMISES AFFECTED – 2162-2166 Broadway, easterly side of Broadway 26 feet north of West 76th Street, Block 1168, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #7M

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 December 8, 2009, at 10 A.M., for decision, hearing closed.

217-96-BZ

APPLICANT – Joseph P. Morsellino, for Silverbell Investments, owner; Enterprise Rent a Car, lessee.

SUBJECT – Application September 15, 2009 – Extension of Term of a previously granted Variance (§72-21) for the continued use of an existing car rental facility (*Enterprise*) with accessory outdoor storage of rental cars (UG 8) which expired on October 7, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on October 7, 1998; and Waiver of the Rules. C1-2/R-2 zoning district.

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

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

ACTION OF THE BOARD – Laid over to December 8, 2009, at 10 A.M., for continued hearing.

195-99-BZ

APPLICANT – Eric Palatnik, P.C., for Theodore Zorbas, owner.

SUBJECT – Application September 18, 2009 – Extension of Term (§11-411) for the continued use of a Gasoline Service

Station (*Shell*) which expires on November 10, 2009. R-6 zoning district.

PREMISES AFFECTED – 112 Atlantic Avenue, south east corner of Atlantic Avenue and Henry Street, Block 285, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to December 15, 2009, at 10 A.M., for continued hearing.

311-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Block 2285 Lite Corporation, owner.

SUBJECT – Application July 8, 2009 – Amendment to a previously granted Variance (§72-21) for a proposed one family dwelling which is contrary to lot coverage (§105-33) and maximum height (§23-631) regulations. R1-2(NA-1) zoning district.

PREMISES AFFECTED – 380 Lighthouse Avenue, south side of Lighthouse Avenue, 579' west of Winsor Avenue, Block 2285, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam Rothkrug and John Buday.

ACTION OF THE BOARD – Laid over to December 15, 2009, at 10 A.M., for continued hearing.

APPEALS CALENDAR

147-07-BZY

APPLICANT – Cozen O'Connor Attorneys, for Gabriel Realty, LLC, owner.

SUBJECT – Application August 27, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 (M1-2) district regulations. R6B zoning district.

PREMISES AFFECTED – 144 North 8th Street, south side of North 8th Street, 100' east of Berry Street, Block 2319, Lot 11, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Peter Geis.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez .4
Negative:.....0
Recused: Commissioner Hinkson.....1
THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time for the completion of construction and obtainment of a certificate of occupancy for a minor development currently under construction at the subject site; and

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WHEREAS, a public hearing was held on this application on October 20, 2009, after due notice by publication in *The City Record*, and then to decision on November 17, 2009; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Ottley-Brown; and
WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, the subject premises is located on the south side of North 8th Street, 100 feet east of Berry Street; and

WHEREAS, the applicant proposes to build a mixed-use residential/commercial building; and

WHEREAS, the premises is currently located within an R6B zoning district; and

WHEREAS, the development complies with the prior R6 (M1-2) zoning district regulations; and

WHEREAS, however, on May 11, 2005, the City Council voted to adopt the Greenpoint Williamsburg Rezoning, which rezoned the site to R6B, as noted above; and

WHEREAS, as of that date, the applicant had obtained permits for the development and had completed 100 percent of its foundation, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, on December 11, 2007 the Board granted a two-year extension of time to complete construction and obtain a certificate of occupancy for the proposed development, pursuant to ZR § 11-332; and

WHEREAS, accordingly, because the two-year time limit will expire before construction is completed, 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 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: “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, the record indicates that the following permit for the proposed development was lawfully issued to the owner by DOB, prior to the Enactment Date: Permit No. 301784399-01-NB, (hereinafter, the “New Building Permit”); 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 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, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the

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proposed development subsequent to the issuance of the permit includes installation of structural steel and floor slabs, and partial installation of exterior walls, internal partitions and electrical infrastructure; and

WHEREAS, in support of this statement, the applicant has submitted the following: financial records; invoices; and photographs of the site showing the completed building form for the lower ten stories with partially completed façade work, building infrastructure, floors, ceilings, and partial interior wall construction; 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 Board notes that on December 11, 2007, when it granted the first extension of time to complete construction pursuant to ZR § 11-332, the applicant had established that the total expenditure paid for the development was \$12,986,900, or 60 percent of the \$21,805,747 cost to complete; and

WHEREAS, the applicant represents that it has spent an additional \$2,248,069 since December 11, 2007, and that due to construction delays and the need to repair or replace some of the construction that had previously been performed, the cost to complete the project has risen to \$24,700,000; and

WHEREAS, thus, the applicant represents that the total expenditure paid for the development is now \$15,234,969, or 62 percent of the \$24,700,000 cost to complete; and

WHEREAS, as noted, the applicant has submitted financial records and invoices; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a 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 Permit No. 301784399-01-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 November 17, 2011.

Adopted by the Board of Standards and Appeals, November 17, 2009.

159-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLC, for 2nd Street Development Corp., owner.

SUBJECT – Application April 16, 2009 – Proposed construction of a single family home located within the bed of a mapped street (Doane Avenue), contrary to General City Law §35. R2 zoning district.

PREMISES AFFECTED – 85 Woodland Avenue, 175’ east of the intersection of Colon Avenue and Woodland Avenue, Block 5442, Lot 44, Borough of Staten Island.

COMMUNITY BOARD #3SI

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 Staten Island Borough Commissioner, dated March 18, 2009, acting on Department of Buildings Application No. 510068150, reads in pertinent part:

“The application for proposed construction in a bed of a mapped street is contrary to GCL 35, and therefore is referred to the Board of Standards and Appeals;” and

WHEREAS, this is an application to permit the proposed construction of a single-family home located within the bed of a mapped street, Doane Avenue, contrary to Section 35 of the General City Law; and

WHEREAS, a public hearing was held on this application on August 25, 2009, after due notice by publication in the *City Record*, with continued hearings on September 22, 2009, October 27, 2009 and November 10, 2009, and then to decision on November 17, 2009; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 3, Staten Island, recommends disapproval of this application; and

WHEREAS, by letter dated November 12, 2009, the Fire Department states that it has reviewed the subject proposal, which provides sprinklers, and has no objections; and

WHEREAS, by letter dated June 22, 2009, the Department of Environmental Protection (“DEP”) states that there is an existing eight-inch diameter sanitary sewer and an eight-inch diameter water main in Woodland Avenue between Doane Avenue and Colon Avenue, and there is an existing ten-inch diameter sanitary sewer and eight-inch diameter water main in Doane Avenue between Woodland Avenue and Leverett Avenue; and

WHEREAS, DEP further states that as per Drainage Plan #D-2-5, sheet 5 of 8, dated December 21, 1962, there is a future 12-inch diameter storm sewer and eight-inch diameter sanitary sewer in Woodland Avenue between Doane Avenue and Colon Avenue, and there is a future 15-inch/24-inch

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diameter storm sewer and a ten-inch diameter sanitary sewer in Doane Avenue between Woodland Avenue and Leverett Avenue; and

WHEREAS, DEP further states that it requires the applicant to submit a revised survey/plan showing the following: (i) the width of the mapped street in Woodland Avenue between Doane Avenue and Colon Avenue; and (ii) the distance from the existing water mains and sewers to the Lot lines in Woodland Avenue between Doane Avenue and Colon Avenue, and the distance from the existing eight-inch water main water cap and the existing manhole on the eight-inch diameter sanitary sewer to the north side property line in Doane Avenue between Woodland and Leverett Avenue; and

WHEREAS, in addition, DEP requires the applicant to provide the 30'-0" sewer corridor for the future 15-inch diameter storm sewer in Doane Avenue between Woodland Avenue and Leverett Avenue or amend the drainage plan; and

WHEREAS, in response, the applicant submitted a revised site plan reflecting a 70'-0" total width of Woodland Avenue with access still available for the remaining 50'-0" of Woodland Avenue between Doane Avenue and Colon Avenue for the installation, maintenance and/or reconstruction of the future 12-inch diameter storm sewer, an eight-inch diameter existing sanitary sewer and an eight-inch water main, and reflecting that the existing ten-inch diameter sanitary sewer terminates approximately 96'-0" to the north of the north lot line of Lot 44 and the eight-inch city water main terminates approximately 9'-6" to the north of the north lot line of Lot 44; and

WHEREAS, the applicant also provided DEP an escrow payment of \$5,000 and an affidavit from the owner of the subject property guaranteeing that the City's drainage plan will be amended; and

WHEREAS, by letter dated October 23, 2009, DEP states that it has reviewed the revised site plan and has no further objections; and

WHEREAS, by letter dated August 14, 2009, the Department of Transportation ("DOT") states that Doane Avenue between Woodland Avenue and Leverett Avenue is generally mapped to a width of 60'-0", but at the proposed site Doane Avenue is narrowed to a width of 15'-0", which the City does not have jurisdiction over, and the easterly 45 feet of this portion of Doane Avenue was voided by order of Judge William E. Mastro on May 30, 2002 (Fraser v. City of New York, NY Sup. Ct., Index. No 11622/98); and

WHEREAS, DOT further states that it requires that a cul-de-sac be constructed per American Association of State Highway and Transportation Officials standards for dead-end streets; and

WHEREAS, the applicant states that constructing a cul-de-sac at this location is not feasible, as it would prohibit the construction of the proposed home; and

WHEREAS, the applicant further states that the majority of the bed of Doane Avenue is already developed with an existing two-story home constructed pursuant to the above-mentioned court order that voided the street mapping, and constructing a cul-de-sac would require the condemnation of the adjacent home; and

WHEREAS, the applicant further states that there is currently an existing garage and home at the subject site, located in the bed of Doane Avenue, and the proposed development merely seeks to replace the existing home with the proposed home; and

WHEREAS, the Board agrees with the applicant that, given the noted conditions, constructing a cul-de-sac at the subject site is not feasible; and

WHEREAS, at hearing, the Board observed that the tax map submitted by the applicant shows a dotted line indicating an easement over the subject property, and requested that the applicant clarify whether such an easement exists; and

WHEREAS, in response, the applicant submitted the title report, survey, plans and prior tax map for the subject property, none of which indicate that there is an easement over the subject site; and

WHEREAS, the applicant also submitted a correspondence from the Department of Finance stating that the dotted line within Lot 44 represents the street widening line, and that its records do not show an easement on the property; and

WHEREAS, at hearing, the Board directed the applicant to explain the relationship between 87 Woodland Avenue, the address noted on the title report, and 85 Woodland Avenue, the address of the subject home; and

WHEREAS, in response, the applicant states that as part of the proposed development, existing Lot 44 will be apportioned into two new tax lots; the westerly lot (Lot 46) will be known as 87 Woodland Avenue (the historic address associated with the lot), and the easterly lot (Lot 44) will be known as 85 Woodland Avenue; and

WHEREAS, the applicant further states that only the easterly lot is within the bed of Doane Avenue and subject to this application; thus, although the subject site will be known as 85 Woodland Avenue (tentative Lot 44), certain submitted materials reference 87 Woodland Avenue (existing Lot 44) because it pertains to the entire property consisting of both tentative lots; 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 18, 2009, acting on Department of Buildings Application No. 510068150, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received November 10, 2009"– (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 DOB shall not issue a building permit prior to DEP's approval of an amended drainage plan;

THAT DOB shall review the proposed lot subdivision prior to the issuance of any permit;

THAT the home shall be sprinklered in accordance with the BSA-approved plans;

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

THAT 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 17, 2009.

217-09-A

APPLICANT – Marvin B. Mitzner, Esq., for 514-516 East 6th Street, owner.

SUBJECT – Application July 7, 2009 – An appeal seeking to vary the applicable provisions under the Multiple Dwelling Law as it applies to the enlargement of non-fireproof tenement buildings. R7-2 zoning district.

PREMISES AFFECTED – 514-516 East 6th Street, south side of East 6th Street, between Avenue A and B, Block 401, Lots 17 and 18, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to December 15, 2009, at 10 A.M., for continued hearing.

315-08-A

APPLICANT – Stuart A. Klein, Esq., for Bayrock/Sapir Organization, LLC., owner.

SUBJECT – Application December 23, 2008 – An appeal seeking the revocation of permits for a condominium hotel on the basis that the approved plans allow for exceedance of maximum permitted floor area. M1-6 zoning.

PREMISES AFFECTED – 246 Spring Street, between Varick Street and Hudson Street, block 491, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to November 24, 2009, at 10 A.M., for postponed hearing.

243-09-BZY

APPLICANT – Gouranga C. Kundu, for Azharul Islam, owner.

SUBJECT – Application August 19, 2009 – Application to complete construction of a minor development (§11-332) commenced under the prior R6 zoning district. R4-1 zoning district.

PREMISES AFFECTED – 87-12 175th Street, corner of 175th Street and Warwick, Block 9830, Lot 32, Borough of

Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Gouranga C. Kundu.

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 December 8, 2009, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, NOVEMBER 17, 2009
1:30 P.M.**

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

ZONING CALENDAR

54-09-BZ

CEQR #09-BSA-104M

APPLICANT – Juan D. Reyes, III/Riker Danzig et al, for Lord Shivas Properties, LLC, owner; Gab & Aud, Inc., lessee.

SUBJECT – Application April 8, 2009 – Special Permit (§73-36) to allow a physical culture establishment (*Haven Day Spa*) on the cellar level of a four-story mixed-use building, M1-5B district.

PREMISES AFFECTED – 150 Mercer Street (a/k/a 579 Broadway) Mercer Street between Prince and Houston in SoHo, block 512, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Juan Reyes.

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 August 10, 2009, acting on Department of Buildings Application No. 100355376, reads in pertinent part:

“42-14D. The proposed physical culture establishment use is not permitted as-of-right in the M1-5B district and is contrary to the ZR;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-5B zoning district within the SoHo Cast Iron Historic District, the legalization of a physical culture establishment (PCE) in the cellar of a four-story mixed-use commercial/residential building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on August 25, 2009, after due notice by publication in the *City Record*, with a continued hearing on September 22, 2009, and then to decision on November 17, 2009; and

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

block, with frontage on the east side of Mercer Street and the west side of Broadway, between Prince Street and West Houston Street, in an M1-5B zoning district within the SoHo Cast Iron Historic District; and

WHEREAS, the site is occupied by a four-story mixed-use commercial/residential building; and

WHEREAS, the PCE occupies approximately 3,041 sq. ft. of space in the cellar; and

WHEREAS, the PCE is operated as Haven Day Spa; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 11:00 a.m. to 7:00 p.m.; and Saturday and Sunday, from 10:00 a.m. to 6:00 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 or 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 approving alterations to the subject building, which expired on August 3, 1997; and

WHEREAS, the applicant notes that there have been no changes to the exterior of the subject building since the issuance of the Certificate of No Effect; and

WHEREAS, by letter dated November 13, 2009, the Landmarks Preservation Commission states that interior layout modifications can be addressed by staff level review and approval; 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, 2006, 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, 2006 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. 09BSQA104M, dated

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August 4, 2009; 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 in an M1-5B zoning district within the SoHo Cast Iron Historic District, the legalization of a physical culture establishment in the cellar of an existing four-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 October 23, 2009" - Nine (9) sheets and *on further condition*:

THAT the term of this grant shall expire on March 1, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; THAT 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 the applicant obtain any additional Landmarks Preservation Commission approvals, if required;

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 17, 2009.

56-09-BZ CEQR #09-BSA-105R

APPLICANT – Omnipoint Communications, Inc., for The South Shore Swimming Club, Inc., owner.

SUBJECT – Application April 15, 2009 – Special Permit (§73-30) to allow a proposed non-accessory radio tower and related equipment. R3X zoning district.

PREMISES AFFECTED – 6736 Hylan Boulevard, south side of Hylan Boulevard between Culotta Lane and Page Avenue, Block 7734, Lot 50, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Robert Gaudioso.

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 April 13, 2009, acting on Department of Buildings Application No. 510025599, reads in pertinent part:

“Proposed 80 foot monopole (Use Group 6) with telecommunication cabinets located in the Residential district. Refer to the Board of Standards and Appeals for review pursuant to Section 73-30 of NYC Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, in an R3X zoning district within the Special South Richmond Development District, the proposed construction of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR § 22-00; and

WHEREAS a public hearing was held on this application on July 14, 2009 after due notice by publication in *The City Record*, with continued hearings on September 22, 2009, and October 20, 2009, and then to decision on November 17, 2009; and

WHEREAS, Community Board 3, Staten Island, recommends disapproval of this application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, certain members of the community provided written and oral testimony in opposition to the proposed installation (the “Opposition”), raising concerns about the safety and location of the telecommunications pole, including: (1) potential health risks associated with radio frequency emissions from the facility; (2) the proximity of the facility to wetlands and the potential adverse impacts on wildlife; (3) the proximity of the facility to school buildings;

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and (4) that alternate sites had not been considered; and

WHEREAS, the proposed telecommunications pole will be located on a portion of a site that is also occupied by the South Shore Swim Club, which consists of two one-story buildings and a swimming pool; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of a monopole with a height of 82 feet, as well as three small equipment cabinets located at grade near the pole; the equipment cabinets will be surrounded by a fence with a height of eight feet; and

WHEREAS, the proposed monopole has been designed to resemble a flagpole, with six small panel antennas located inside and completely hidden from view; and

WHEREAS, the stealth design includes an American flag and a decorative gold ball with a maximum height of 82 feet; and

WHEREAS, the applicant represents that the telecommunications facility is necessary to remedy a significant gap in reliable service in the vicinity of the site caused by a lack of coverage and capacity; and

WHEREAS, a special permit is required from the City Planning Commission pursuant to ZR § 107-43, since the facility exceeds the 50-ft. height limitation of the Special South Richmond Development District; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the cellular pole proposed, provided it finds “that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood;” and

WHEREAS, the applicant represents that the pole has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the pole will comply with all applicable laws; that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant also states that related equipment cabinets will be installed within an eight-foot high fence enclosure, as noted above; and

WHEREAS, the applicant further represents that the height of the pole is the minimum necessary to provide the required wireless coverage, and that the pole will not interfere with radio, television, telephone or other uses; and

WHEREAS, as to the safety and health concerns raised by the Opposition, the Board appreciates the concerns expressed by these neighbors, but notes that it may not consider arguments about health risks related to such installations, as such consideration is pre-empted by federal law, pursuant to Section 332(c) of the Federal Telecommunications Act of 1996; and

WHEREAS, however, the applicant states that the transmissions from the facility are well below the limits set by the Federal Communications Commission, in accordance with federal law; and

WHEREAS, as to the proximity of the facility to wetlands, the applicant states that it will comply with all Department of Environmental Conservation (“DEC”) requirements; and

requirements; and

WHEREAS, as to the facility’s impacts on wildlife, the applicant submitted a letter from a Certified United States Fish and Wildlife Service Procedure Practitioner, stating that there will be no adverse impacts on wildlife from the facility; and

WHEREAS, as to the proximity of the facility to school buildings, the applicant notes that there is no setback requirement for wireless facilities from schools in New York City, and that the pole will be located at least 700 feet from the nearest school building; and

WHEREAS, as to the Opposition’s assertion that the applicant must identify alternate locations, the Board notes that there is no such requirement for this special permit; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed pole and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

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

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

WHEREAS, therefore, the Board finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 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. 09-BSA-105R, dated March 25, 2009; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State

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Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR §§ 73-03 and 73-30 to allow, in an R3X zoning district within the Special South Richmond Development District, the proposed construction of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR § 22-00, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked “Received April 15, 2009”-(4) sheets; and *on further condition*;

THAT any fencing shall be maintained in accordance with BSA-approved plans;

THAT a special permit shall be obtained from the City Planning Commission pursuant to ZR § 107-43 to address the proposed height prior to DOB’s issuance of any permits;

THAT any permits required by DEC shall be obtained prior to DOB’s issuance of any permits;

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

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

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

Adopted by the Board of Standards and Appeals, November 17, 2009.

198-09-BZ

CEQR #09-BSA-121M

APPLICANT – Eric Palatnik, P.C., for Chelsea Lofts Corp., owner; Personal Training Institute, lessee.

SUBJECT – Application June 29, 2009 – Special Permit (§73-36) to allow the operation of the proposed physical culture establishment (*Personal Training Institute*) on the first floor of an eight-story building. C6-3A zoning district.

PREMISES AFFECTED – 143 West 19th Street, between Sixth and Seventh Avenues, Block 795, Lot 14, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated September 4, 2009, acting on Department of Buildings Application No. 120018140, reads

in pertinent part:

“A physical culture establishment is not a permitted ‘as-of-right’ use in a C6-3A zoning district;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-3A zoning district, a physical culture establishment (PCE) on the first floor of an eight-story mixed-use commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 15, 2009, after due notice by publication in the *City Record*, with a continued hearing on October 20, 2009, and then to decision on November 17, 2009; 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 4, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of West 19th Street, between Sixth Avenue and Seventh Avenue, in a C6-3A zoning district; and

WHEREAS, the site is occupied by an eight-story mixed-use commercial/residential building; and

WHEREAS, the PCE has a total floor area of approximately 9,600 sq. ft. on the first floor; and

WHEREAS, the PCE is operated as Personal Training Institute; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, from 6:00 a.m. to 9:30 p.m.; Friday, from 6:00 a.m. to 8:00 p.m.; Saturday, from 7:00 a.m. to 2:00 p.m.; and Sunday, from 7:00 a.m. to 12:00 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

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review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA121M, dated September 11, 2009; 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 C6-3A zoning district, the establishment of a PCE on the first floor of an existing eight-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 October 6, 2009"- One (1) sheet and "Received October 29, 2009"- One (1) sheet and *on further condition*:

THAT the term of this grant shall expire on November 17, 2019;

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 sound attenuation measures shall be installed in accordance with the BSA-approved plans;

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, November 17, 2009.

215-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 92-16 95th Avenue Realty Corporation By: Alfred Smith, owner.
SUBJECT – Application July 6, 2009 – Special Permit (§11-411 & §11-413) for reinstatement and change of use from a wholesale (UG7) to retail (UG6) on the ground floor of a three story building, which expired on March, 2002; Extension of Time to obtain a certificate of occupancy, which expired March 1993; and 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 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 Queens Borough Superintendent, dated June 8, 2009, acting on Department of Buildings Application No. 420013103 reads, in pertinent part:

"Proposed extension of time to...obtain a Certificate of Occupancy, extension of term, amendment to the plans and modification of use are contrary to prior BSA approval under calendar number 440-59-BZ;" and

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reinstatement of a prior Board approval, an extension of term, and an extension of time to obtain a certificate of occupancy pursuant to ZR § 11-411, minor modifications to the previously-approved plans pursuant to ZR § 11-412, and a change in use from wholesale sales of imported food products (Use Group 7) to a Use Group 6 retail use on the first floor of a three-story building, pursuant to ZR § 11-413; and

WHEREAS, a public hearing was held on this application on October 27, 2009 after due notice by publication in the *City Record*, and then to decision on November 17, 2009; and

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

WHEREAS, the premises is located on the southwest corner of 93rd Street and 95th Avenue, in an R5 zoning district; and

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WHEREAS, the site is currently occupied by a three-story mixed-use commercial/ residential building, with offices, storage, and wholesale sales of imported food products 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, most recently, on March 3, 1992, the Board granted an extension of term for ten years from the expiration of the previous grant, to expire on December 2, 2000; and

WHEREAS, the applicant now proposes to reinstate and extend the term of the prior grant, to extend the time to obtain a certificate of occupancy, to allow minor modifications to the previously-approved plans, and to allow a change in use on the first floor from a Use Group 7 use to a Use Group 6 use; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for modifications to the site; and

WHEREAS, the applicant represents that the minor modifications to the site include the removal of two storage closets; 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 one of the provisions applicable to non-conforming uses as set forth in ZR §§ 52-31 to 52-36; and

WHEREAS, the applicant represents that its request for a change in use on the first floor of the subject site from a Use Group 7 use to a Use Group 6 use would be permitted pursuant to ZR § 52-34; and

WHEREAS, the applicant states that the change in use will not alter the essential character of the neighborhood, as a Use Group 7 use has operated at the site for over 45 years, and the surrounding area has a number of ground floor commercial uses; and

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

WHEREAS, in response, the applicant submitted revised plans reflecting signs with a maximum of 75 sq. ft. of surface area on each frontage, in compliance with C1 district regulations; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411, 11-412, and 11-413.

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, 11-412, and 11-413, to permit the reinstatement of a prior Board approval, an extension of term, and 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 a Use Group 6 use on the first floor of a three-story building; 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 October 26, 2009"-(6) sheets and "November 4, 2009"-(2) sheets; and on further condition:

THAT this permit shall be for a term of ten years, to expire on November 17, 2019;

THAT the hours of operation shall be limited to 6:00 a.m. to 10:00 p.m., daily;

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

THAT a certificate of occupancy shall be obtained by May 17, 2010;

THAT signage shall be limited to a maximum surface area of 75 sq. ft. on each frontage;

THAT this approval 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 17, 2009

186-08-BZ

APPLICANT – Petrus Fortune, P.E., for Kevin Mast, Chairman, Followers of Jesus Mennonite Church, owner.

SUBJECT – Application July 10, 2008 – Special Permit (§73-19) to allow the legalization and enlargement of a school (*Followers of Jesus Mennonite Church & School*) in a former manufacturing building, contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 3065 Atlantic Avenue, northwest corner of Atlantic Avenue and Shepherd Avenue, Block 3957, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: James E. Gochnauer.

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 January 26, 2009, at 1:30 P.M., for decision, hearing closed.

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28-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for 133 Equity Corp., owner.

SUBJECT – Application February 17, 2009 – Variance (§72-21) to permit a four-story residential building on a vacant lot, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 133 Taaffe Place, east side of Taaffe Place, 142'-2.5" north of intersection of Taaffe Place and Myrtle Avenue, Block 1897, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January 26, 2010, at 1:30 P.M., for adjourned hearing.

29-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chabad Israeli Center, owner.

SUBJECT – Application February 23, 2009 – Variance (§72-21) to legalize and enlarge a synagogue (*Chabad Israeli Center*), contrary to lot coverage, front yards, side yards, and parking regulations. R3X zoning district.

PREMISES AFFECTED – 44 Brunswick Street, northwest corner of Brunswick Street and Richmond Hill Road, Block 2397, Lot 212, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Lyra Altman.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 1:30 P.M., for adjourned hearing.

161-09-BZ

APPLICANT – Rizzo Group, for 25 Garfield Sparta, LLC, owner.

SUBJECT – Application April 23, 2009 – Variance (§72-21) for the development of two residential buildings (20 dwelling units) contrary to rear yard equivalent, floor area, lot coverage, minimum distance between buildings and minimum distance between legally required window regulations (§§23-532, 23-145, 23-711, 23-861). R6B zoning district.

PREMISES AFFECTED – 580 Carroll Street (25 Garfield Place) Carroll Street/Garfield Place, between Fourth and Fifth Avenue, Block 951, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Ashwin Verma and Saif Sumaida.

For Opposition: Brad Lander, P. Adam Walsh, Johnny Werbe and Abigail Banker.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 1:30 P.M., for continued hearing.

187-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Torath Israel Sephardic Congregation, owner.

SUBJECT – Application June 9, 2009 – Variance (§72-21) to permit the construction of a mikvah (ritual bath) in the proposed building (*Torath Israel Sephardic Congregation*), contrary to FAR and lot coverage (§24-11), side yard (§24-35) and rear yard (§24-36). R3-1 zoning district.

PREMISES AFFECTED – 94 Amherst Street, west side of Amherst Street, between Shore Boulevard and Hampton Avenues, Block 8726, Lot 43, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

For Opposition: Hilton Dantas, Harvey Lerner and Francene Olk.

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 December 8, 2009, at 1:30 P.M., for decision, hearing closed.

239-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York University, owner.

SUBJECT – Application August 5, 2009 – Variance (§72-21) to allow for the development of a six-story community facility building (*NYU Center for Academic and Spiritual Life*), contrary to lot coverage (§24-11) and height and setback regulations (§§24-522, 33-431). R7-2/C1-5 and R7-2 Districts.

PREMISES AFFECTED – 238 Thompson Street, a/k/a 56 Washington Square South, block bounded by Thompson and West 3rd Streets, Laguardia Place, Washington Square South Block 538, Lot 27, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to December 15, 2009, at 1:30 P.M., for continued hearing.

269-09-BZ

APPLICANT – Dennis D. Dell'angelo, R.A., for Jehoshua Cohen, owner.

SUBJECT – Application September 21, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to lot coverage (§23-141); side yard (§23-461) and less than the required rear yard (§23-47) and the legalization of a prior one story enlargement at the front of the existing home. R-5 zoning district.

PREMISES AFFECTED – 1938 East 12th Street, west side of East 12th Street, between Avenue S and Avenue T, Block 7290, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

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For Applicant: Dennis D. Dell'angelo.

ACTION OF THE BOARD – Laid over to December 8, 2009, at 1:30 P.M., for continued hearing.

279-09-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Rifki Zoneshayn, owner.

SUBJECT – Application October 1, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED –2709 Avenue M, between East 27th and East 28th Street, Block 7645, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Lewis E. Garfinkel.

For Opposition: Arthur Bredk.

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 December 8, 2009, at 1:30 P.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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60-82-BZ	60-11 Queens Boulevard, Queens
149-01-BZ	88 Jane Street, Manhattan
389-37-BZ	31-08 - 31-12 45 th Street, Queens
389-85-BZ	2090 Bronxdale Avenue, Bronx
140-92-BZ	39-21 Crescent Street, Queens
5-96-BZ	564/92 St. John Place, Brooklyn
68-03-BZ	649 39 th Street, Brooklyn
326-04-BZ	6208-6216 Strickland Avenue, Brooklyn
197-05-BZ	813/815 Broadway, Manhattan
228-09-A & 229-09-A	37-45 and 37-47 98 th Street, Queens
147-08-BZY	95-04 Allendale Street, Queens
315-08-A	246 Spring Street, Manhattan
170-09-A	24-03 Queens Plaza North, Queens
244-09-BZY	175 Vanderbilt Avenue, Brooklyn
245-09-BZY	120 Adelphi Street, Brooklyn
301-09-BZY	539 59 th Street, Brooklyn

Afternoon Calendar749

Affecting Calendar Numbers:

260-08-BZ	148 Oxford Street, Brooklyn
314-08-BZ	437-447 West 13 th Street, Manhattan
23-09-BZ	114 Amherst Street, Brooklyn
214-07-BZ	3217 Irwin Avenue, Bronx
187-08-BZ	1247 38 th Street, Brooklyn
43-09-BZ	198 Varet Street, Brooklyn
164-09-BZ	124 Irwin Street, Brooklyn
180-09-BZ	1735 Richmond Avenue, Staten Island
218-09-BZ	57 Empire Boulevard, Brooklyn
224-09-BZ	218-51 aka 218-59 Hempstead Avenue, Queens
246-09-BZ	636 Louisiana Avenue, Brooklyn
247-09-BZ	123 East 55 th Street, Manhattan
250-09-BZ	532 Madison Avenue, Manhattan

DOCKET

New Case Filed Up to November 24, 2009

308-09-BZ

366 Husson Street, Corner between Husson Street & Bedford Avenue, Block 3575, Lot(s) 24, Borough of **Staten Island, Community Board: 2**. Variance to legalize in ground pool and parking, contrary to use regulations. R3X district.

309-09-BZ

2173 65th Street, Between Bay Parkway and 21st Avenue., Block 5550, Lot(s) 40, Borough of **Brooklyn, Community Board: 11**. Variance to allow a mixed use building, contrary to use regulations. C2-3 & R6A district.

310-09-A

14 State Road, North side of Rockaway Point Boulevard, Block 16340, Lot(s) p/o 50, Borough of **Queens, Community Board: 14**. Construction within a bed of a mapped street, contrary to Section 35, Article of the General City Law. R4 district.

311-09-BZ

1092 East 22nd Street, Between Avenue J and Avenue K., Block 7603, Lot(s) 54, Borough of **Brooklyn, Community Board: 14**. Special Permit (73-622) for the enlargement of a three-story dwelling. R-2 district.

312-09-A

291 Union Street, Eastern portion, block bounded by Court, Union, Sackett and clinton Streets., Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2, R6B district.

313-09-A

298 Sackett Street, Eastern portion, block bounded by Court, Union, Sackett and clinton Streets., Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2, R6B district.

314-09-A

296A Sackett Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, R6B district.

315-09-A

296 Sackett Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, R6B district.

316-09-A

294A Sackett Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, R6B district.

317-09-A

294 Sackett Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, R6B district.

318-09-A

292A Sackett Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, R6B district.

319-09-A

292 Sackett Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, R6B district.

320-09-A

289 Union Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, R6B district.

DOCKET

321-09-A

287 Union Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, R6B district.

322-09-A

285 Union Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, R6B district.

323-09-A

283 Union Street, Eastern portion, block by Court, Union, Sackett and Clinton Streets, Block 339, Lot(s) 19, Borough of **Brooklyn, Community Board: 6**. Appeal for common law vested rights to continue development under the prior zoning. R6A/C2-4, 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

DECEMBER 15, 2009, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 15, 2009, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

615-57-BZ

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

SUBJECT – Application – Extension of Time to obtain a Certificate of Occupancy and waiver of the rules for a Gasoline Service Station (Exxon) which expired on January 22, 2009. C1-3/R5B zoning district.

PREMISES AFFECTED – 154-11 Horace Harding Expressway, north side of Horace Harding Expressway between Kissena Boulevard and 154th Place, Block 6731, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

75-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Matthew Realty LLC, c/o Nathan Katz Realty, LLC, owner; TVR Communications, lessee.

SUBJECT – Application October 26, 2009 – Extension of Term of a previously granted Variance (§72-21) to permit a real estate management offices (UG6) in a residential district which expires on July 25, 2010. This application also proposes to change within the same UG6 office use. R-5 zoning district.

PREMISES AFFECTED – 60-69 Woodhaven Boulevard, east side of Woodhaven Boulevard, north of Eliot Avenue, Block 3089, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

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

208-03-BZ

APPLICANT – Stuart A. Klein, Esq., for Shell Road, LLC, owner; Orion Caterers, Incorporated, lessee.

SUBJECT – Application November 9, 2009 – Extension of Term of a previously granted Variance (§72-21) for a UG9 catering hall which expired on October 19, 2009. R4/C1-2/M1-1 OP zoning district.

PREMISES AFFECTED – 255 Shell Road, east side of Shell Road, between Avenue X and Bouck Court, Block 7192, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #15BK

291-03-BZ

APPLICANT – Stuart A. Klein, Esq., for 6202-6217 Realty LLC, owner.

SUBJECT – Application June 5, 2009 – Application to extend the term and amend the prior granted variance to add an additional floor and increase the number of dwelling units, FAR, and the number of parking spaces. M1-1/R5B zoning districts.

PREMISES AFFECTED – 1380 62nd Street, corner of 62nd Street and 14th Avenue, Block 5733, Lots 35, 36, Borough of Brooklyn.

COMMUNITY BOARD #10BK

196-08-BZ

APPLICANT – Gage Parking Consultants, for 53-10 Associates, owner.

SUBJECT – Application October 13, 2009 – Reopening for an amendment of the existing public parking garage. C6-2 (Special Clinton District) zoning district.

PREMISES AFFECTED – 792 Tenth Avenue / 455 West 53rd Street, north east corner of Tenth Avenue and West 53rd Street, Block 1063, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEALS CALENDAR

205-05-A

APPLICANT – Gary D Lenhart, for The Breezy Point Cooperative, Inc., owner; Sheila Cardinale, lessee.

SUBJECT – Application September 1, 2009 – Amendment of to a previously granted General City Law Section 35 waiver to permit the construction of a single family home within the bed of a mapped street. R4 zoning district.

PREMISES AFFECTED – 47 Graham Place, north side of Graham Place, approximately 60' west of mapped Beach 204th Street, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

83-08-A

APPLICANT – NYC Department of Buildings, for H. Patel, P.M. – Purvi Enterprises, LLC, owner.

SUBJECT – Application April 9, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 301279319 issued on January 17, 2007 as it was issued in error due to failure to comply with ZR §62-711 requiring waterfront certification and the failure to comply with ZR §12-10(d) in the formation of the zoning lot R5 SP Sheepshead Bay District.

PREMISES AFFECTED – 3218 Emmons Avenue, Emmons Avenue between Bringham Street, and Bragg Street, Block 8815, Lot 590, Borough of Brooklyn.

COMMUNITY BOARD #15BK
-----**291-09-A**

APPLICANT – Gary D Lenhart, for The Breezy Point Cooperative, Inc., owner; Kathleen & Thomas Owens, lessees.

SUBJECT – Application October 13, 2009 – Reconstruction and enlargement of an existing single family home not fronting on a mapped street contrary to General City law Section 36 and the proposed upgrade of the existing legal nonconforming private disposal system located partially in the bed of the service road is contrary to Department of Buildings Policy. R4 zoning district.

PREMISES AFFECTED – 33 Queens Walk, east side of Queens Walk, 115' north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

DECEMBER 15, 2009, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 15, 2009, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR**302-08-BZ**

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for James Woods, owner.

SUBJECT – Application December 10, 2008 – Variance to permit an existing semi-detached residential building contrary to side yard regulations (ZR §23-462) R5 district.

PREMISES AFFECTED – 4368 Furman Avenue, 224' south of the southeast corner of the intersection of Furman Avenue and Nereid Avenue, Block 5047, Lot 12, Borough of The Bronx.

COMMUNITY BOARD #12BX
-----**309-08-BZ**

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for 147th Avenue Building Corporation, owner.

SUBJECT – Application December 19, 2008 – Variance (§72-21) for the construction of a three story, two-family home on a vacant corner lot contrary to front yards (§23-45) and floor area (§23-141). R4-1 zoning district.

PREMISES AFFECTED – 1717 Pitman Avenue, northwest corner of intersection of Digney Avenue and Pitman Avenue, Block 5049, Lot 21, Borough of The Bronx.

COMMUNITY BOARD #12BX
-----**239-09-BZ**

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York University, owner.

SUBJECT – Application August 5, 2009 – Variance (§72-21) to allow for the development of a 6 story community facility building (NYU Center for Academic and Spiritual Life) contrary to lot coverage (ZR §24-11) and height and setback regulations (ZR §24-522, §33-431). R7-2/C1-5 and R7-2 Districts.

PREMISES AFFECTED – 238 Thompson Street aka 56 Washington Square South, block bounded by Thompson and West 3rd Streets, Laguardia Place, Washington Square South Block 538, Lot 27, Borough of Manhattan.

COMMUNITY BOARD #2M
-----**253-09-BZ**

APPLICANT – MetroPCS New York, LLC, for Jangla Realty Corp., owner; MetroPCS New York, LLC, lessee.

SUBJECT – Application September 4, 2009 – Special Permit (§73-30) to install public utility wireless telecommunications facility on roof of existing building. R4 zoning district.

PREMISES AFFECTED – 53-00 65th Place, southwest corner of 53rd Avenue and 65th Place, Block 2374, Lot 160, Borough of Queens.

COMMUNITY BOARD # 5Q

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, NOVEMBER 24, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

728-29-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; ExxonMobil Franchisee, lessee.

SUBJECT – Application August 31, 2009 – Extension of Term for the continued use of a gasoline service station (*Mobil*) which expires on March 19, 2010. R4 zoning district.

PREMISES AFFECTED – 154-04 Horace Harding Expressway, bounded easterly by Kissena Boulevard, northerly by Horace Harding Expressway and southerly by 64th Street, Block 6744, Lot 71, Borough of Queens.

COMMUNITY BOARD #8Q

APPEARANCES –

For Applicant: Cindy 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 a reopening and an amendment seeking an extension of term for the continued use of a gasoline service station, which expires on March 19, 2010; and

WHEREAS, a public hearing was held on this application on November 10, 2009 after due notice by publication in *The City Record*, and then to decision on November 24, 2009; 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 8, Queens, recommends approval of this application; and

WHEREAS, the site is located on the south side of the Horace Harding Expressway at the corner formed by the Horace Harding Expressway and Kissena Boulevard, in an R4 zoning district; and

WHEREAS, the site is currently occupied by a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 14, 1958 when, under the subject calendar number, the Board granted a variance to permit the construction and operation of a gasoline service station on the site; and

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

WHEREAS, on May 15, 2001, the Board granted an extension of term for a period of ten years, to expire on March 19, 2010, with a condition that a certificate of occupancy be obtained by May 25, 2003; and

WHEREAS, on July 29, 2008, the Board granted an extension of time to obtain a certificate of occupancy; and

WHEREAS, the Board notes that the applicant has submitted a new certificate of occupancy; and

WHEREAS, the applicant has requested a ten-year extension of term; 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 April 15, 1958, so that as amended this portion of the resolution shall read: “to extend the term for ten years from March 19, 2010, to expire on March 19, 2020; *on condition* that the use and operation shall substantially conform to the previously approved drawings; and *on further condition*:

THAT the term of this grant shall expire on March 19, 2020;

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

THAT a new certificate of occupancy shall be obtained by May 24, 2010;

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. 410058663)

Adopted by the Board of Standards and Appeals November 24, 2009.

467-58-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; Nor-Topia Service Station, lessee.

SUBJECT – Application September 14, 2009 – Extension of Term for the continued operation of a Gasoline Service Station (*Mobil*) which expires on December 4, 2009. R3-2 zoning district.

PREMISES AFFECTED – 172-11 Northern Boulevard, northside blockfront between 172nd Street & Utopia Parkway, Block 5363, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Cindy Bachan.

ACTION OF THE BOARD – Application granted on condition.

MINUTES

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 gasoline service station, which expires on December 4, 2009; and

WHEREAS, a public hearing was held on this application on November 10, 2009 after due notice by publication in *The City Record*, and then to decision on November 24, 2009; and

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

WHEREAS, Community Board 7, Queens, recommends approval of this application, with the following conditions: (1) all shrubs and planters must be replaced and maintained as per the BSA-approved plans; (2) the garbage shed door must be fixed and remain closed at all times; (3) the used tires near the building must be removed; and (4) all accessories must be stored inside the building; and

WHEREAS, Council Member Tony Avella recommends approval of this application, subject to the same conditions as the Community Board; and

WHEREAS, the site is located on the north side of Northern Boulevard between 172nd Street and Utopia Parkway, in an R3-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 16, 1958 when, under the subject calendar number, the Board granted a variance to permit the premises to be occupied by a gasoline service station; and

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

WHEREAS, most recently, the grant was extended on August 19, 2008 for a term of ten years from the expiration of the prior grant, to expire on December 4, 2009; and

WHEREAS, the applicant has requested a ten-year extension of term; and

WHEREAS, as to the concerns raised by the Community Board, the applicant states that it will comply with all of the Community Board's conditions; and

WHEREAS, the applicant submitted photographs reflecting that: (1) all required shrubbery has been planted; (2) the gate for the garbage enclosure remains closed except for limited access for collection and removal; and (3) all tires and accessories are stored inside the service building; and

WHEREAS, further, the applicant states that the west elevation of the service building has been uniformly painted and that the owner is in the process of selecting a contractor to perform work involving the replacement of concrete flags in the sidewalks and the painting of directional arrows to direct traffic on the site; and

WHEREAS, the applicant also seeks to legalize the existing dimensions of the curb cuts on the site, which do not comply with the previously-approved plans; and

WHEREAS, specifically, the curb cut located on Northern Boulevard near the 172nd Street intersection is 23'-0" instead of 20'-0", the curb cut located on Northern Boulevard near the Utopia Parkway intersection is 19'-0" instead of 23'-0", and the curb cut located on 172nd Street is 33'-0" instead of 30'-0"; and

WHEREAS, the applicant states that the Department of Buildings approved its curb cut application; and

WHEREAS, the Board has determined that the proposed curb cuts are appropriate; 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 December 16, 1958, so that as amended this portion of the resolution shall read: "to extend the term for ten years from December 4, 2009, to expire on December 4, 2019; *on condition* that all use and operations shall substantially conform to plans filed with this application marked "Received September 14, 2009"- (6) sheets; and *on further condition*:

THAT the term of the grant shall expire on December 4, 2019;

THAT landscaping shall be maintained as shown on the BSA-approved plans;

THAT there shall be no exterior storage on the site;

THAT the gate for the garbage enclosure shall be maintained and shall remain closed except for limited access for collection and removal;

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

THAT a new certificate of occupancy shall be obtained by May 24, 2010;

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. 420074109)

Adopted by the Board of Standards and Appeals November 24, 2009.

60-82-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application September 22, 2009 – Extension of Time to obtain a Certificate of Occupancy for a gasoline service station (*BP North America*) which expired on December 13, 2007; Waiver of the Rules. C2-3/R7X zoning district.

MINUTES

PREMISES AFFECTED – 60-11 Queens Boulevard, between 60th Street and 61st Street, Block 1338, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: 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 for a gasoline service station, which expired on December 13, 2007; and

WHEREAS, a public hearing was held on this application on October 27, 2009, after due notice by publication in *The City Record*, with a continued hearing on November 17, 2009, and then to decision on November 24, 2009; and

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

WHEREAS, the site is located on a block bounded by 60th Street, 61st Street, 44th Avenue, and Queens Boulevard, within a C2-3 (R7X) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 24, 1952 when, under BSA Cal. No. 570-52-BZ, the Board granted a variance for the alteration of an existing gasoline service station with accessory uses; and

WHEREAS, on July 7, 1982, under the subject calendar number, the Board amended the grant to permit the reconstruction of the service station and the elimination of automotive repairs at the site; and

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

WHEREAS, most recently, on March 13, 2007, the Board granted a ten-year extension of the term from July 7, 2006, to expire July 7, 2016; and

WHEREAS, a condition of the grant was that a new certificate of occupancy be obtained by December 13, 2007; and

WHEREAS, the applicant represents that a certificate of occupancy was not obtained by the stipulated date due to an administrative oversight; and

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

WHEREAS, at hearing, the Board questioned whether the fence around the site was repaired and shrubs were planted in accordance with the previous grant; and

WHEREAS, in response, the applicant submitted photographs reflecting that the fence has been repaired and the shrubs have been planted in accordance with the previous grant; 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 *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated July 7, 1982, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to November 24, 2011; *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 November 24, 2011;

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. 402380071)

Adopted by the Board of Standards and Appeals November 24, 2009.

149-01-BZ

APPLICANT – Eric Palatnik, P.C. for Jane Street Realty LLC, owner.

SUBJECT – Application March 26, 2009 – Amendment to a previously issued resolution that seeks to remove the condition that a residential unit be occupied by a qualified senior citizen at a subsidized rate for a term of 10 years, from the date of the issuance of the Certificate of Occupancy. R6 zoning district.

PREMISES AFFECTED – 88 Jane Street, between Washington and Greenwich Streets, Block 641, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Eric Palatnik.

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, this is an application for a reopening and an amendment to the resolution for a variance for the conversion of a six-story building to residential use; and

WHEREAS, a public hearing was held on this application on June 23, 2009, after due notice by publication in

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The City Record, with continued hearings on September 22, 2009, and November 10, 2009, and then to decision on November 24, 2009; 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, recommends disapproval of this application because it objects to the applicant's proposal to eliminate a subsidized apartment for a senior citizen in the building; and

WHEREAS, on June 18, 2002, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit in an R6 zoning district the conversion of community facility space on the cellar level and first floor of an existing six-story building to additional residential dwelling units and recreation space; the Board also granted a companion case, under BSA Cal. No. 150-01-A, to allow for certain waivers to Multiple Dwelling Law § 310; and

WHEREAS, on September 19, 2006, the Board granted an extension of term to obtain a certificate of occupancy to expire on September 19, 2007; and

WHEREAS, the applicant represents that all construction has been completed and DOB has issued a certificate of occupancy; and

WHEREAS, the applicant states that the certificate of occupancy identifies dwelling unit A as a subsidized unit; and

WHEREAS, the applicant now seeks to have the Board remove the language in the 2006 Board resolution, which references a purported agreement between the applicant and the Community Board regarding the provision of one subsidized unit to a senior citizen for a period of ten years; and

WHEREAS, the language, within the body of the resolution, includes the following:

“additionally, at the time of the original grant, the applicant volunteered to restrict, for a term of ten years, the occupancy of one subsidized unit to a qualified senior citizen at a subsidized rate . . . the applicant agreed to provide documentation of the occupancy;” and

WHEREAS, during the hearing process, the Board stated that the applicant misapprehended the resolution and the noted language, within the body of the decision, is not identified as a condition of the approval; and

WHEREAS, thus, the Board did not act beyond its purview or condition its approval on the purported agreement with the Community Board, but rather noted the agreement in the resolution as the applicant and Community Board discussed it during the hearing process associated with the 2006 approval; and

WHEREAS, the Board does not take any position as to the enforceability of the purported agreement between the applicant and the Community Board; and

WHEREAS, accordingly, because the noted discussion was not a condition of the Board's approval, the Board has determined that the applicant has not requested a substantive modification to the approval, requiring the Board's action, and thus the request must be dismissed.

Therefore it is Resolved that the application filed under BSA Cal. No. 149-01-BZ is hereby dismissed.

Adopted by the Board of Standards and Appeals, November 24, 2009.

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 – 31-08 -31-12 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 –

For Applicant: Fredrick A. Becker

ACTION OF THE BOARD – Laid over to January 12, 2010, at 10 A.M., for continued hearing.

389-85-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for ExxonMobil Corporation, owner; Mobil On The Run, lessee.

SUBJECT – Application October 5, 2009 – Extension of Time to obtain a Certificate of Occupancy for a UG16 Automotive Service Station (*Mobil*) which expires on December 9, 2009. C2-3/R7-1 zoning district.

PREMISES AFFECTED – 2090 Bronxdale Avenue, bounded by Brady Avenue, White Plains Road and Bronx Park East, Block 4283, Lot 1, Borough of The Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Cindy Bachan.

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 December 15, 2009, at 10 A.M., for decision, hearing closed.

140-92-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Evangel Church, owner.

SUBJECT – Application December 19, 2008 – Amendment of variance (§72-21) which allowed an enlargement of an existing school (UG 3). The amendment would further enlarge the school, contrary to height and setback (§43-43). M1-2/R5D & M1-2/R5B (Special Long Island City Mixed Use District).

PREMISES AFFECTED – 39-21 Crescent Street, southerly

MINUTES

side of Crescent Street between 39th Avenue and 40th Avenue, Block 396, Lot 10 & 36, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to December 15, 2009, at 10 A.M., for continued hearing.

5-96-BZ

APPLICANT – Sheldon Lobel, P.C. for Saint John's Place, LLC c/o Ulltra Parking Systems Incorporated, owner; Park Right Corporation, lessee.

SUBJECT – Application January 20, 2009 – Extension of Term (§11-411) to permit the operation a one-story public parking garage for no more than 150 cars (UG 8), which expired on March 18, 2007; Amendment to change the parking layout; and an Extension of Time to obtain a certificate of occupancy, which expired on March 18, 1998.

R7-1 zoning district.

PREMISES AFFECTED – 564/92 St. John's Place, South side of Saint John's Place approximately 334' west of Classon Avenue, Block 1178, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Elizabeth Safian.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 10 A.M., for continued hearing.

68-03-BZ

APPLICANT – Stuart A. Klein, Esq., for Torah M. Sinai, Incorporated, owner.

SUBJECT – Application October 20, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the conversion of an existing manufacturing building to a (UG3) day care center and (UG6) office use which expired on August 10, 2008 and a Waiver of the Rules. M1-2 zoning district.

PREMISES AFFECTED – 649 39th Street, northwest corner of the intersection of 39th street and 7th Avenue, Block 903, Lot 79, 80, 83, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES – None.

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 December 15, 2009, at 10 A.M., for decision, hearing closed.

326-04-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sephardic Center of Mill Basin, owner.

SUBJECT – Application October 29, 2009 – Extension of Time to Complete Construction of a previously granted

Variance (§72-21) for the construction of a new Synagogue (*Sephardic Center of Mill Basin*) which expired on October 18, 2009. R-2 zoning district.

PREMISES AFFECTED – 6208-6216 Strickland Avenue, northeast corner of the intersection of Strickland Avenue and Mill Avenue, Block 8656, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #18BK

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 December 15, 2009, at 10 A.M., for decision, hearing closed.

197-05-BZ

APPLICANT – Marvin Mitzner, Esq., for B&E 813 Broadway Realty, owner.

SUBJECT – Application April 17, 2009 – Amendment to a variance (§72-21) to allow full commercial coverage on the ground floor and an increase in commercial FAR in a mixed use building. C6-1 zoning district.

PREMISES AFFECTED – 813/815 Broadway, west side of Broadway, 42' south of East 12th Street, Block 563, Lots 33 & 34, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Marvin Mitzner.

THE VOTE TO REOPEN HEARING –

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

Negative:.....0

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 January 12, 2010, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

228-09-A & 229-09-A

APPLICANT – Jordan Most of Sheldon Lobel, P.C., for Selvakumar Rajaratnam, owner.

SUBJECT – Application July 16, 2009 – An Appeal seeking a common law vested right to complete construction commenced under the prior R6B zoning district. R5 zoning district.

PREMISES AFFECTED – 37-45 and 37-47 98th Street, east side of 98th Street, Block 1761, Lots 48 and 49, Borough of Queens.

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COMMUNITY BOARD #3Q

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 on 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 6, 2009, after due notice by publication in *The City Record*, with a continued hearing on November 10, 2009, and then to decision on November 24, 2009; 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, Queens, recommends disapproval of the application; and

WHEREAS, the site is located on the east side of 98th Street, between 37th Avenue and 38th Avenue and has a lot area of 5,000 sq. ft.; and

WHEREAS, the applicant proposes to develop the site with two four-story residential buildings, each with seven dwelling units, 4,960 sq. ft. of floor area (1.98 FAR), a wall height of 39'-5", a total height of 43'-9", no side yards, and no parking spaces (the "Buildings"); and

WHEREAS, the Board notes that the Buildings are being constructed simultaneously, on a single foundation; and

WHEREAS, the subject site is currently located within an R5A zoning district, but was formerly located within an R6B zoning district; and

WHEREAS, the Buildings comply with the former R6B zoning district parameters; specifically with respect to floor area, FAR, number of units, height, setbacks, side yards, and number of parking spaces; and

WHEREAS, however, on March 24, 2009 (the "Enactment Date"), the City Council voted to adopt the North Corona 2 Rezoning, which rezoned the site to R5A, as noted above; and

WHEREAS, the Buildings do not comply with the R5A zoning district parameters as to floor area, FAR, number of units, height, setbacks, side yards, and number of parking spaces; 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. 410063247-01-NB and 410063238-01-NB (the "New Building Permits"), which authorized the development of two four-story residential building pursuant to R6B zoning district regulations were issued on October 31, 2008 and November

26, 2008, respectively; and

WHEREAS, the New Building Permits lapsed by operation of law on the Enactment Date because the plans did not comply with the new R5A zoning district regulations and the Department of Buildings ("DOB") determined that the Buildings' foundation was not complete; and

WHEREAS, by letter dated September 8, 2009, DOB stated that New Building Permit No. 410063238 was lawfully issued, authorizing construction of the building prior to the Enactment Date; and

WHEREAS, on August 19, 2009, DOB conducted an audit of New Building Permit No. 410063247 and issued a notice of intent to revoke the permit ("Letter of Intent") on August 26, 2009; and

WHEREAS, on September 29, 2009, DOB rescinded the Letter of Intent, noting that the applicant had resolved all of DOB's objections; 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 had completed the following: 100 percent of shoring work, 40 percent of excavation work, and the pouring of 46 cubic yards of concrete, or 36 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, a construction log, affidavits from the contractor and architect, and copies of cancelled checks; and

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WHEREAS, initially the applicant included an additional 12 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 12 cubic yards of concrete from its calculations; and

WHEREAS, at hearing, the Board requested that the applicant provide an affidavit from the contractor stating the amount of work completed; and

WHEREAS, in response, the applicant submitted affidavits from the general contractor and architect which confirm that 100 percent of shoring was completed, 100 percent of the rakers were installed, and that 36 percent of the concrete required for the foundation had been poured; and

WHEREAS, the general contractor also stated that approximately 49 percent of the foundation has been completed; 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 \$134,279, including hard and soft costs and irrevocable commitments, out of \$1,198,193 budgeted for the entire project; and

WHEREAS, as proof of the expenditures, the applicant has submitted construction contracts, cancelled checks, and concrete pour tickets; and

WHEREAS, in relation to actual construction costs and related soft costs, the applicant specifically notes that the owner had paid \$117,975 for excavation, shoring, installation of foundations, architectural and engineering fees; and

WHEREAS, the applicant further states that the owner also irrevocably owes an additional \$16,304 in connection with costs committed to the development under irrevocable contracts prior to the Enactment Date; and

WHEREAS, thus, the expenditures up to the Enactment Date represent approximately 11 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 the serious loss finding, the applicant contends that the loss of approximately \$134,279 associated with pre-Enactment Date project costs that would result if vesting were not permitted is significant; and

WHEREAS, a serious loss determination may be based in part upon a showing that certain of the expenditures could not be recouped if the development proceeded under the new zoning, but in the instant application, the determination was also grounded on the applicant's discussion of the decreased level of return for the project if the limitations of the new zoning were imposed; and

WHEREAS, specifically, the applicant notes that the permitted floor area would decrease from 9,920 sq. ft. (2.0 FAR) to 5,500 sq. ft. (1.1 FAR) between the two buildings; and

WHEREAS, the applicant states that the 4,420 sq. ft. loss in floor area represents a 45 percent decrease in the buildable FAR on the site; and

WHEREAS, the applicant notes that the permitted number of dwelling units would decrease from a total of 14 units under the prior zoning district to two units under the new zoning district; and

WHEREAS, the applicant states that the rezoning would result in a 77 percent decrease in the annual rental income for the proposed development, from \$180,000 to \$42,000; and

WHEREAS, the Board agrees that the reduction in the number of units within the Buildings and the diminution in value of those units because of the need to redesign, coupled with \$134,279 of actual expenditures that could not be recouped, constitutes a serious economic loss, and that the supporting data submitted by the applicant supports this conclusion; and

WHEREAS, in sum, the Board has reviewed the representations as to the work performed, the expenditures made, and serious loss, and the supporting documentation for such representations, and agrees that the applicant has satisfactorily established that a vested right to complete construction of the Building had accrued to the owner of the premises as of the Enactment Date.

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. 410063247-01-NB and 410063238-01-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, November 24, 2009.

147-08-BZY

APPLICANT – Hui-Li Xu, for Beachway Equities, Inc., owner.

SUBJECT – Application May 23, 2008 – Extension of time (§11-331) to complete construction of a minor development commenced under the prior zoning district. R5 zoning district

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PREMISES AFFECTED – 95-04 Allendale Street, between Atlantic Avenue and 97th Avenue, Block 10007, Lot 108, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to February 2, 2010, at 10 A.M., for an adjourned hearing.

315-08-A

APPLICANT – Stuart A. Klein, Esq., for Bayrock/Sapir Organization, LLC., owner.

SUBJECT – Application December 23, 2008 – An appeal seeking the revocation of permits for a condominium hotel on the basis that the approved plans allow for exceedance of maximum permitted floor area. M1-6 zoning.

PREMISES AFFECTED – 246 Spring Street, between Varick Street and Hudson Street, block 491, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES –

For Applicant: Stuart A. Klein.

For Opposition: Mark Davis, DOB; Paul Selver.

ACTION OF THE BOARD – Laid over to January 26, 2010, at 10 A.M., for continued hearing.

170-09-A

APPLICANT – NYC Department of Buildings

OWNER – Kenbridge Realty Corporation

SUBJECT – Application April 3, 2009 – An appeal filed by the Department of Buildings seeking to amend Certificate of Occupancy to remove the reference to "Adult" Establishment "use on the second floor. M1-5/R-9 Special Mixed Use District.

PREMISES AFFECTED – 24-03 Queens Plaza North, northeast corner of Queens Plaza North and 24th Street, Block 414, Lot 5, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Lisa Orrantia

For Opposition: Marvin Mitzner.

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 December 15, 2009, at 10 A.M., for decision, hearing closed.

244-09-BZY

APPLICANT – Sheldon Lobel, P.C., for Polven, LLC, owner.

SUBJECT – Application August 21, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6/C1-3 zoning district. R6B/C2-4 Zoning District.

PREMISES AFFECTED – 175 Vanderbilt Avenue, east side of Vanderbilt Avenue and Myrtle Avenue, Block 1901, Lots 19, 20, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most.

ACTION OF THE BOARD – Laid over to December 15, 2009, at 10 A.M., for continued hearing.

245-09-BZY

APPLICANT – Sheldon Lobel, P.C., for Adelphi Luxury Development, LLC, owner.

SUBJECT – Application August 21, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 zoning district. R6B Zoning District.

PREMISES AFFECTED – 120 Adelphi Street, west side of Adelphi Street, 252' north of the intersection of Adelphi Street and Myrtle Avenue, Block 2044, Lots 74 and 75, Borough of Brooklyn.

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Jordan Most and A. Calvo.

For Opposition: Enid Braun and Scott Oliver.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 10 A.M., for continued hearing.

301-09-BZY

APPLICANT – Nelson A. Padilla, for Nelson A. Padilla, owner.

SUBJECT – Application October 29, 2009 – Extension of time (§11-332) to complete construction of an enlargement commenced prior to the text amendment on September 30, 2009. R6B Zoning district.

PREMISES AFFECTED – 539 59th Street, 320' north from 5th Avenue, Block 856, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Nelson A. Padilla.

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 December 8, 2009, at 10 A.M., for decision, hearing closed.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, NOVEMBER 24, 2009
1:30 P.M.**

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

ZONING CALENDAR

260-08-BZ

APPLICANT – Eric Palatnik, for Moisei Tomshinsky, owner.

SUBJECT – Application October 21, 2008 – Special Permit (§73-622) to legalize and enlarge a single family home, contrary to floor area (§23-141) regulations. R3-1 zoning district.

PREMISES AFFECTED – 148 Oxford Street, between Shore Boulevard and Oriental Boulevard, Block 8757, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Adam Rothkrug.

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, November 24, 2009.

314-08-BZ

CEQR #09-BSA-054M

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 437-51 West 13th Street, LLC, owner.

SUBJECT – Application December 22, 2008 – Variance (§72-21) to allow for the construction of a 12-story commercial building (office and UG10 retail), contrary to FAR, height and setback and rear yard regulations (§43-12, §43-43, §43-26) and use regulations (§42-12). M1-5 zoning district.

PREMISES AFFECTED – 437-447 West 13th Street, 862-868 Washington Street, southeast portion, block bounded by West 13th, West 14th and Washington Streets, Tenth Avenue, Block 646, Lots 19, 20, Borough of Manhattan.

COMMUNITY BOARD #2M

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, the decision of the Manhattan Borough Commissioner, dated December 16, 2008, acting on Department of Buildings Application No. 110115768, reads in pertinent part:

- “1. The floor area ratio for the proposed new building to be used for offices, Use Group 6 and retail Use Group 10, in a M1-5 zoning district exceeds 5.0 contrary to Section 43-12 of the Zoning Resolution.
2. The proposed new building does not comply with the height and setback regulations facing West 13th Street and Washington Street contrary to Section ZR 43-43.
3. Proposed building does not provide a rear yard on the portion of the zoning lot beyond 100 feet of the intersection of two street lines, contrary to Section ZR 43-26.
4. Proposed Use Group 10 retail use in an M1-5 zoning district is contrary to Zoning Resolution Section 42-12;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an M1-5 zoning district, the construction of a ten-story commercial building which does not comply with the zoning requirements for floor area ratio (FAR), height and setback, and rear yard, and which provides Use Group 10 retail use, contrary to ZR §§ 43-12, 43-43, 43-26, and 42-12; and

WHEREAS, a public hearing was held on this application on April 28, 2009, after due notice by publication in the *City Record*, with continued hearings on August 11, 2009, September 22, 2009, and October 27, 2009, and then to decision on November 24, 2009; 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 initially proposed to construct a 12-story commercial building with a total floor area of 117,390 sq. ft. (7.73 FAR), a height of 215 feet, Use Group 10 retail use at the cellar level and on the first, second, and third floors, and with the western portion of the building cantilevered over the High Line by ten feet; and

WHEREAS, at hearing, the Board directed the applicant to reduce the requested relief and bulk of the building; and

WHEREAS, in response, the applicant revised the proposal to reflect an 11-story building with a floor area of 108,108 sq. ft. (7.12 FAR), a height of 201 feet, Use Group 10 retail use on the first, second, and third floors, and with the western portion of the building cantilevered over the High Line by ten feet; and

WHEREAS, at hearing, the Board directed the applicant to further reduce the request for relief so as to reflect the minimum variance; and

WHEREAS, in response, the applicant reduced the FAR and height of the building, eliminated one retail level, and reduced the cantilever of the western portion of the building from ten feet to two feet, such that it no longer extends over the

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High Line; and

WHEREAS, the current proposal reflects a ten-story commercial building with a total floor area of 93,741 sq. ft. (6.19 FAR), a height of 175 feet, a Use Group 10 retail floor area of 22,012 sq. ft. (1.45 FAR) on the first and second floors, a Use Group 6 office floor area of 71,729 sq. ft. (4.73 FAR), and an additional 11,443 sq. ft. of space located in the cellar; and

WHEREAS, the proposed building will have the following non-complying parameters: an FAR of 6.19 (the maximum permitted FAR is 5.0); a wall height of 175 feet with no setbacks above 85 feet (the minimum required setbacks are 20'-0" along West 13th Street and 15'-0" along Washington Street); no rear yard (a rear yard with a minimum depth of 20'-0" is required at the northwest corner of the site); and Use Group 10 retail use at the first and second floors (Use Group 10 retail is not permitted as of right in an M1-5 zoning district); and

WHEREAS, the cellar level will be occupied by storage and accessory use; and

WHEREAS, the first and second floors will be occupied by Use Group 10 retail use; and

WHEREAS, the third through tenth floors will be occupied by Use Group 6 office use; and

WHEREAS, Community Board 2, Manhattan, reviewed the applicant's original proposal and recommended disapproval of the requested FAR waiver and any waiver for Use Group 10 retail use beyond the cellar, first floor and second floor, but recommended approval of the requested setback and rear yard waivers, on condition that the rooftop not be used as an accessory use for the retail uses and that there not be a permanent use as an eating and drinking establishment or catering establishment; and

WHEREAS, the Board notes that the applicant revised its original proposal to reduce the proposed FAR of the building and to limit the retail use to the first and second floors, in accordance with the Community Board's request; and

WHEREAS, the City Planning Commission submitted written testimony in support of the height and setback waivers, but in opposition to the increase in floor area, the extension of the retail use beyond the second floor, and the proposed cantilever over the High Line; and

WHEREAS, the Greenwich Village Society for Historic Preservation, the Standard Hotel, and certain community members testified in opposition to this application; and

WHEREAS, the Greenwich Village Community Task Force testified in opposition to the FAR waiver in the original proposal and in support of the other aspects of this application; and

WHEREAS, the Greenwich Village/Chelsea Chamber of Commerce, the Meatpacking District Initiative, and certain community members testified in support of this application; and

WHEREAS, the site is located on the northwest corner of Washington Street and West 13th Street, in an M1-5 zoning district; and

WHEREAS, the site is currently occupied by two- and four-story buildings used for meat processing that are proposed

to be demolished; and

WHEREAS, the site has 147'-0" of frontage on the north side of West 13th Street, 103'-3" of frontage on the west side of Washington Street, and a lot area of 15,178 sq. ft.; and

WHEREAS, the High Line, an elevated former railroad trestle, with a height of 25 feet, extends diagonally across the western part of the site, including the entire western lot line, such that the site has an irregular shape, as discussed below; and

WHEREAS, the City owns the High Line and is converting it into a publicly accessible open space; and

WHEREAS, the applicant notes that the owner of the subject site has executed agreements granting an easement for use of the High Line on the site and allowing the City five feet of clearance around the High Line as an accessible maintenance corridor; and

WHEREAS, the High Line easement extends 20 feet above its platform and includes the landing sites for the support columns below it; and

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary hardship in developing the site in compliance with applicable regulations: (1) the presence of the High Line, which cuts diagonally across the site, reduces the developable lot area, and creates an irregularly-shaped developable portion of the site; and (2) the subsurface conditions including: poor soil, contamination, and a high water table; and

WHEREAS, as to the location of the High Line, it extends diagonally across the rectangular site for a width of 57 feet along the site's southern boundary along West 13th Street and a width of approximately 21 feet along the site's northern boundary; and

WHEREAS, the applicant states that the result is that approximately 27 percent of the site is not developable because it is obstructed by the High Line and an easement that extends 20 feet above as it extends diagonally across the western part of the site including the entire western lot line and 23 percent of the site's total street frontage, such that the site is a *de facto* irregularly-shaped lot with a range of widths from approximately 90 feet to 126 feet and a range of depths from approximately zero feet to 103 feet across the site; and

WHEREAS, several of the High Line's support columns extend to grade within the boundaries of the subject site, such that construction below it would be constrained; and

WHEREAS, the applicant states that due to the physical constraints posed by the High Line, a resultant as-of-right building would provide an inefficient building envelope, requiring an irregularly-shaped footprint; and

WHEREAS, further, the High Line limits the applicant's ability to position the building on the site, thus the applicant is unable to distribute the bulk within a complying envelope that has both reasonably sized and uniform floor plates, due to the presence of the High Line across 27 percent of the site; and

WHEREAS, the applicant represents that height, setback, and yard waivers are required to allow for uniform floor plates on fewer floors than would be permitted as of right, which enables efficient use of the building core and communication of infrastructure between floors; and

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WHEREAS, the applicant states that compliance with the rear yard regulations would not only result in irregular and less marketable floor plates, but would also leave a small, isolated yard area at the northwest corner of the subject site that would be difficult to use and maintain; and

WHEREAS, the applicant further states that much of the subject rear yard is already encumbered by the High Line, and that because the proposed building will not span the High Line, light and air will be provided to occupants of the building and neighboring buildings; and

WHEREAS, the applicant represents that even with the bulk waivers, the building is taller and narrower than a building on a site not traversed by the High Line due to the reduced developable portion of the site; and

WHEREAS, the applicant further states that there are additional costs associated with a taller and narrower building that results from the constrained site, including exterior façade, steel, masonry, iron, plumbing, elevators, drywall and miscellaneous finish and fit out work, as well as additional general conditions and soft costs; and

WHEREAS, the applicant represents that larger floor plates on the upper floors are required to achieve greater efficiency, as the small size of the as-of-right floor plates make it difficult to amortize construction costs; and

WHEREAS, as to the uniqueness of the site condition, the Board notes that, there is not one other site wholly within a 400-ft. radius of the site, which has as wide a portion of the High Line traversing it which has not been built out over the High Line; there is one narrow lot, at the edge of the radius which is almost completely obscured by the High Line, without enough remaining lot area for a feasible development; and

WHEREAS, as to the subsurface soil conditions, the applicant states that the site is burdened by poor soil conditions which require additional excavation, foundation, and underpinning measures; and

WHEREAS, specifically, the applicant submitted a report from its engineering consultant (the "Geotechnical Report") stating that soil borings indicate that sand is located on the site in the area between 14 and 40 feet below grade and is likely liquefiable; and

WHEREAS, the applicant states that, as a result, the foundation of the proposed building must be constructed with longer, more costly piles than comparable sites in the area because the pile design cannot rely on friction between the soil and pile within the liquefiable zone and the piles must extend through the liquefiable zone; and

WHEREAS, the applicant further states that the subject site is underlain by up to 20 feet of fill materials located above the liquefiable zone, such that the proposed building must be supported by a deep foundation system; and

WHEREAS, the applicant represents that the site's proximity to sensitive structures such as the High Line will likely preclude the use of driven piles because of the vibrations they generate, thus necessitating the use of more expensive and time consuming drilled piles; and

WHEREAS, the applicant further represents that, due to the poor soil conditions on the site, the adjacent structures to the west and north will require underpinning schemes

involving drilled piles spaced every eight feet, with the foundations of the adjacent structures supported on new grade beams cast against or under the existing foundations and spanning between the new piles; and

WHEREAS, as to the uniqueness of these soil conditions, according to the Geotechnical Report, recent developments in the vicinity of the site were either able to utilize previously existing building foundations for the new construction, or were not located in a probable liquefiable zone, and therefore could use shorter piles than the subject site; and

WHEREAS, additionally, the applicant represents that the site has a uniquely high water table with water detected at a depth of 12 feet; and

WHEREAS, at hearing, the Board questioned the applicant's contention that the water table was a unique condition, noted that the required underpinning is consistent with other development in the area and throughout New York City, and directed the applicant to eliminate costs associated with those conditions from the hardship analysis; and

WHEREAS, based on the applicant's Geotechnical Report and submissions regarding nearby construction, the Board agrees that the poor soil conditions are unique and contribute to a hardship at the site; and

WHEREAS, as to soil contamination at the subject site, the applicant states that soil samples detected concentrations of lead, which will require special handling, disposal, and reporting procedures during site development, and groundwater at the site contains concentrations of chlorinated solvents which have the potential to volatilize and may necessitate the need for the installation of a vapor/waterproofing barrier under the building; and

WHEREAS, the Board notes that, although soil contamination alone may not be a unique condition, it accepts that the hazardous lead condition is not a prevalent condition in the area; and

WHEREAS, the applicant submitted a report from a construction cost estimator that studied the hard construction costs associated with the unique site conditions; and

WHEREAS, the study concluded that the hard costs associated with the unique site conditions, in particular the excavations and foundations and the additional construction costs associated with the taller building that results from the constrained footprint, total approximately \$5,251,045; and

WHEREAS, the applicant represents that, in conjunction with a hazardous materials remediation cost of between \$475,000 to \$700,000, and a generated soft cost premium of approximately \$1,225,000, the total cost premium resulting from the unique conditions of the subject site are approximately \$7,000,000; and

WHEREAS, as to the requested floor area waiver, the applicant states that the irregular shape of the developable portion of the subject lot and the subsurface soil conditions lead to increased project development costs and make it difficult to amortize construction costs in an as of right project; thus the requested floor area waiver is necessary in order to achieve economies of scale that would provide a reasonable return; and

WHEREAS, as to the requested waiver for Use Group 10 retail, the applicant states that although Use Group 6 retail is

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permitted as-of-right, it would not be feasible to rent the second floor to a tenant without also offering substantial space on the ground floor; thus, any such proposal would likely exceed the 10,000 sq. ft. limitation on many Use Group 6 retail uses; and

WHEREAS, the applicant represents that office use on the second floor would not generate enough rental income to support the construction of the building, as the proximity of the High Line and the subsurface soil conditions make it difficult to amortize construction costs in a conforming project; and

WHEREAS, the applicant notes that ZR § 74-922 authorizes the Department of City Planning (“DCP”) to issue a special permit for Use Group 10 retail use in the subject zoning district upon DCP’s determination that all of the findings for the special permit have been met; and

WHEREAS, the applicant represents that the proposed Use Group 10 retail use at the subject site satisfies the conditions and findings for a special permit pursuant to ZR § 74-922, including that the principal vehicular access is not located on a local narrow street, that no vehicular entrances or exits are provided and therefore no reservoir spaces are required, and that the site is in close proximity to bus and rapid transit facilities; and

WHEREAS, based upon the above, the Board finds that the presence of the High Line, the resultant irregular shape of the developable portion of the lot, and the poor soil conditions, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in compliance with the applicable zoning regulations; and

WHEREAS, the applicant initially submitted a feasibility study that analyzed: (1) the existing commercial use; (2) a 5.0 FAR commercial development with height and setback non-compliance; (3) a complying hotel development; (4) a 6.5 FAR lesser variance proposal; and (5) a 12-story 7.73 FAR proposal; and

WHEREAS, the applicant included incremental premium costs associated with (1) underpinning, (2) protection of historic structures, and (3) dewatering measures; and

WHEREAS, as noted, the Board rejected these incremental costs, which contributed to a total of \$16 million, because it determined that they are prevalent conditions in the area and do not rise to the level of uniqueness; and

WHEREAS, the applicant concluded that only the 7.73 FAR scenario resulted in a reasonable rate of return and a reduced floor area could not generate the income required to offset incremental costs incurred in addressing the site’s physical conditions; and

WHEREAS, at hearing, the Board directed the applicant to revise the financial analysis and to review lesser variance alternatives; and

WHEREAS, in response, the applicant provided additional analysis for (1) an 11-story 7.12 FAR proposal; and (2) a revised 5.0 FAR commercial development with height and setback non-compliance; and

WHEREAS, ultimately, the applicant revised the hardship costs and submitted the current iteration of the proposal as a 6.19 FAR commercial building, with \$7 million of unique hardship costs; and

WHEREAS, the applicant concluded that none of the as-

of-right or lesser variance scenarios would result in a reasonable return, due to the unique physical conditions of the site and the resulting premium construction costs, but that the proposed building would realize a reasonable return and has submitted evidence in support of that assertion; 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, as to bulk, the applicant represents that the proposed height of 175 feet and 6.19 FAR are compatible with the neighborhood character; and

WHEREAS, in support of this assertion, the applicant submitted a radius diagram reflecting that there are eight buildings within a 400-ft. radius of the subject site that have an FAR greater than 5.0; and

WHEREAS, the applicant notes that the Standard Hotel, an 18-story hotel building located immediately south of the subject site is built to an FAR of 5.24 and has a height of 271’-0”;

WHEREAS, the applicant represents that the scale and bulk of the proposed building is similar to that of the Standard Hotel and the High Line Building, a 16-story retail office building being constructed immediately northwest of the project site, with a proposed height of 221’-0” and is part of a merged zoning lot which has a total FAR of 5.0, but, the applicant represents, that based on the footprint of the individual lot it is located on, the High Line Building itself is equivalent to a built FAR of 7.24 ; and

WHEREAS, the applicant states that an as-of-right building on the site could reach to 13 stories, with the required setbacks; and

WHEREAS, further, the applicant states that the Special West Chelsea District north of the site, permits a range of base FARs from 5.0 to 7.5; and

WHEREAS, as to the rear yard, the applicant notes that the rear yard is either traversed by or abutting the High Line; and

WHEREAS, at hearing, the Board raised concerns about potential shadows from the proposed building onto the High Line open space adjacent to the site; and

WHEREAS, the applicant notes that the CEQR Technical Manual indicates that a reduction in sunlight may not be significant if vegetation can easily be replaced with more shade-tolerant species; and

WHEREAS, the applicant notes that many existing plant species adjacent to the site are shade tolerant, and that, based on information obtained from the Friends of the High Line, adjustments may be made in certain locations as part of the ongoing evolution of plant species to account for shadows; and

WHEREAS, the applicant’s Environmental Assessment

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Statement (EAS) states that the period of greatest shadow coverage on the High Line generated by the proposed project would be in mid-morning, and that those areas of the High Line affected by project generated-shadows would still receive sunlight during the midday and/or afternoon (depending on the analysis dates); and

WHEREAS, the Board agrees with the conclusion in the EAS that the proposed project would not result in significant adverse shadow impact on open spaces resources in the surrounding area; and

WHEREAS, as to the proposed Use Group 10 use, the applicant states that it is consistent with the character of the Meatpacking District, which is occupied by a range of commercial uses; and

WHEREAS, in support of the above statements, the applicant submitted a land use map, showing the range of uses in the immediate vicinity of the site; and

WHEREAS, the Board agrees that the character of the area is mixed-use, and finds that the introduction of the proposed Use Group 10 retail use on the first and second floor will not impact nearby conforming uses; and

WHEREAS, as noted above, the DCP special permit, pursuant to ZR § 74-922, contemplates Use Group 10 use within M1-5 zoning districts, if certain findings are met; 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 due to the proximity of the High Line, the resulting irregularity of the subject lot, and the subsurface soil conditions on the site; and

WHEREAS, as noted above, the applicant initially proposed to construct a 12-story building with a floor area of 117,390 sq. ft. (7.73 FAR), a height of 215 feet, Use Group 10 retail use at the cellar level and first, second and third floors, and with the western portion of the building cantilevered over the High Line by ten feet; and

WHEREAS, at the Board's direction, the applicant revised its proposal by reducing the FAR to 6.19 and the building height to 175 feet, limiting the Use Group 10 use to the first and second floors, and reducing the cantilever of the western portion of the building from ten feet to two feet, such that it no longer extends over the High Line; 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) CEQR No. 09BSA054M, dated November 13, 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 site is located in the State/National Register Gansevoort Market Historic District, and the two buildings on the site are to be demolished for the proposed project; and

WHEREAS, the New York City Landmarks Preservation Commission (LPC) has reviewed the Environmental Assessment Statement (EAS) and requested a Historic American Buildings Survey (HABS) documentation for the two buildings to be demolished; 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 Revised Remedial Action Plan (RAP) and Construction Health and Safety Plan (CHASP) on August 7, 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, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration, with conditions as stipulated below, prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR § 72-21 and grants a variance, to permit, within an M1-5 zoning district, the construction of a ten-story commercial building which does not comply with the zoning requirements for FAR, height and setback, and rear yard, and which provides Use Group 10 retail use, contrary to ZR §§ 43-12, 43-43, 43-26, and 42-12, *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 October 19, 2009"-(16) sheets and "November 12, 2009"-(1) sheet; and *on further condition*

THAT the following shall be the bulk parameters of the proposed building: a maximum total height of 175 feet, including rooftop mechanicals; a maximum total floor area of 93,741 sq. ft. (6.19 FAR); a maximum Use Group 10 retail floor area of 22,012 sq. ft.; a maximum Use Group 6 office

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floor area of 71,729 sq. ft.;

THAT Use Group 10 retail use shall be limited to the first and second floors;

THAT a scope of work for HABS documentation shall be submitted to LPC for review and approval prior to DOB's issuance of demolition permits;

THAT DOB shall not issue a permanent certificate of occupancy prior to DEP's issuance of a Notice of Satisfaction or a Notice of No Objection for the Remedial Closure Report;

THAT this 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)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 24, 2009.

23-09-BZ

APPLICANT – Eric Palatnik, P.C., for Alla Simirnov, owner.

SUBJECT – Application February 12, 2009 – Special Permit (§73-622) for the enlargement of an existing one family home, contrary to open space, lot coverage and floor area (§23-141(b)) and rear yard (§23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 114 Amherst Street, west side of Amherst Street between Hampton Avenue and Oriental Boulevard, Block 8732, Lot 71, 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 16, 2009, acting on Department of Buildings Application No. 310243616, reads in pertinent part:

- “1. Proposed floor area ratio contrary to ZR 23-141(a).
2. Proposed open space contrary to ZR 23-141(a).
3. Proposed lot coverage contrary to ZR 23-141.
4. Proposed rear yard contrary to ZR 23-47;” 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 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, lot coverage, and rear yards, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on June 23, 2009 after due notice by publication in *The City Record*, with continued hearings on July 28, 2009, August 25, 2009, and November 10, 2009, and then to decision on November 24, 2009; 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 west side of Amherst Street, between Hampton Avenue and Oriental Avenue, within an R3-1 zoning district; and

WHEREAS, the subject site has a total lot area of 4,160 sq. ft., and is occupied by a two-family home with a floor area of approximately 1,904 sq. ft. (0.45 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 1,904 sq. ft. (0.45 FAR) to approximately 3,096 sq. ft. (0.74 FAR); the maximum floor area permitted is 2,496 sq. ft. (0.60 FAR, including attic bonus); and

WHEREAS, the applicant proposes to provide an open space of 59 percent (65 percent is the minimum required); and

WHEREAS, the applicant proposes to provide a lot coverage of 41 percent (35 percent is the maximum permitted); and

WHEREAS, the proposed enlargement will provide a rear yard with a depth of 24'-0" (a minimum rear yard of 30'-0" is required); and

WHEREAS, at hearing, the Board requested that the applicant clarify the discrepancy between the lot dimensions of 40'-0" by 100'-0" reflected in the tax map on record at the Department of Finance ("DOF") and the lot dimensions of 40'-0" by 104'-0" claimed by the applicant; and

WHEREAS, in response, the applicant submitted a revised DOF tax map reflecting that the dimensions of the subject lot are 40'-0" by 104'-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

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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 R3-1 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 FAR, open space, lot coverage, and rear yards, 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 12, 2009"-(8) sheets, "May 20, 2009"-(2) sheets and "November 20, 2009"-(1) sheet; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,096 sq. ft. (0.74 FAR); an open space of 59 percent; a lot coverage of 41 percent; a maximum wall height of 21'-0"; a total height of 27'-6"; a side yard with a minimum width of 8'-9" along the southern lot line; a side yard with a minimum width of 5'-0" along the northern lot line; and a rear yard with a minimum depth of 24'-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 24, 2009.

214-07-BZ

APPLICANT – Sheldon Lobel, P.C., for 3210 Riverdale Associates, LLC, owner.

SUBJECT – Application September 18, 2007 – Variance (§72-21) to allow a public parking garage and increase the maximum permitted floor area in a mixed residential and community facility building, contrary to §22-10 and §24-

162. R6 zoning district.

PREMISES AFFECTED – 3217 Irwin Avenue, aka 3210 Riverdale Avenue, north side of West 232nd Street, Block 5759, Lots 356, 358, 362, Borough of Bronx.

COMMUNITY BOARD #8BX

APPEARANCES –

For Applicant: Joshua Rinesmith.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 1:30 P.M., for continued hearing.

187-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation and Yeshiva Machzikei Hadas, Inc., owner.

SUBJECT – Application July 11, 2008 – Variance (§72-21) to permit the construction of a six-story community facility building (*Congregation & Yeshiva Machzikei Hadas*), contrary to ZR §42-00. M2-1 zoning district.

PREMISES AFFECTED – 1247 38th Street, east side of 38th Street, between 13th and 12th Avenue, Block 5295, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEARANCES –

For Applicant: Richard Lobel and Adam Rothkrug.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 1:30 P.M., for continued hearing.

43-09-BZ

APPLICANT – Harold Weinberg, P.E., for Paul S. Grosman, owner.

SUBJECT – Application March 10, 2009 – Special Permit (§73-19) to allow a school (*Southside Charter High School*) in a recently constructed building, contrary to use regulations. M1-2 district.

PREMISES AFFECTED – 198 Varet Street, southside 170'-6" west of White Street, between White Street and Bushwick Avenue, Block 3117, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Harold Weinberg, Frank Sellitto, Florence Adu, Mark Ainleg, Annie BeArhaurd, Paul C., Hiram Rothkrug, Nesli Erogan and Maria E.

ACTION OF THE BOARD – Laid over to December 15, 2009, at 1:30 P.M., for continued hearing.

164-09-BZ

APPLICANT – Eric Palatnik, P.C., for Steve Palanker, owner.

SUBJECT – Application April 29, 2009 – Special Permit (§73-622) for enlargement of an existing two-family home, contrary to floor area, lot coverage and open space (§23-141) and rear yard (ZR §23-47) regulations. R3-1 zoning district.

PREMISES AFFECTED – 124 Irwin Street, between Hampton Avenue and Oriental Boulevard, Block 8751, Lot

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416, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Eric Palatnik.

THE VOTE TO REOPEN HEARING –

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

Negative:.....0

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 January 12, 2010, at 1:30 P.M., for decision, hearing closed.

180-09-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Steven Smith, owner.

SUBJECT – Application June 1, 2009 – Variance (§72-21) to allow for a commercial building (UG6) contrary to use regulations (§22-00). R3-1 zoning district.

PREMISES AFFECTED – 1735 Richmond Avenue, 296.35' north of the intersection of Richmond Avenue and Croft Place, block 2072, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to December 15, 2009, at 1:30 P.M., for continued hearing.

218-09-BZ

APPLICANT – Jeffrey A. Chester, for Rich Gene Realty Corporation, owner; McDonald's Corporation, lessee.

SUBJECT – Application July 8, 2009 – Special Permit (§73-243) to allow an accessory drive-through facility to an eating and drinking establishment (*McDonald's*). C1-3/C8-2 zoning district.

PREMISES AFFECTED – 57 Empire Boulevard, between Mckeever Place and Bedford Avenue, bounded by Sullivan Place on south, Block 1306, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jeffrey A. Chester.

ACTION OF THE BOARD – Laid over to December 15, 2009, at 1:30 P.M., for continued hearing.

224-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Springfield-Hempstead Realty, LLC, owner; Walgreens Company, lessee.

SUBJECT – Application July 8, 2009 – Special Permit (§73-52) to allow for accessory commercial parking to be located in the residential portion of a split zoning lot. C2-3/R3-2 and

R3-2 zoning districts.

PREMISES AFFECTED – 218-51 aka 218-59 Hempstead Avenue, Northwest corner of intersection of Hempstead Avenue, Block 10766, Lot 38, 46, 48, 51, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Joshua Rinesmith.

ACTION OF THE BOARD – Laid over to January 26, 2010, at 1:30 P.M., for postponed hearing.

246-09-BZ

APPLICANT – Jordan Most of Sheldon Lobel, P.C., for Louisiana Purchase, LLC, owner.

SUBJECT – Application August 21, 2009 – Variance (§72-21) to allow for the construction of a four story assisted living facility (*Brooklyn Boulevard ALP*) contrary to floor area, dwelling units and parking regulations (§§ 23-141/62-321, 23-22, 25-23). R5 district.

PREMISES AFFECTED – 636 Louisiana Avenue, western side of Louisiana Avenue at its intersection with Twin Pines Drives, Block 8235, Lot 140, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEARANCES –

For Applicant: Jordan Most, David Marx, Robert Marx, A. Schiffman and Anthony Hecht.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 1:30 P.M., for continued hearing.

247-09-BZ

APPLICANT – Michael T. Sillerman, Esq., c/o Kramer Levin et al, for Central Synagogue, owner.

SUBJECT – Application August 26, 2009 – Variance (§72-21) to allow for expansion of the community house for the Central Synagogue (UG 4), contrary to floor area and height and setback regulations. (§§33-12, 81-211, 33-432). C5-2, C5-2.5 MiD zoning districts.

PREMISES AFFECTED – 123 East 55th Street, north side of East 55th Street between Park Avenue and Lexington Avenue, 127.5', Block 1310, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

APPEARANCES –

For Applicant: Michael Sillerman.

For Opposition: Jordan Most, Steven Greystein and Brad Becker.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 1:30 P.M., for continued hearing.

250-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP., for 532 Madison Syndicate, owner; Madison/Fifth Associates LLC c/o Stahl Real Estate, lessee.

SUBJECT – Application August 28, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Ultimate Training Center*) on the sixth and

MINUTES

seventh floors in an existing seven-story commercial building. C5-3 (MiD) zoning district.

PREMISES AFFECTED – 532 Madison Avenue, East 54th Street, Fifth Avenue; East 55th Street, Block 1290, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #6M

APPEARANCES –

For Applicant: Marcia Kesner.

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 December 15, 2009, 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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December 18, 2009

DIRECTORY

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Tuesday, December 8, 2009**

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293-09-BZ	2501 Avenue M, Brooklyn

DOCKET

New Case Filed Up to December 8, 2009

324-09-A

50 Gansevoort Street, South side of Gansevoort at the West Corner of Greenwich., Block 643, Lot(s) 54, Borough of **Manhattan, Community Board: 2**. Appeal challenging the revocation of the certificate of occupancy. M1-5 district.

325-09-BZ

1364 52nd Street, South side of 52nd Street, 100' west of 14th Avenue., Block 5663, Lot(s) 31,33, Borough of **Brooklyn, Community Board: 12**. Variance to allow proposed community facility use, contrary to bulk regulations. R6 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 12, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 12, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

223-98-BZ

APPLICANT – Andrea Claire/Peter Hirshman for Jilda Realty Corporation, owner.

SUBJECT – Application October 29, 2009 – Extension of Term (§§72-01 & 72-22) of a previous variance that permits the operation of an automotive service station (UG 16B) which will expire on February 1, 2010; Amendment to allow used car sales (UG 16B); Extension of Time to obtain a Certificate of Occupancy which expired on June 10, 2003; Waiver of the Rules. R6B zoning district.

PREMISES AFFECTED – 51-59 Maujer Street aka 451-459 Lorimer Street, northeast corner of the intersection of Maujer Street and Lorimer Street, Block 2785, Lot 31 & 32, Borough of Brooklyn.

COMMUNITY BOARD #1BK

163-99-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for 503 Broadway LLC, owner; TSI Soho LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application September 16, 2009 – Extension of Term for a special permit (§73-36) which will expire on June 28, 2010 for the operation of a Physical Culture Establishment (*New York Sports Club*); Waiver of the Rules. M1-5B zoning district.

PREMISES AFFECTED – 503 Broadway, westerly side of Broadway between Broome Street and Spring Street, Block 484, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

405-01-BZ

APPLICANT – Eric Palatnik, P.C., for United Talmudical Academy, owner.

SUBJECT – Application November 24, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) to construct a five-story school and synagogue (UG 3 & 4) which expired on November 12, 2006. R5/C2-3 zoning district.

PREMISES AFFECTED – 1275 36th Street, between Clara Street and Louisa Street, Block 5310, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #12BK

26-02-BZ

APPLICANT – Walter T. Gorman, P.E., for ExxonMobil Corporation, owner; A & A Automotive Corporation, lessee. SUBJECT – Application November 23, 2009 – Extension of Time to obtain a Certificate of Occupancy for a Gasoline Service Station (*Mobil*) which expires on January 28, 2010. C1-2/R3X zoning district.

PREMISES AFFECTED – 1680 Richmond Avenue, north west corner of Victory Boulevard, Block 2160, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

265-08-BZ

APPLICANT – Richard Bass, Herrick, Feinstein LLP, for 70 Wyckoff LLC, owner.

SUBJECT – Application December 8, 2009 – 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 December 23, 2009. 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

APPEALS CALENDAR

249-09-A

APPLICANT – Bryan Cave LLP, for 363 Lafayette Street, LLC, owner.

SUBJECT – Application August 27, 2009 – Appeal challenging Department of Building's determination under the Title 28 Section 28-105.9 of the Administrative Code that the permit for the subject premises expired and became invalid because the permitted work or use was not commenced within 12 months from the date of issuance.

PREMISES AFFECTED – 363 Lafayette (371 Lafayette Street, 21 Great Jones Street) east side of Lafayette Street, between Bond and Great Jones Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

262-09-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative Inc., owner; Maria Larkin, lessee.

SUBJECT – Application September 14, 2009 – Reconstruction and enlargement of an existing single family home not fronting on a mapped street contrary to General City Law Section 36 and also the home and private disposal system located within the bed of a mapped street B204th contrary to General City Law Section 35 and Department of Buildings Policy. R4 Zoning District.

PREMISES AFFECTED – 711 Bayside Drive, north side of mapped 204th Street, 28.63' south of Bayside Drive, Block

CALENDAR

16350, Lot 300, Borough of Queens.
COMMUNITY BOARD #14Q

263-09-A

APPLICANT – Joseph A. Sherry, for Breezy Point Cooperative, owner; Michael & Christine Salica, lessees.
SUBJECT – Application September 14, 2009 – Reconstruction and enlargement of an existing single family home not fronting on a mapped street contrary to General City Law Section 36 and also located within the bed of a mapped street (B216th) contrary to General City Law Section 35. R4 Zoning District.
PREMISES AFFECTED – 28 Tioga Walk, west side of Tioga Walk, 18.32' south of paved Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q

265-09-A

APPLICANT – Gary D. Lenhart, for The Breezy Point Cooperative, Incorporated, owner; John Strong, lessee.
SUBJECT – Application September 15, 2009 – Reconstruction and enlargement of an existing single family home and the upgrade of a private disposal system 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 – 165 Ocean Avenue, east side of Ocean Avenue, 130' south of Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.
COMMUNITY BOARD #14Q

Lot 19, Borough of Queens.
COMMUNITY BOARD #9Q

302-09-BZ

APPLICANT – Harold Weinberg, P.E., for Yi Fu Rong, owner.
SUBJECT – Application October 30, 2009 – Special Permit pursuant (ZR §73-50) to permit a building to encroach within the 30 foot open area required at a rear lot line coincident with a residential zoning district boundary line (ZR §43-302). M1-2 zone.
PREMISES AFFECTED – 820 39th Street, south side, 150'0" east of 8th Avenue between 8th Avenue and 9th Avenue, Block 916, Lot 12, Borough of Brooklyn.
COMMUNITY BOARD #12BK

307-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Zahava Hurwitz and Steven Hurwitz, owner.
SUBJECT – Application November 9, 2009 – Special Permit (§73-622) for the enlargement of existing single family home, contrary to open space and floor area (§23-141); side yard (23-461) and less than the required rear yard (§23-47). R-2 zoning district.
PREMISES AFFECTED – 1358-1360 East 28th Street, West side of East 28th Street between Avenue M and Avenue N. Block 7663, Lot 73 & 75, Borough of Brooklyn.
COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

JANUARY 12, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 12, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

271-09-BZ

APPLICANT – Sheldon Lobel, P.C., for 132-40 Metropolitan Realty, LLC, owner; Jamaica Fitness Group, LLC d/b/a Planet Fitness, lessee.
SUBJECT – Application September 21, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (Planet Fitness) on the first, second, and third floors of an existing three-story building. The proposal is contrary to ZR §32-10. C2-3 zoning district.
PREMISES AFFECTED – 132-40 Metropolitan Avenue, between Metropolitan Avenue and Jamaica Avenue, approximately 300 feet east of 132nd Street. Block 9284,

MINUTES

**REGULAR MEETING
TUESDAY MORNING, DECEMBER 8, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

115-53-BZ

APPLICANT – Eric Palatnik, P.C., for Theodoras Zorbas, owner.

SUBJECT – Application July 8, 2009 – Extension of Term and Waiver of the Rules for the continued use of a Gasoline Service Station (*Mobil*) which expired on July 11, 2008. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 252-02 Union Turnpike, southwest corner of Little Neck Parkway, Block 8565, Lot 1, 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 a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for the continued use of a gasoline service station, which expired on July 11, 2008; and

WHEREAS, a public hearing was held on this application on September 22, 2009, after due notice by publication in *The City Record*, with continued hearings on October 20, 2009 and November 17, 2009, and then to decision on December 8, 2009; 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 13, Queens, recommends approval of this application; and

WHEREAS, the site is located on the southwest corner of Union Turnpike and Little Neck Parkway, in a C2-2 (R3-2) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 7, 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 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 April 20, 1999, the Board granted an extension of term for ten years from the expiration of the prior grant, and permitted the replacement of two existing pump islands and dispensers with four new pump islands, the installation of two new canopies over the dispensers, the addition of a 30'-0" curb cut on Union Turnpike, a 30'-0" curb cut on 80th Avenue, and two 30'-0" curb cuts on Little Neck Parkway, and the removal of two existing curb cuts, one located on Union Turnpike and the other on Little Neck Parkway, to expire on July 11, 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 C2 district regulations, and clarify the functionality and purpose for the previously-approved curb cuts; and

WHEREAS, in response, the applicant submitted revised plans and a revised sign analysis confirming that the signage complies with C2 district regulations, and provided a circulation drawing and letter from an engineer establishing that the previously-approved curb cuts are necessary to improve circulation at the site; 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 July 7, 1953, so that as amended this portion of the resolution shall read: "to extend the term for ten years from July 11, 2008, to expire on July 11, 2018; *on condition* that all use and operations shall substantially conform to plans filed with this application marked "Received October 6, 2009"–(5) sheets; and *on further condition*:

THAT the term of the grant shall expire on July 11, 2018;

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

THAT a new certificate of occupancy shall be obtained by June 8, 2010;

THAT signage shall comply with C2-2 zoning district regulations;

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. 420022790)

Adopted by the Board of Standards and Appeals December 8, 2009.

MINUTES

240-55-BZ

APPLICANT – Joseph P. Morsellino, Esq., for DLC Properties LLC, owner; Helms Brother's, lessee.

SUBJECT – Application September 18, 2009 – Extension of Term (§11-411) for the continued operation of a UG16 auto repair shop with sales, exchange of vehicles and products which expired on November 3, 2008. C2-2(R6B) & R-4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard, Northern Boulevard and 208th Street, Block 7305, Lot 19, Borough of Queens.

COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair 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 use of an auto repair shop with sales, exchange of vehicles and products (Use Group 16), which expired on November 3, 2008; and

WHEREAS, a public hearing was held on this application on November 17, 2009 after due notice by publication in *The City Record*, and then to decision on December 8, 2009; and

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

WHEREAS, Community Board 11, Queens, recommends approval of this application, on condition that the applicant complies with the conditions from the previous grant; and

WHEREAS, Councilman Tony Avella provided written testimony in support of this application, on the condition that the applicant comply with the recommendations of the Community Board; and

WHEREAS, the subject site is located on the south side of Northern Boulevard between 208th Street and Oceania Street, partially within a C2-2 (R6B) zoning district and partially within an R4 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 13, 1955 when, under the subject calendar number, the Board granted a variance to permit the reconstruction of an automotive repair facility in a residential zoning district; and

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

WHEREAS, on May 25, 1999, the Board granted an extension of term for ten years from the expiration of the previous grant, and amended the grant to permit the existing opening in the fence between the parking area of the subject site and the owner's property to the east, to expire on

November 3, 2008; and

WHEREAS, on March 6, 2001, the Board granted a special permit to allow the construction of a second floor to the existing commercial building to be occupied by office and storage space; and

WHEREAS, subsequent grants extended the amount of time to complete construction and obtain a certificate of occupancy; and

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

WHEREAS, at hearing, the Board requested that the applicant clarify whether it complies with certain conditions on the Certificate of Occupancy and from the prior grant, specifically the hours of operation, the maintenance of landscaping in accordance with the BSA-approved plans, and the operation of a ventilation system; and

WHEREAS, additionally, the Board asked the applicant to clarify whether the gate was maintained closed; and

WHEREAS, in response, the applicant states that: (1) the hours of operation are Monday through Friday, from 8:00 a.m. to 6:00 p.m., and closed on the weekends; (2) there is no landscaping reflected on the BSA-approved plans and there has never been any landscaping on the site; and (3) the condition for a ventilation system was associated with the prior use of the site, which included body work and paint spraying; and

WHEREAS, the applicant provided a letter from the lessee stating that no body and fender work or painting of vehicles is performed at the site; and

WHEREAS, the applicant confirmed that the gate would remain closed and, as reflected on the plans, the site will not provide access to 45th Road; and

WHEREAS, the Board has determined that the noted modifications to conditions, including a change in the hours from 8:30 a.m. to 5:00 p.m. to the proposed, are appropriate; and

WHEREAS, the Board directed the applicant to obtain a new certificate of occupancy reflecting the current site conditions; 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 December 13, 1955, so that as amended this portion of the resolution shall read: “to extend the term for ten years from November 3, 2008, to expire on November 3, 2018; *on condition* that all use and operations shall substantially conform to plans filed with this application marked “Received September 18, 2009” – (4) sheets; and *on further condition*:

THAT the term of the grant shall expire on November 3, 2018;

THAT no spray-painting shall be performed on site;

THAT the gate shall remain closed and no access shall be provided from the site to 45th Road;

THAT no vehicles shall be parked on the sidewalk;

MINUTES

THAT the premises shall be maintained free of debris and graffiti;

THAT all lighting shall be directed away from residential uses;

THAT the hours of operation shall be Monday through Friday, from 8:00 a.m. to 6:00 p.m., and closed on weekends;

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

THAT a new certificate of occupancy shall be obtained by June 8, 2010;

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

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

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

(DOBApplication No. 420055184)

Adopted by the Board of Standards and Appeals, December 8, 2009.

1715-61-BZ

APPLICANT – Mitchell S. Ross, for 21st Century Cleaners Corporation, owner.

SUBJECT – Application July 17, 2009 – Extension of Term (§11-411) for a dry cleaning establishment (UG 6A), which expired on June 5, 2007; Extension of Time to obtain a certificate of occupancy, which expired on December 14, 2000; Waiver of the Rules. R3X zoning district.

PREMISES AFFECTED – 129-02 Guy R. Brewer Boulevard, a/k/a 129-02 New York Boulevard, south west corner of 129th Avenue and Guy R. Brewer Boulevard, Block 2276, Lot 59, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Mitchell Ross.

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 dry cleaning establishment (Use Group 6A) which expired on June 5, 2007, and an extension of time to obtain a certificate of occupancy, which expired on December 14, 2000; and

WHEREAS, a public hearing was held on this application on October 20, 2009 after due notice by publication in *The City Record*, with a continued hearing on November 17, 2009, and then to decision on December 8,

2009; 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, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of 129th Avenue and Guy R. Brewer Boulevard, within an R3X zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 5, 1962 when, under the subject calendar number, the Board granted a variance to permit the change in use of an existing one-story five-car garage located in a residence use district to retail stores, for a term of 25 years; and

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

WHEREAS, most recently, on December 14, 1999, the Board granted an extension of the term for ten years from the expiration of the previous grant, to expire on June 5, 2007; a condition of the grant was that a certificate of occupancy be obtained by December 14, 2000; and

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

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

WHEREAS, the applicant states that a new certificate of occupancy was not obtained due to an administrative oversight; and

WHEREAS, at hearing, the Board requested that the non-complying signage on the site be removed, and that the 35-ft. curb cut on 129th Avenue be reduced in size; and

WHEREAS, in response, the applicant submitted photographs reflecting the removal of the non-complying signage on the site and provided a revised site plan reflecting that the 35-ft. curb cut on 129th Avenue will be reduced to a width of 20 feet; and

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

WHEREAS, based upon the above, the Board finds 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 June 5, 1962, so that as amended this portion of the resolution shall read: “to extend the term for ten years from June 5, 2007, to expire on June 5, 2017, and to permit an extension of time to obtain a certificate of occupancy, to expire on June 8, 2010; *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 17, 2009”–(1) sheets and “November 16, 2009”–(1) sheet; and *on further condition*:

THAT the term of the grant shall expire on June 5, 2017;

THAT signage shall comply with C1 district regulations;

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

MINUTES

THAT a new certificate of occupancy shall be obtained by June 8, 2010;

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

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

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

(DOB Application No. 402636849)

Adopted by the Board of Standards and Appeals, December 8, 2009.

1016-86-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Opera Owner Incorporated, owner; TSI West 76 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application August 13, 2009 – Extension of Term for a special permit (§73-36) which expired on May 5, 2007 for the operation of a Physical Culture Establishment (*New York Sports Club*); Extension of Time to obtain a Certificate of Occupancy which expired on October 26, 2000; and Waiver of the Rules. C4-6A zoning district.

PREMISES AFFECTED – 2162-2166 Broadway, easterly side of Broadway 26 feet north of West 76th Street, Block 1168, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #7M

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, an extension of term of a previously granted special permit for a physical culture establishment (PCE), which expired on May 5, 2007, and an extension of time to obtain a certificate of occupancy, which expired on October 26, 2000; and

WHEREAS, a public hearing was held on this application on October 20, 2009, after due notice by publication in *The City Record*, with a continued hearing on November 17, 2009, and then to decision on December 8, 2009; 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, Community Board 7, Manhattan, recommends approval of this application; and

WHEREAS, the PCE is located on the east side of Broadway, between West 76th Street and West 77th Street, within a C4-6A zoning district; and

WHEREAS, the site is occupied by a 23-story mixed-use commercial/residential building; and

WHEREAS, the PCE use is located in a portion of the cellar with an entrance on the first floor, and occupies a total floor area of 88 sq. ft. with an additional 5,593 sq. ft. of floor space in the cellar; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 5, 1987 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 5, 1997; and

WHEREAS, on October 26, 1999, the Board granted an extension of the term for ten years from the expiration of the previous grant, to expire on May 5, 2007, and permitted a 731 sq. ft. enlargement of the PCE; a condition of the grant was that a certificate of occupancy be obtained by October 26, 2000; and

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

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

WHEREAS, the applicant states that a new certificate of occupancy was not obtained after the most recent extension of term, due in part to the fact that there are open DOB applications within the building, unrelated to the PCE, which preclude the building as a whole from being able to obtain a certificate of occupancy; and

WHEREAS, accordingly, given the outstanding applications in the building, the applicant seeks two years for the resolution of these matters and to obtain a certificate of occupancy; and

WHEREAS, the Board has determined that this request is appropriate but directs the applicant to secure a temporary certificate of occupancy as soon as possible; and

WHEREAS, at hearing, the Board requested that the applicant clarify the hours of operation for the PCE; and

WHEREAS, in response, the applicant states that the PCE’s hours of operation are Monday through Thursday, from 6:00 a.m. to 9:00 p.m., Friday, from 6:00 a.m. to 7:00 p.m., and Saturday and Sunday, from 8:00 a.m. to 3:00 p.m.; and

WHEREAS, based upon its review of the record, the Board finds the requested extension of term and 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, as adopted on May 5, 1987, so that as amended this portion of the resolution shall read: “to extend the term for a period of ten years from May 5, 2007, to expire on May 5, 2017, and to permit an extension of time to obtain a certificate of occupancy to December 8, 2011; *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 13, 2009”-(2) sheets; and *on further condition*:

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THAT the term of this grant shall expire on May 5, 2017;
THAT the above condition shall appear on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by December 8, 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;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning 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. 120122287)

Adopted by the Board of Standards and Appeals, December 8, 2009.

826-86-BZ, 827-86-BZ and 828-86-BZ

APPLICANT – Eric Palatnik, P.C. for North Shore Tower Apartments, Incorporated, owner; Continental Communications, lessee.

SUBJECT – Application April 3, 2009 – Extension of Term for a Special Permit (§73-11) to allow non-accessory radio towers and transmitting equipment on the roof of a 33-story multiple dwelling (*North Shore Towers*) which expired on March 28, 2008; Extension of Time to obtain a Certificate of Occupancy which expired on March 6, 2003; an Amendment to eliminate the condition that a new Certificate of Occupancy be obtained; and Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 269-10, 270-10, 271-10 Grand Central Parkway, Northeast corner of 26th Street. Block 8489, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Eric Palatnik.

For Opposition: Barbara Leonardi and Dianne Stromfeld.

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 January 26, 2010, at 10 A.M., for decision, hearing closed.

603-86-BZ

APPLICANT – H. Irving Sigman, P.E., for 8826 Parsons LLC, owner.

SUBJECT – Application September 3, 2009 – Extension of Term for a Variance (§72-21) allowing the construction of retail stores (UG 6), which expired on September 8, 2007; Amendment to the accessory open parking area and refuse area and request to eliminate the term; Waiver of the Rules. R7A (Downtown Jamaica Special District) zoning district.

PREMISES AFFECTED - 88-34 Parsons Boulevard, a/k/a 88-26/34 Parsons Boulevard. North west corner of Parsons Boulevard and 89th Avenue, Block 9762, Lot 41, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: H. Irving Sigman and Barney Sigman.

ACTION OF THE BOARD – Laid over to January 26, 2010, at 10 A.M., for continued hearing.

813-87-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Gwynne Five LLC, owner; TSI Cobble Hill LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 8, 2009 – Extension of Term for a special permit (§73-36) which expired on April 12, 2008 for the operation of a Physical Culture Establishment (*New York Sports Club*); Waiver of the Rules. C2-3 (R6) zoning district.

PREMISES AFFECTED – 110 Boerum Place, Westerly side of Boerum Place 0 feet northerly of Dean Street, Block 279, Lot 1, Borough of Brooklyn

COMMUNITY BOARD #2BK

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to January 26, 2010, at 10 A.M., for continued hearing.

21-91-BZ

APPLICANT – Sheldon Lobel, P.C., for Hadarth Latchininarain, owner.

SUBJECT – Application September 21, 2009 – Extension of Term (§72-01 & §72-22) of a previous variance that permits the operation of an automotive glass and mirror repair establishment (UG 7D) and used car sales (UG 16B) which expired on July 24, 2009; Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, located on the northern corner corner of Linden Boulevard and Montauk Avenue, Block 4478, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Josh Rhinesmith.

For Opposition: Ronald J. Dillon.

ACTION OF THE BOARD – Laid over to January 26, 2010, at 10 A.M., for continued hearing.

75-95-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for The Ruprert Yorkville Towers Condominium, owner; TSI East 91 d/b/a New York Sports Club, lessee.

SUBJECT – Application October 8, 2009 – Extension of Term for a special permit (§73-36) which expired on January 28, 2006 for the operation of a Physical Culture

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Establishment (*New York Sports Club*); Waiver of the Rules. C2-8 zoning district.

PREMISES AFFECTED – 1635 Third Avenue, Easterly side of Third Avenue between East 91st Street and East 92nd Street. Block 1537, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 10 A.M., for continued hearing.

217-96-BZ

APPLICANT – Joseph P. Morsellino, for Silverbell Investments, owner; Enterprise Rent a Car, lessee.

SUBJECT – Application September 15, 2009 – Extension of Term of a previously granted Variance (§72-21) for the continued use of an existing car rental facility (*Enterprise*) with accessory outdoor storage of rental cars (UG 8) which expired on October 7, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on October 7, 1998; and Waiver of the Rules. C1-2/R-2 zoning district.

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

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

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 January 12, 2010, at 10 A.M., for decision, hearing closed.

136-01-BZ

APPLICANT – Eric Palatnik, P.C., for Cel-Net Holding, Incorporated, owner.

SUBJECT – Application April 25, 2008 – Extension of Time to complete construction and obtain a Certificate of Occupancy for a Variance (§72-21) which permitted non-compliance in commercial floor area and rear yard requirements; Amendment to reduce amount of commercial floor area; Waiver of the Rules. M1-4/R7A (Hunters Point Subdistrict) zoning district.

PREMISES AFFECTED – 11-11 44th Drive, Northside between 11th and 21st Streets. Block 447, Lot 13, Borough of Queens.

COMMUNITY BOARD #2Q

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 January 12, 2010, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

241-09-BZY

APPLICANT – Gouranga Kundu, for 170-22 93rd Property LLC, owner.

SUBJECT – Application August 12, 2009 – Extension of time to complete construction of a minor development (§11-332) commenced under the prior R6 Zoning district. R4-1 Zoning District.

PREMISES AFFECTED – 87-26 175th Street, (aka 88-04 175th Street) west side of 175th Street, 100' north of corner of 89th Avenue and 175th Street, Block 9830, Lot 41, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Gouranga Kundu.

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; and

WHEREAS, a public hearing was held on this application on November 10, 2009, after due notice by publication in *The City Record*, and then to decision on December 8, 2009; and

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

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of 175th Street, between 89th Avenue and Warwick Crescent, in an R4-1 zoning district; and

WHEREAS, the subject site has 60 feet of frontage along 175th Street, a depth of 140 feet, and a total lot area of 8,400 sq. ft.; and

WHEREAS, the site is proposed to be developed with a seven-story mixed-use residential/community facility building (the "Building"); and

WHEREAS, the Building is proposed to have a total floor area of 27,141 sq. ft. (3.2 FAR); and

WHEREAS, the development complies with the former R6 zoning district parameters; and

WHEREAS, however, on September 10, 2007 (hereinafter, the "Enactment Date"), the City Council voted to adopt The Jamaica Plan Rezoning, which rezoned the site from R6 to R4-1; and

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WHEREAS, on June 28, 2007, New Building Permit No. 402592191-01-NB (hereinafter, the "New Building 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

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 October 22, 2009, DOB stated that the New Building 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 New Building 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 September 10, 2009 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes: 100 percent of the superstructure; 100 percent of the water main and sewer work; 87 percent of steel work, balconies and stairs; 85 percent of the masonry; 40 percent of the rough framing; 24 percent of the plumbing work; and two percent of the electrical work; 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 New Building Permit; a breakdown of the construction costs by line item and percent complete; an affidavit from the general contractor enumerating the completed work; copies of cancelled checks; invoices; and photographs of the building's interior and exterior; 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 September 10, 2009; and

WHEREAS, the Board notes that, based on visual inspections, a substantial amount of physical construction has been completed; and

WHEREAS, as to costs, the applicant represents that

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the total expenditures paid for the development are \$1,414,183, or approximately 46 percent of the \$3,074,374 cost to complete; and

WHEREAS, as noted, the applicant has submitted copies of cancelled checks and invoices; 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. 402592191-01-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 December 8, 2011.

Adopted by the Board of Standards and Appeals, December 8, 2009.

243-09-BZY

APPLICANT – Gouranga C. Kundu, for Azharul Islam, owner.

SUBJECT – Application August 19, 2009 – Application to complete construction of a minor development (§11-332) commenced under the prior R6 zoning district. R4-1 zoning district.

PREMISES AFFECTED – 87-12 175th Street, corner of 175th Street and Warwick, Block 9830, Lot 32, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Gouranga C. Kundu.

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; and

WHEREAS, a public hearing was held on this

application on November 11, 2009, after due notice by publication in *The City Record*, and then to decision on December 8, 2009; and

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

WHEREAS, Community Board 12, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of 175th Street and Warwick Crescent, in an R4-1 zoning district; and

WHEREAS, the subject site has 39 feet of frontage along 175th Street, a depth of 110 feet, and a total lot area of 5,427 sq. ft.; and

WHEREAS, the site is proposed to be developed with a seven-story mixed-use residential/community facility building (the “Building”); and

WHEREAS, the Building is proposed to have a total floor area of 20,394 sq. ft. (3.75 FAR); and

WHEREAS, the development complies with the former R6 zoning district parameters; and

WHEREAS, however, on September 10, 2007 (hereinafter, the “Enactment Date”), the City Council voted to adopt The Jamaica Plan Rezoning, which rezoned the site from R6 to R4-1; and

WHEREAS, on April 25, 2007, New Building Permit No. 402527262-01-NB (hereinafter, the “New Building 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

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

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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 September 2, 2009, DOB stated that the New Building 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 New Building 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 September 10, 2009 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New

Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes: 30 percent of the superstructure; 20 percent of the steel work and stairs; 15 percent of the masonry; and three percent of the plumbing work; 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 New Building Permit; a breakdown of the construction costs by line item and percent complete; an affidavit from the general contractor enumerating the completed work; copies of cancelled checks; invoices; and photographs of the building’s interior and exterior; 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 September 10, 2009; and

WHEREAS, the Board notes that, based on visual inspections, a substantial amount of physical construction has been completed; and

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are \$352,315, or 15 percent, of the \$2,336,238 cost to complete; and

WHEREAS, as noted, the applicant has submitted copies of cancelled checks and invoices; 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. 402527262-01-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 December 8, 2011.

Adopted by the Board of Standards and Appeals, December 8, 2009.

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301-09-BZY

APPLICANT – Nelson A. Padilla, for Nelson A. Padilla, owner.

SUBJECT – Application October 29, 2009 – Extension of time (§ 11-332) to complete construction of an enlargement commenced prior to the text amendment on September 30, 2009. R6B Zoning district.

PREMISES AFFECTED – 539 59th Street, 320' north from 5th Avenue, Block 856, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEARANCES –

For Applicant: Nelson A. Padilla.

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 renew a building permit and extend the time for the completion of a one-story enlargement to an existing three-story residential building; and

WHEREAS, a public hearing was held on this application on November 24, 2009, after due notice by publication in *The City Record*, and then to decision on December 8, 2009; and

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

WHEREAS, Community Board 7, Brooklyn, provided written testimony stating that in the absence of its public hearing and vote, it cannot take an official position, yet it requests that the Board consider the applicant's hardship when making a determination; and

WHEREAS, the subject site is located on the north side of 59th Street, between Fifth Avenue and Sixth Avenue, within an R6B zoning district; and

WHEREAS, the subject site has 20 feet of frontage along 59th Street, a depth of approximately 100 feet, and a total lot area of 2,004 sq. ft.; and

WHEREAS, the subject site is currently occupied by a three-story residential building with a floor area of 2,900 sq. ft. (1.45 FAR); and

WHEREAS, the applicant proposes to construct a one-story enlargement which will result in a total building floor area of 3,800 sq. ft. (1.9 FAR) and a maximum base height of 45 feet (the post-enlargement building is the "Building"); and

WHEREAS, the enlargement complies with the former R6B zoning district parameters; and

WHEREAS, on May 28, 2009, Alteration Permit No. 310217903-01-AL (hereinafter, the "A1 Permit") was issued by the Department of Buildings ("DOB") permitting construction of the proposed enlargement; and

WHEREAS, however, on September 30, 2009 (hereinafter, the "Enactment Date"), the City Council voted to

adopt the subject zoning text amendment (the "Text Amendment"), which restricts the maximum base height to 40 feet; and

WHEREAS, the applicant represents that the Building complies with the former R6B zoning district parameters; specifically, the proposed maximum base height of 45'-0"; and

WHEREAS, applicant states that the Building would not comply with the provision of the R6B regulations limiting the base height to a maximum of 40'-0"; and

WHEREAS, because the Building violated this provision of the R6B zoning district as of the Enactment Date, the A1 Permit lapsed by operation of law; and

WHEREAS, additionally, DOB issued a Stop Work Order on October 7, 2009 halting work on the Building; and

WHEREAS, the applicant now applies to the Board to reinstate the A1 Permit pursuant to ZR § 11-332, so that the proposed enlargement may be fully constructed under the prior R6B zoning district parameters; and

WHEREAS, ZR § 11-30 et seq. sets forth the regulations that apply to the subject application for a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, ZR § 11-31(c)(3) defines construction such as the proposed enlargement as "other construction"; and

WHEREAS, for "other construction," an extension of time to complete construction may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: "[F]or other construction if construction has not been completed on the effective date of any applicable amendment, the building permit shall automatically lapse and the right to continue construction shall terminate. An application 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...one term of not more than three months for other construction. In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit"; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) reads: "For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, by letter dated November 13, 2009, DOB

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stated that the A1 Permit was lawfully issued, authorizing construction of the proposed enlargement prior to the Enactment Date; and

WHEREAS, the Board has reviewed the record and agrees that the A1 Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date; 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, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of an enlargement; and

WHEREAS, the Board 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 performed prior to the Enactment Date; and

WHEREAS, work performed subsequent to the Enactment Date and prior to the issuance of the Stop Work Order on October 7, 2009, cannot be considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the A1 Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed enlargement subsequent to the issuance of the A1 Permit includes: 100 percent of structural steel, exterior framing, plumbing, windows, doors, and chimney; and 95 percent of masonry, roofing, and stairs; and

WHEREAS, in support of this statement the applicant has submitted the following: approved building plans; a construction timeline and breakdown of the percentage completed; invoices; copies of cancelled checks; and photographs of the interior and exterior of the site, reflecting that the building envelope and much of the interior work is complete; 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 September 30, 2009; and

WHEREAS, the Board notes that, based on visual inspections, a substantial amount of physical construction has been completed; and

WHEREAS, the applicant represents that construction can be completed within one or two days; and

WHEREAS, as to costs, the applicant states that from the date of the issuance of the A1 Permit to the Enactment Date, the total expenditures for the enlargement represent approximately \$127,870 or 80 percent of the \$160,000 cost to complete; and

WHEREAS, the applicant asserts that this percentage

constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, as noted, the applicant has submitted invoices and copies of cancelled checks; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that this percentage of expenditure is substantial and meets the finding set forth at ZR § 11-332; and

WHEREAS, additionally, based upon its consideration of the arguments made by the applicant, as well as its consideration of the entire record, the Board finds that substantial construction was completed and substantial expenditures were made since the issuance of the permit; 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 permit, and all other permits necessary to complete the proposed enlargement; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a three-month 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 Permit No. 310217903-01-AL, as well as all related permits for various work types, either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed enlargement and obtain a certificate of occupancy for one term of three months from the date of this resolution, to expire on March 8, 2010.

Adopted by the Board of Standards and Appeals, December 8, 2009.

199-09-A thru 213-09-A

APPLICANT – Eric Palatnik, P.C., for Gino Savo, owner.
SUBJECT – Application June 29, 2009 – Proposed construction of 15, two-story, one family homes not fronting on a mapped street, contrary to General City Law Section 36. R3A /R3-2 Zoning District.

PREMISES AFFECTED – 165, 161, 159, 155, 153, 151, 149, 145, 143, 141, 137, 135, 131, 129, 127, Roswell Avenue, Block 2641, Lot 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, Borough of Queens.

COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 10 A.M., for continued hearing.

257-09-BZY & 258-09-BZY

APPLICANT – Gouranga C. Kundu, for Isteak Rum, owner.
SUBJECT – Application September 9, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 Zoning District. R5 Zoning District.

MINUTES

PREMISES AFFECTED – 88-36 & 88-38 144th Street,
86.63' from corner of 88th Road and 144th Street, Block
9683, Lot 15 & 16, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Gouranga Kundu.

ACTION OF THE BOARD – Laid over to January
26, 2010, at 10 A.M., for continued hearing.

259-09-BZY & 261-09-BZY

APPLICANT – Gouranga C. Kundu, for Isteak Rum, owner.
SUBJECT – Application September 9, 2009 – Extension of
time (§11-332) to complete construction of a minor
development commenced under the prior R6 Zoning district.
R5 Zoning District.

PREMISES AFFECTED – 139-48 88th Road, 88-30 144th
Street and 88-34 144th Street, corner of 88th Road and 144th
Street, Block 9683, Lot 13 & 14, Borough of Queens.

COMMUNITY BOARD #12Q

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January
26, 2010, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, DECEMBER 8, 2009
1:30 P.M.**

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

ZONING CALENDAR

100-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) for the construction of a two-story with basement single family residence, contrary to front yard regulations (§23-45) and within the bed of a mapped, un-built street, contrary to General City Law Section 35. R2 zoning district.

PREMISES AFFECTED – 205 Wolverine Street, northwest of intersection of Wolverine Street and Thomas Street, Block 4421, Lot 167, Borough of Staten Island.

COMMUNITY BOARD #3SI

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 Staten Island Borough Commissioner, dated March 19, 2008, acting on Department of Buildings Application No. 510016304, reads in pertinent part:

“Front yard is deficient as per New York City Zoning Resolution section 23-45. Therefore Board of Standards and Appeals approval is required for the variance;” and

WHEREAS, this is an application under ZR § 72-21, to permit, within an R2 zoning district, the proposed construction of a two-story single-family home that does not provide the required front yards, contrary to ZR § 23-45; and

WHEREAS, the applicant filed a companion case under BSA Calendar No. 101-08-A pursuant to Section 35 of the General City Law, to allow the proposed building to be constructed within the bed of a mapped street; this application was granted on the date hereof and is addressed within a separate resolution; and

WHEREAS, a public hearing was held on this application on May 19, 2009 after due notice by publication in *The City Record*, with continued hearings on July 14, 2009, August 18, 2009, October 6, 2009, and October 27, 2009, and then to decision on December 8, 2009; 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, City Councilmember James S. Oddo provided testimony in opposition to this application; and

WHEREAS, the Richmondtown and Clarke Avenue Civic Association 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 the proposal are the “Opposition;” and

WHEREAS, specifically, the Opposition raised the following primary concerns: (1) the proposed home is not compatible with neighborhood character; (2) the site should remain vacant for common open space; and (3) the claimed hardship was self-created based on the purchase of the lot; and

WHEREAS, the site is located on the southwest corner of Wolverine Street and Thomas Street, within an R2 zoning district; and

WHEREAS, the site has 30’-6” of frontage on Wolverine Street, 101’-9” on Thomas Street, and a total lot area of 3,080.5 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story single-family home; and

WHEREAS, the proposed home will have the following complying parameters: 1,502 sq. ft. of floor area (0.49 FAR); an open space ratio of 154 percent; a side yard with a width of 5’-0” along the southern lot line; a front yard with a depth of 20’-0” along the eastern lot line; a rear yard with a depth of 35’-5” along the western lot line; a wall height of 23’-9”; and a total height of 33’-6”; and

WHEREAS, however, the applicant proposes to provide a front yard with a depth of 5’-0” along the northern lot line (two front yards with minimum depths of 15’-0” each are required); 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, the applicant provided a title search and 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 adjoining lot; 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 front yard objection; and

WHEREAS, the applicant states that front yard relief is necessary for reasons stated below; thus, the instant application was filed; and

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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 front yard waiver is necessary to develop the site with a habitable home; and

WHEREAS, specifically, the applicant represents that the pre-existing lot width of 30'-6" 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 15 feet each; and

WHEREAS, the applicant further states that the building would be left with an exterior width of approximately 10'-0" if front yard regulations were complied with fully; and

WHEREAS, the applicant represents that a complying home would therefore have unreasonably narrow rooms and no interior corridors; and

WHEREAS, accordingly, the applicant represents that the front yard waiver is necessary to create a home of a reasonable width; and

WHEREAS, the applicant submitted a radius diagram reflecting that every developed lot within a 400-ft. radius of the subject site has a lot width of at least 40 feet, and the subject site is one of only two vacant lots within that radius; and

WHEREAS, based upon the above, the Board finds that the cited unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable front yard regulations; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that compliance with applicable zoning regulations will result in a habitable home; and

WHEREAS, the applicant represents that the proposed variance will not negatively affect the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that the surrounding neighborhood is characterized by single-family 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; and

WHEREAS, specifically, the applicant notes that the proposed home complies with the R2 zoning district regulations for use, FAR, side yards, rear yards, open space ratio, height, and parking; 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 Opposition contended that the applicant's hardship was instead created by its purchase of the subject lot, which requires the requested variance to build a habitable home; and

WHEREAS, the Board notes that the (d) finding under ZR § 72-21 specifies that the purchase of a zoning lot subject to the cited hardship shall not constitute a self-created hardship; 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 R2 zoning district, a two-story single-family home that does not provide the required front yards, contrary to ZR § 23-45; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received February 6, 2009"- (5) sheets and "August 11, 2009"-(6) sheets; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum floor area of 1,502 sq. ft. (0.49 FAR), an open space ratio of 154 percent, a side yard with a width of 5'-0" along the southern lot line; a front yard with a depth of 20'-0" along the eastern lot line; a front yard with a depth of 5'-0" along the northern lot line; a rear yard with a depth of 35'-5" along the western lot line; a wall height of 23'-9"; a total height of 33'-6"; 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 if required, a Builder's Pavement Plan shall be filed and approved by DOT prior to the issuance of a building permit;

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

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

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, December 8, 2009.

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101-08-A

APPLICANT – Rothkrug, Rothkrug & Spector, LLP, for Cee Jay Real Estate Development Company, owner.

SUBJECT – Application April 21, 2008 – Variance (§72-21) for the construction of a two-story with basement single family residence, contrary to front yard regulations (§23-45) and within the bed of a mapped, un-built street, contrary to General City Law Section 35. R2 zoning district.

PREMISES AFFECTED – 205 Wolverine Street, northwest of intersection of Wolverine Street and Thomas Street, Block 4421, Lot 167, Borough of Staten Island.

COMMUNITY BOARD #3SI

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 Staten Island Borough Commissioner, dated March 19, 2008, acting on Department of Buildings Application No. 510016304, reads in pertinent part:

“Proposed construction is located within the bed of a mapped street contrary to Section 35 of the General City Law. Therefore Board of Standards and Appeals approval is required;” and

WHEREAS, this is an application to permit the proposed construction of a single-family home located within the bed of a mapped street, Thomas Street, contrary to Section 35 of the General City Law; and

WHEREAS, the applicant filed a companion case under BSA Calendar No. 100-08-BZ pursuant to ZR § 72-21 to permit the proposed building, contrary to ZR § 23-45; this application was granted the date hereof and is addressed within a separate resolution; and

WHEREAS, a public hearing was held on this application on May 19, 2009, after due notice by publication in the *City Record*, with continued hearings on July 14, 2009, August 18, 2009, October 6, 2009 and October 27, 2009, and then to decision on December 8, 2009; 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 disapproval of this application; and

WHEREAS, City Councilmember James S. Oddo provided testimony in opposition to this application; and

WHEREAS, the Richmondtown and Clarke Avenue Civic Association 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 the proposal are the “Opposition;” and

WHEREAS, specifically, the Opposition raised the following primary concerns: (1) the proposed home is not compatible with neighborhood character; (2) the site should remain vacant for common open space; and (3) the claimed hardship was self-created based on the purchase of the lot; and

WHEREAS, by letter dated August 5, 2008, the Fire Department states that it has reviewed the subject proposal and has no objections; and

WHEREAS, by letter dated June 16, 2008, the Department of Environmental Protection (“DEP”) states that there is an existing ten-inch diameter sanitary sewer and an eight-inch diameter water main in the bed of Thomas Street between Wolverine Street and Amber Street, and an existing manhole on ten-inch diameter sanitary sewer at the southwest corner of Thomas Street and Wolverine Street; and

WHEREAS, DEP further states that as per Drainage Plan No. D-3(S-2), sheet 2 of 2, dated November 25, 1979, there is a future ten-inch diameter sanitary sewer and 12-inch diameter storm sewer in Thomas Street between Wolverine Street and Amber Street; and

WHEREAS, DEP further states that it requires the applicant to submit a survey/plan showing the following: (i) the mapped width of Thomas Street between Wolverine Street and Amber Street and the remaining width of the street; and (ii) the distance from the terminal manholes on the ten-inch diameter sanitary sewers in Thomas Street from the end caps of the eight-inch diameter city water main in Thomas Street to the lot lines of Lot 167; and

WHEREAS, in response, the applicant submitted a revised survey reflecting a 60’-0” wide mapped street and a 30’-0” width of the property in the bed of Thomas Street, with the remaining 30’-0” width of the traveled portion of the street accessible for the construction, maintenance and/or reconstruction of the existing ten-inch diameter sanitary sewer, the eight-inch diameter city water main and the 12-inch diameter future storm sewer; and

WHEREAS, by letter dated March 10, 2009, DEP states that it has reviewed the revised survey and has no further objections; and

WHEREAS, by letter dated November 6, 2008, the Department of Transportation (“DOT”) states that Thomas Street between Wolverine Street and Amber Street is mapped to a 60’-0” width, that a Corporation Council Opinion of Dedication for approximately 220’-0” from the intersection of Thomas Street and Amber Street was issued on May 5, 1992, and that the City does not have title for the remaining portion of Thomas Street; and

WHEREAS, DOT further states that it requires that a cul-de-sac be constructed at the dead end of Thomas Street per American Association of State Highway and Transportation Officials (“AASHTO”) standards for dead-end streets, because this street is more than 200’-0” from dead end to the closest intersection, which is Amber Street; and

WHEREAS, in response, the applicant contends that constructing a cul-de-sac at this location is not feasible due to a significant change in grade in the vicinity of the retaining wall at the northwest corner of the subject site; and

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WHEREAS, by letter dated June 15, 2009, DOT reiterated that a cul-de-sac or alley should be constructed based on safety and guidelines for dead-end streets; and

WHEREAS, in response, the applicant submitted two alternate Builders Pavement Plans which indicate that a cul-de-sac constructed according to AASHTO standards would extend into the neighboring properties along Thomas Street, requiring the City to acquire a portion of these properties to accommodate the turn around; and

WHEREAS, the Builders Pavement Plans further indicate that the existing elevations at the dead-end of Thomas Street result in a pavement surface gradient of 11 percent, which is greater than the ten percent maximum accepted by DOT and the five percent maximum slope along a residential street pursuant to AASHTO standards; and

WHEREAS, the applicant states that a cul-de-sac at the subject location is further unwarranted because all of the existing adjacent homes front upon open roadways and have vehicular access from a paved street; thus, the installation of a cul-de-sac would serve no functional purpose for any of the surrounding homes; and

WHEREAS, by letter dated December 3, 2009, DOT states that it has no objections to the proposal provided the development plan for the proposed site meets the requirements of the Builder's Pavement Plan for the remaining 30-ft. portion of Thomas Street between Wolverine Street and Amber Street; 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 Staten Island Borough Commissioner, dated March 19, 2008, acting on Department of Buildings Application No. 510016304, 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 11, 2009" – (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 if required, a Builder's Pavement Plan shall be filed and approved by DOT prior to the issuance of a building permit;

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

THAT 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, December 8, 2009.

171-08-BZ

APPLICANT – Law Offices of Howard Goldman, LLC, for York Prep Realty, LLC., owner.

SUBJECT – Application June 26, 2008 – Variance (§72-21) to allow the enlargement of an existing school (*York Prep*) contrary to ZR §74-95 (City Planning Commission Housing Quality Special Permit). R8 zoning district.

PREMISES AFFECTED – 40 West 68th Street, between Central Park West and Columbus Avenue, Block 1120, Lot 48, Borough of Manhattan.

COMMUNITY BOARD #7M

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, the decision of the Manhattan Borough Commissioner, dated June 8, 2009, acting on Department of Buildings Application No. 103217573, reads, in pertinent part:

"Property is subject to City Planning Commission Housing Quality Special Permit (C840206ZSM, approved 2/1/84). Proposed plans are not permitted pursuant to ZR 74-95 and require a variance from the Board of Standards and Appeals"; and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site in an R8 zoning district within the Upper West Side-Central Park West Historic District, the enlargement of a five-story and cellar educational facility (Use Group 3), which is contrary to ZR § 74-95; and

WHEREAS, a public hearing was held on this application on October 6, 2009, after due notice by publication in the *City Record*, with a continued hearing on November 10, 2009, and then to decision on December 8, 2009; 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, Community Board 7, Manhattan, recommends approval of the application; and

WHEREAS, residents of the adjacent building to the rear of the site, represented by counsel, provided written testimony in opposition to the original proposal (the "Opposition"), citing concerns with the effect of the original proposal on the light and air of the adjacent building to the rear; and

WHEREAS, the applicant revised its plans to reduce the bulk of the enlargement, in response to the Opposition's concerns; and

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WHEREAS, this application is brought on behalf of the York Preparatory School (the "School"); and

WHEREAS, the site is located on the south side of West 68th Street between Columbus Avenue and Central Park West; and

WHEREAS, the applicant notes that the site is a single zoning lot consisting of two separate tax lots: (1) Tax Lot 48 is situated on the eastern portion of the site, where the subject five-story and cellar school building is located; and (2) Tax Lot 51 is situated on the western portion of the site, where an 11-story residential building (the "Residential Building") is located; and

WHEREAS, the zoning lot has a rectangular shape with approximately 154 feet of frontage on West 68th Street, a depth of 100 feet, and a total lot area of 15,464 sq. ft.; Tax Lot 48, the subject tax lot, has approximately 77'-3" of frontage on West 68th Street, a depth of 100 feet, and a total lot area of 7,757 sq. ft.; and

WHEREAS, the applicant states that in 1984, the City Planning Commission ("CPC") approved a special permit pursuant to ZR § 74-95 ("Housing Quality Developments") to modify the requirements for building height and setback, open space, and distance between buildings in connection with the development of the Residential Building on the subject zoning lot (the "Special Permit"); and

WHEREAS, the applicant further states that the Special Permit limited development of both Lot 48 and Lot 51 to the approved plans and required that any alteration to the plans be approved by the CPC; and

WHEREAS, however, Housing Quality was eliminated from the Zoning Resolution and replaced by Quality Housing in 1987, and ZR § 74-95 was amended to permit modification of Housing Quality special permits granted before August 14, 1987, but excludes certain kinds of modifications, including: an increase in floor area, the extension of the location of exterior walls, or an increase in the portion of the zoning lot covered by the building; and

WHEREAS, the applicant notes that, although the proposed enlargement creates an additional 855 sq. ft. of floor area, a waiver of the Special Permit's prohibition on increasing floor area is not required due to the reduction in floor area that resulted from the removal of the first floor auditorium for the creation of a two-story cellar gymnasium pursuant to a 1997 alteration to the School; thus, the proposed floor area is actually less than what was approved pursuant to the Special Permit; and

WHEREAS, however, the applicant proposes to extend the location of the exterior walls and increase the portion of the zoning lot covered by the building; and

WHEREAS, the applicant initially sought relief from the Department of City Planning ("DCP"); and

WHEREAS, by letter to the applicant dated July 23, 2007, DCP states that the findings of ZR § 74-95 would not be met by the proposed enlargement, and therefore a variance would be required in order to develop the proposed enlargement; and

WHEREAS, by letter to the Opposition dated December 23, 2008, DCP added that its determination that a variance is

the appropriate means of modifying the Special Permit does not set improper precedent because the provision allowing modification of the Special Permit specifically prohibits the CPC from permitting the proposed modifications; and

WHEREAS, further, DCP states that since no relief is available from CPC, the applicant should not be precluded from seeking relief elsewhere; and

WHEREAS, DCP distinguishes the subject application from those where the CPC may modify a special permit condition as proposed and thus relief from the Board is not necessary or appropriate; and

WHEREAS, the Board agrees with DCP that this case, involving a discontinued program and an amended special permit is a rare example of when a variance is an appropriate means of modifying a special permit under CPC's jurisdiction and there is limited applicability of such practice; and

WHEREAS, further, the Board notes that the proposed enlargement, which does not create any new non-compliance, is within the spirit of the Special Permit; and

WHEREAS, because the site is also located within the Upper West Side-Central Park West Historic District, the applicant has obtained a Certificate of Appropriateness from the Landmarks Preservation Commission ("LPC") for the proposed development, dated October 5, 2009; and

WHEREAS, the School proposes to construct a side and rear enlargement to the cellar and first floor; and

WHEREAS, the School currently occupies 25,799 sq. ft. of floor area; the proposed enlargement will add 855 sq. ft. of floor area at the first floor and an additional 1,510 sq. ft. of floor space at the cellar, for a total floor area of 26,654 sq. ft.; and

WHEREAS, the applicant initially proposed to construct an enlargement with a floor area of 2,424 sq. ft., for a total floor area of 28,226 sq. ft.; and

WHEREAS, in response to concerns raised by the Opposition, the applicant revised its plans to eliminate the second floor of the enlargement on the west side of the building and set back the first floor of the enlargement on both sides of the building a distance of ten feet from the rear lot line, thereby reducing the floor area of the enlargement to 855 sq. ft.; and

WHEREAS, the enlargement will be occupied by (1) a classroom, office, health care office, seating area, and circulation space at the cellar; and (2) a classroom and circulation space on the first floor; and

WHEREAS, the applicant states that the following are the programmatic needs of the School: (1) additional classroom space for Jump Start, the School's special education program; (2) a health care office to support health care services for the faculty, students and parents; and (3) additional seating within the gymnasium; and

WHEREAS, in order to meet its programmatic needs, the applicant seeks a variance pursuant to ZR § 72-21; and

WHEREAS, the applicant states that the School is a member of the Middle States Association of Colleges and Schools ("Middle States"), a non-governmental, voluntary organization of educational institutions that establishes criteria, evaluates, and accredits member institutions; and

WHEREAS, the applicant further states that in 2003,

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Middle States evaluated the School's program and reviewed every component of the School to be utilized in the accreditation process; and

WHEREAS, the Middle States report identified a lack of classroom space for the School's special education program, the need for a health office, and insufficient seating in the gymnasium; and

WHEREAS, as to the need for classroom space, the applicant states that approximately 25 percent of students receive special education through the School's Jump Start program, which assists students with specific learning disabilities in language processing, reading, writing, math, time management skills and organizational skills; and

WHEREAS, the applicant further states that 11 faculty members provide assistance to approximately 100 students in the Jump Start program, and that due to a lack of classrooms the services are provided in small shared settings; and

WHEREAS, the applicant represents that there is a programmatic need for additional classroom space so that teachers do not have to share a room with other teachers while working with students in the Jump Start program; and

WHEREAS, as to the need for a health care office, the applicant states that the School does not have a dedicated health care office, and health care services are currently provided in a portion of the gym; and

WHEREAS, the applicant further states that the current design does not afford an appropriate degree of privacy for students; and

WHEREAS, the applicant represents that the proposed enlargement would satisfy the programmatic need for a health office with the materials and resources needed to support health care services for the faculty, students, and parents; and

WHEREAS, as to the need for additional seating in the gymnasium, the applicant represents that the current number of seats within the gymnasium is inadequate, and the Middle States evaluation identified a need for additional seating; and

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 the unique configuration of the existing building and the existence of a special permit under a discontinued program that cannot be modified create an unnecessary hardship in developing the site in compliance with applicable regulations; and

WHEREAS, as to the configuration of the existing building, the applicant states that the unique shape of the building results in two trapezoidal open areas beginning approximately one-third of the distance from the street on each side lot line and wrapping around the corners of the rear yard,

resulting in a combination of triangle and L-shaped open space; and

WHEREAS, the applicant represents that an architectural analysis identified these side and rear open areas as the only feasible expansion option; and

WHEREAS, the applicant further represents that filling in this irregularly shaped area with viable education space presents a significant architectural challenge, and that the building's location within the historic district further constrains the ability to enlarge the building; and

WHEREAS, the applicant states that there is no as-of-right alternative to enlarge this building because ZR § 74-95 does not permit any modification of the Special Permit that would increase floor area, expand the exterior walls or increase the portion of the zoning lot covered by a building; and

WHEREAS, the applicant represents that an as-of-right enlargement is not possible under these limitations; and

WHEREAS, the applicant states that, but for the existence of the Special Permit, the proposed enlargement would be as-of-right; and

WHEREAS, the applicant represents that the requested waivers of the Special Permit's lot coverage and open space restrictions are necessary in order to satisfy the programmatic needs of the School; 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 not a non-profit educational 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 represents that the subject variance is necessary to ensure the continuation and future academic success of the School and to remain competitive with similar institutions; and

WHEREAS, specifically, the applicant states the requested variance is needed to provide additional classroom space to the Jump Start program, which accounts for \$2.8 million, or approximately 30 percent, of the School's annual revenue; and

WHEREAS, the applicant represents that the inability to meet the Jump Start program's programmatic need for additional classroom space would threaten the long-term viability of the Jump Start program and the revenues it generates; and

WHEREAS, the applicant further represents that the School's annual income is approximately \$8.4 million and its operating expenses, including salaries and scholarships, are more than \$7.5 million per year; and

WHEREAS, the applicant notes that without the Jump Start program, the School's annual income would be reduced to

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approximately \$5.6 million; thus, any significant loss of tuition revenues associated with Jump Start would threaten the School's financial viability; and

WHEREAS, based upon the above, the Board has determined that there is no reasonable possibility that 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, the applicant represents that the land uses surrounding the site are characterized by a mix of residential, commercial, and community facility uses; and

WHEREAS, the applicant states that the proposed enlargement consists of a small expansion of an existing school, with no increase in height, which will be located behind the street wall and therefore not visible from the street; and

WHEREAS, the applicant further states that the Residential Building does not have any windows on its western wall facing the portion of the subject site where the proposed enlargement will be located, and the height of the enlargement was reduced to one-story adjacent to the Residential Building; and

WHEREAS, the applicant also reduced the enlargement from two stories to one-story adjacent to the synagogue to the east so as not to obstruct a stained glass window; and

WHEREAS, additionally, the applicant has agreed to backlight the synagogue's affected lower level window; and

WHEREAS, as discussed above, the applicant notes that the proposed enlargement would be permitted as-of-right if not for the Special Permit which prohibits the expansion of exterior walls and increase in the portion of the zoning lot covered by the building; 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; and

WHEREAS, as to the minimum variance, as noted above, the applicant revised the proposal to eliminate the second floor of the enlargement on the west side of the building and set back the first floor of the enlargement on both sides of the building a distance of 10'-0", thereby reducing the floor area of the proposed enlargement from 2,424 sq. ft. to 855 sq. ft.; and

WHEREAS, the applicant represents that the requested waivers of the Special Permit, which do not otherwise trigger zoning non-compliances, 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 Type II action pursuant to Sections 617.12 (aj) and 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 in an R8 zoning district within the Upper West Side-Central Park West Historic District, the enlargement of a five-story and cellar educational facility (Use Group 3), which is contrary to ZR § 74-95, *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 29 , 2009" – two (2) sheets and "Received June 25, 2009" – eight (8) sheets; and *on further condition*:

THAT the parameters of the zoning lot shall be as follows: a total zoning lot floor area of 82,369 sq. ft. (5.32 FAR); and a community facility floor area of 26,654 sq. ft. (1.72 FAR), as reflected on the BSA-approved plans;

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

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 8, 2009.

187-09-BZ CEQR #09-BSA-117K

APPLICANT – Law Office of Fredrick A. Becker, for Torath Israel Sephardic Congregation, owner.

SUBJECT – Application June 9, 2009 – Variance (§72-21) to permit the construction of a mikvah (ritual bath) in the proposed building (*Torath Israel Sephardic Congregation*), contrary to FAR and lot coverage (§24-11), side yard (§24-35) and rear yard (§24-36). R3-1 zoning district.

PREMISES AFFECTED – 94 Amherst Street, west side of Amherst Street, between Shore Boulevard and Hampton

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Avenues, Block 8726, Lot 43, 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 Montanez5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated May 11, 2009, acting on Department of Buildings Application No. 320004357, reads in pertinent part:

“Proposed side yard is contrary to ZR 24-35.

Proposed rear yard is contrary to ZR 24-36;” and

WHEREAS, this is an application for a variance pursuant to ZR § 72-21, to permit, on a site within an R3-1 zoning district, the construction of a two-story mikvah (Use Group 4), which does not comply with side yard and rear yard requirements for community facilities, contrary to ZR §§ 24-35 and 24-36; and

WHEREAS, a public hearing was held on this application on October 20, 2009, after due notice by publication in *The City Record*, with a continued hearing on November 17, 2009, and then to decision on December 8, 2009; 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, certain community members testified in opposition to this application, citing concerns with the proposal’s impact on neighborhood character and that the applicant did not establish a programmatic need for the facility at this location; and

WHEREAS, this application is being brought on behalf of the Torath Israel Sephardic Congregation, a non-profit religious entity; and

WHEREAS, the subject premises is located on the west side of Amherst Street, between Shore Boulevard and Hampton Avenue, within an R3-1 zoning district; and

WHEREAS, the site has a rectangular shape with 30 feet of frontage on Amherst Street, a depth of 100 feet, and a total lot area of 3,000 sq. ft.; and

WHEREAS, the subject site is currently occupied by a vacant single-family home, which is to be demolished; and

WHEREAS, the applicant proposes to construct a two-story and cellar mikvah on the site (the “Mikvah”); and

WHEREAS, the proposed Mikvah will have the following complying parameters: a floor area of approximately 2,966 sq. ft. (0.99 FAR); a lot coverage of approximately 55 percent; a wall height of 12’-2”; a total height of 35’-0”; and a front yard with a depth of 15’-6”; and

WHEREAS, however, the applicant proposes to provide a side yard with a width of 5’-0” along the northern lot line and a side yard with a width ranging from 5’-0” to 0’-6” along the

southern lot line (two side yards with a width of 8’-0” each are the minimum required for a community facility use); and a rear yard with a depth of 10’-0” (a minimum rear yard depth of 30’-0” is required); and

WHEREAS, the applicant initially proposed a building with a floor area of 3,053 sq. ft. (1.02 FAR) (1.0 FAR is the maximum permitted), a lot coverage of 60 percent (55 percent is the maximum permitted), a side yard with a width of 5’-0” along the northern lot line, a side yard with widths of 3’-6” and 0’-6” along the southern lot line, and a rear yard with a depth of 5’-0”; and

WHEREAS, at the request of the Board, the applicant revised its plans to reduce the width and depth of the proposed Mikvah, thereby eliminating the requested floor area and lot coverage waivers and providing more depth at the rear yard; and

WHEREAS, the proposal provides for the following uses: (1) two ritual pools, three preparation rooms, a drying room, reception area, and waiting room on the first floor; (2) four bathrooms and storage space on the second floor; and (3) a laundry room, utensil ritual bath, accessory office, boiler room, and storage space in the cellar; and

WHEREAS, the applicant states that the following are the primary programmatic needs of the Mikvah: (1) a centralized location to better serve the needs of the surrounding area; (2) a sufficient number of preparation rooms and ritual pools to accommodate the approximately 21 women anticipated to patronize the Mikvah on a daily basis; (3) to locate the ritual pools on the ground floor; and (4) privacy for the women who use the Mikvah; and

WHEREAS, the applicant states that the closest existing facility, Mikvah Israel – Brighton Beach, located at 245 Neptune Avenue, is approximately three-quarters of a mile from the proposed mikvah; and

WHEREAS, the applicant represents that, due to the religious requirements of ritual purity, a woman must travel to a mikvah after sundown on a specific day each month, and is not permitted to delay; and

WHEREAS, in addition, the applicant states that Jewish law prohibits congregants from driving on the Sabbath and, therefore, close proximity to patrons’ homes is required; and

WHEREAS, the applicant represents that a mikvah at the subject site will reduce the inconvenience for many women who, due to religious requirements and the distance of their homes from the nearest existing mikvah, must walk approximately three-quarters of a mile at night by themselves when required to visit on the Sabbath; and

WHEREAS, the applicant submitted letters from Congregation Shaarey Torah and the Manhattan Beach Jewish Center, two other congregations that the Mikvah will service, stating their support for the proposal given the community’s need for such a facility; and

WHEREAS, thus, the applicant represents that a mikvah is necessary to better serve areas of the community located furthest from the existing mikvahs in the area; and

WHEREAS, the applicant states that the requested side and rear yard waivers will allow for a building footprint that is large enough to accommodate all of the required Mikvah

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services; and

WHEREAS, specifically, the applicant states that the requested waivers are necessary to provide an adequate number of preparation rooms and ritual baths for the anticipated number of Mikvah patrons; and

WHEREAS, the applicant represents that the requested waivers are also necessary to accommodate two ritual baths at ground level; and

WHEREAS, the applicant further represents that many religious authorities dictate that mikvah baths be located at ground level to minimize vibrations and prevent damage; and

WHEREAS, the applicant states that locating the ritual baths at ground level also allows for quality control to ensure that the baths do not leak; and

WHEREAS, the applicant further states that if a mikvah bath leaks, then it can no longer be used to satisfy the religious requirement; and

WHEREAS, thus, the applicant states that as a result of the need for the ritual baths to be located at ground level, the yard waivers are necessary to meet the Mikvah's programmatic needs; and

WHEREAS, the applicant further represents that the requested waivers are necessary to ensure the privacy of the women who use the Mikvah; and

WHEREAS, the applicant states that modesty and privacy are fundamental aspects of the deeply personal mikvah ritual; and

WHEREAS, the applicant represents that in order to maintain privacy, mikvahs should provide a wet corridor and a dry corridor, and each preparation room should have a door to each corridor; and

WHEREAS, the applicant states that the use of two hallways helps to limit conflicts by permitting fully dressed patrons to enter and exit the preparation rooms through the dry corridor and permitting partially clothed patrons to use the wet corridor to go to and from the mikvah pool; and

WHEREAS, the applicant represents that a complying building would not provide sufficient corridors or the appropriate number of preparation rooms to ensure the privacy of its patrons; and

WHEREAS, the Board acknowledges that the Mikvah, 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 applicant provided a submission briefing the prevailing New York State case law on religious deference; and

WHEREAS, the Board notes that under established precedents of the courts, "[r]eligious use is conduct with a

religious purpose, the determination of which focuses on the proposed use itself, not the religious nature of the organization" (McGann v. Incorporated Village of Old Westbury, 293 A.D.2d 581 (2d Dep't 2002)), and includes uses ancillary to the function of the house of worship (See Community Synagogue v. Bates, 1 N.Y.2d 445 (1956)); and

WHEREAS, the Board recognizes the role of a mikvah in the religious Jewish community and its significance to Jewish life; accordingly, the Board finds that the Mikvah qualifies as a religious use and is therefore entitled to significant deference under the law of the State of New York as to zoning; and

WHEREAS, based upon the above, the Board finds that the programmatic needs of the Mikvah 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 Mikvah is a not-for-profit organization and the proposed development will be in furtherance of its not-for-profit mission; and

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

WHEREAS, the applicant notes that the proposed use is permitted in the subject zoning district; and

WHEREAS, the applicant further notes that side and rear yard waivers are the only waivers requested and that the FAR and height of the proposed building are permitted in the subject R3-1 zoning district; and

WHEREAS, the applicant states that, given the proximity of the proposed Mikvah to the homes of many of its anticipated users, in conjunction with the fact that Jewish law prohibits driving on the Sabbath, many Mikvah visitors are likely to walk to the proposed facility, thereby reducing any potential traffic impacts; and

WHEREAS, the applicant initially proposed a non-complying FAR of 1.02 and lot coverage of 60 percent, as well as a side yard with a depth ranging from 3'-6" to 0'-6" along the southern lot line, and a rear yard with a depth of 5'-0"; and

WHEREAS, at hearing, the Board directed the applicant to reduce the floor area and lot coverage to comply with zoning district regulations; and

WHEREAS, additionally, the Board directed the applicant to reduce the width of the hallways and the size of the bathrooms in order to provide greater open space; and

WHEREAS, the applicant revised the plans to reflect complying FAR and lot coverage and yards that are more compatible with the neighborhood character; and

WHEREAS the Board notes that side yards with widths of 5'-0" are permitted for residential development in the zoning district; and

WHEREAS, the Board also notes that the pre-existing side yards at the site had widths of less than 5'-0"; and

WHEREAS, the applicant notes that the façade has been designed to resemble a residential building; and

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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 Mikvah 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 to the minimum variance, as noted above, during the hearing process the applicant revised the proposal to eliminate the floor area and lot coverage waivers and to provide a rear yard with a depth of 10'-0" rather than the originally proposed depth of 5'-0"; and

WHEREAS, the applicant represents that any further reduction would prevent it from meeting its programmatic needs; and

WHEREAS, accordingly, the Board finds the requested waivers to be the minimum necessary to afford the Mikvah 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 an Unlisted action pursuant to Sections 617.6(h) and 617.2(h) of 6 NYCRR; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No.09BSA117K, dated November, 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 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 R3-1 zoning district, the construction of a mikvah (Use Group 4), which does not comply with the zoning requirements for side and rear yards for community facilities, 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 November 4, 2009" – Seven (7) sheets and "Received November 17, 2009" – Three (3) sheets and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum of 2,966 sq. ft. of floor area (0.99 FAR); a maximum lot coverage of approximately 55 percent; a maximum wall height of 12'-2"; a maximum total height of 35'-0"; a minimum front yard of 15'-6"; a side yard with a minimum width of 5'-0" along the northern lot line; a side yard with a minimum width of 0'-6" along the southern lot line; and a rear yard with a minimum depth of 10'-0", as reflected on the BSA-approved plans;

THAT the use shall be limited to a mikvah (Use Group 4);

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

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

THAT any required access lift shall be reviewed and approved by the Mayor's Office for People with Disabilities and/or DOB;

THAT any porches shall be reviewed and approved by DOB;

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, December 8, 2009.

225-09-BZ

APPLICANT – Antonio S. Valenziano, AIA, for Beacon Luigi, LLC, owner.

SUBJECT – Application July 14, 2009 – Variance (§72-21) for the construction of a single family residence on a vacant undersized lot, contrary to front yard (§23-45) regulations. R2 (LDGM) zoning district.

PREMISES AFFECTED – 45 Beacon Avenue, Beacon Avenue c/o Luigi Place, Block 948, Lot 27, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEARANCES –

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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 Staten Island Borough Commissioner, dated July 8, 2009, acting on Department of Buildings Application No. 520005887, reads in pertinent part:

“ZR 23-45. Proposed front yard is contrary to the section of the zoning resolution and required BSA approval;” and

WHEREAS, this is an application under ZR § 72-21, to permit, in an R2 zoning district within a Lower Density Growth Management Area, the proposed construction of a two-story single-family home that does not provide the required front yard, contrary to ZR § 23-45; and

WHEREAS, a public hearing was held on this application on October 6, 2009 after due notice by publication in *The City Record*, with a continued hearing on November 10, 2009, and then to decision on December 8, 2009; 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 disapproval of this application; and

WHEREAS, City Councilmember James S. Oddo provided testimony in opposition to this application; and

WHEREAS, a member of the community testified in opposition to this application, citing the following primary concerns: (1) the proposed home is not compatible with neighborhood character; (2) development of the site would cause a flooding problem; and (3) the claimed hardship was self-created based on the purchase of the lot; and

WHEREAS, collectively, the parties who provided testimony in opposition to the proposal are the “Opposition;” and

WHEREAS, the site is located on the northeast corner of Beacon Avenue and Luigi Place, in an R2 zoning district within a Lower Density Growth Management Area; and

WHEREAS, the site has a width of 25 feet, a depth of 108 feet, and a total lot area of approximately 2,700 sq. ft.; and

WHEREAS, the site is currently vacant; and

WHEREAS, the applicant proposes to construct a two-story with attic single-family home; and

WHEREAS, the proposed home will have the following complying parameters: 1,290 sq. ft. of floor area (0.48 FAR); an open space ratio of 150.5 percent; a side yard with a width of 30’-0” along the eastern lot line; a side yard with a width of 5’-0” along the northern lot line; a front yard with a depth of approximately 28’-0” along the western lot line; a wall height of 24’-6”; and a total height of approximately 28’-0”; and

WHEREAS, however, the applicant proposes to provide

a front yard with a depth of 5’-0” along the northern lot line (two front yards with minimum depths of 15’-0” each are required); 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 in a Lower Density Growth Management Area where the zoning lot was owned separately and individually from all adjoining tracts of land both on December 8, 2005 and on the date of the application for a building permit; and

WHEREAS, a title report submitted by the applicant reflects that the site has existed in its current configuration since before December 8, 2005 and its ownership has been independent of the ownership of the two 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 front yard objection; and

WHEREAS, the applicant states that front 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 narrowness of the subject site; and

WHEREAS, the applicant represents that the requested front yard waiver is necessary to develop the site with a habitable home; and

WHEREAS, specifically, the applicant represents that the pre-existing lot width of 25’-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 of 15 feet each; and

WHEREAS, the applicant states that the building would have an exterior width of only 5’-0” if front yard regulations were complied with fully; and

WHEREAS, accordingly, the applicant represents that the front yard waiver is necessary to create a home of a reasonable width; and

WHEREAS, the applicant submitted a radius diagram indicating that the majority of lots within a 400-ft. radius are at least 40 feet in width, and only one other lot is as narrow as the subject lot; and

WHEREAS, the radius diagram further reflects that the subject site is one of only three vacant lots located wholly within a 400-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 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

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neighborhood, or impact adjacent uses; and

WHEREAS, the applicant submitted a radius diagram reflecting that the surrounding neighborhood is characterized by single-family 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; and

WHEREAS, specifically, the applicant notes that the proposed home complies with the R2 zoning district regulations for use, FAR, side yards, open space ratio, height, and parking; and

WHEREAS, the applicant represents that the proposed front yard waiver will not impair the light and air of the adjacent home across Luigi Place, as the distance between the proposed home and the home across Luigi Place will be approximately 68 feet; 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 Opposition contended that the applicant's hardship was instead created by its purchase of the subject lot, which requires the requested variance to build a habitable home; and

WHEREAS, the Board notes that the (d) finding under ZR § 72-21 specifies that the purchase of a zoning lot subject to the cited hardship shall not constitute a self-created hardship; 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, in an R2 zoning district within a Lower Density Growth Management Area, a two-story single-family home that does not provide the required front yards, contrary to ZR § 23-45; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received September 21, 2009"– (1) sheet, "November 10, 2009"–(5) sheets and "December 4, 2009"–(1) sheet; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: a maximum of 1,290 sq. ft. of floor area (0.48 FAR), an open space ratio of 150.5 percent, a side yard with a width of 30'-0" along the eastern lot line; a side yard with a width of 5'-0" along the northern lot line; a front yard with a depth of approximately 28'-0" along the western lot line; a

front yard with a depth of 5'-0" along the southern lot line; a wall height of 24'-6"; a total height of approximately 28'-0"; 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 if required, a Builder's Pavement Plan shall be filed and approved by DOT prior to the issuance of a building permit;

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

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

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, December 8, 2009.

279-09-BZ

APPLICANT – Lewis E. Garfinkel, R.A., for Rifki Zoneshayn, owner.

SUBJECT – Application October 1, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED –2709 Avenue M, between East 27th and East 28th Street, Block 7645, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #14BK

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 September 25, 2009, acting on Department of Buildings Application No. 320051741, reads:

1. Proposed plans are contrary to ZR 23-141(a) in that the proposed floor area ratio (FAR) exceeds the permitted 50 percent.
2. Proposed plans are contrary to ZR 23-141(a) in that the proposed open space ratio (OSR) is less than the required 150 percent.
3. Plans are contrary to ZR 23-461(a) in that the

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existing minimum side yard is less than the required minimum 5'-0".

4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30'-0";" and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03, to permit, in an 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 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 17, 2009 after due notice by publication in *The City Record*, and then to decision on December 8, 2009; and

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

WHEREAS, Community Board 14, Brooklyn, recommended disapproval of the applicant's initial proposal, citing concerns about the proximity of the proposed rear enlargement and the existing garage; and

WHEREAS, the Board notes that the applicant has revised its proposal to remove the existing garage; and

WHEREAS, a neighbor testified in opposition to this application, citing concerns about the construction process; and

WHEREAS, the subject site is located on the north side of Avenue M, between East 27th Street and East 28th Street, 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 2,752 sq. ft. (0.66 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 2,752 sq. ft. (0.66 FAR) to 3,548 sq. ft. (0.85 FAR); the maximum permitted floor area is 2,100 sq. ft. (0.50 FAR); and

WHEREAS, the applicant proposes to provide an open space ratio of approximately 65 percent (150 percent is the minimum required); and

WHEREAS, the proposed enlargement will maintain the existing non-complying side yard with a width of 4'-1" along the western lot line (a minimum width of 5'-0" is required) and will provide a complying side yard of 8'-11" along the eastern 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 initially proposed to maintain the existing garage but revised the plans to reflect its demolition; 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, in response to the neighbor's construction-related concerns, the Board notes that the applicant must comply with all relevant Building Code regulations throughout the construction process; 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 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 October 30, 2009"-(11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 3,548 sq. ft. (0.85 FAR); an open space ratio of 65 percent; a side yard with a minimum width of 4'-1" along the western lot line; a side yard with a minimum width of 8'-11" along the eastern lot line; a rear yard with a minimum depth of 20'-0"; a maximum perimeter wall height of 22'-11"; and a maximum total height of 30'-6", 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 8, 2009.

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256-07-BZ

APPLICANT – Rothkrug, Rothkrug & Spector, LLP for Hayden Rester, owner.

SUBJECT – Application November 5, 2007 – Variance (§72-21) to permit a three-story, five-unit residential building, contrary to use regulations (§42-00). M1-1 zoning district.

PREMISES AFFECTED – 1978 Atlantic Avenue, Southern side of Atlantic Avenue, 180 feet west of the intersection of Atlantic and Ralph. Block 1339, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD # 8BK

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to January 26, 2010, at 1:30 P.M., for continued hearing.

44-09-BZ

APPLICANT – Philip L. Rampulla, for Tony Chrampanis, owner.

SUBJECT – Application March 11, 2009 – Variance (§72-21) to allow for a two-story commercial building (UG 6) with accessory parking, contrary to use regulations (§22-00). R3-1 district.

PREMISES AFFECTED – 2175 Richmond Avenue, Eastside of Richmond Avenue 39.80' south of Saxon Avenue, Block 2361, Lot 12(tent), 14, 17, 22, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Philip Rampulla.

ACTION OF THE BOARD – Laid over to February 2, 2010, at 1:30 P.M., for continued hearing.

162-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Steinway 30-33, LLC, owner; Steinway Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application April 27, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Planet Fitness*) in the cellar, first, and second floors in an existing two-story building; Special Permit (§73-52) to extend the C4-2A zoning district regulations 25 feet into the adjacent R5 zoning district. C4-2A/R5 zoning districts.

PREMISES AFFECTED – 30-33 Steinway Street, east side of Steinway Street, south of 30th Avenue, Block 680, Lot 32, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: Elizabeth Safain.

ACTION OF THE BOARD – Laid over to January 26, 2010, at 1:30 P.M., for continued hearing.

231-09-BZ

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.

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 January 12, 2010, at 1:30 P.M., for decision, hearing closed.

264-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for Joseph Ashkenaki, owner; LRHC Flatbush NY, LLC, lessee.

SUBJECT – Application September 15, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (*Lucille Roberts*) on the second and third floors of a three-story commercial building. C4-4A zoning district.

PREMISES AFFECTED – 927 Flatbush Avenue, aka 927-933 Flatbush Avenue, aka 21-33 Snyder Avenue, Block 5103, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Moshe M. Friedman.

ACTION OF THE BOARD – Laid over to January 26, 2010, at 1:30 P.M., for continued hearing.

269-09-BZ

APPLICANT – Dennis D. Dell'angelo, R.A., for Jehoshua Cohen, owner.

SUBJECT – Application September 21, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to lot coverage (§23-141); side yard (§23-461) and less than the required rear yard (§23-47) and the legalization of a prior one story enlargement at the front of the existing home. R-5 zoning district.

PREMISES AFFECTED – 1938 East 12th Street, west side of East 12th Street, between Avenue S and Avenue T, Block 7290, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Dennis D. Dell'angelo.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins,

MINUTES

Commissioner Ottley-Brown, Commissioner Hinkson and
Commissioner Montanez.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to January
12, 2010, at 1:30 P.M., for decision, hearing closed.

292-09-BZ

APPLICANT – Martyn & Don Weston, for Barbara Aal-
Albar LLC, owner; Third Avenue Auto Corporation, lessee.
SUBJECT – Application October 15, 2009 – Special Permit
(§11-411, §11-413 & §73-03) to reinstate previously granted
variance which expired on December 7, 1999; amendment to
change use from a gasoline service station (UG16B) to
automotive repair establishment (UG16B); Waiver of the
Boards Rules. C1-3/R6A & R5B (Special Bay Ridge
District).

PREMISES AFFECTED – 9310-9333 Third Avenue, North
east corner of 94th Street, Block 6107, Lot 1, Borough of
Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES –

For Applicant: Don Weston.

ACTION OF THE BOARD – Laid over to January
26, 2010, at 1:30 P.M., for continued hearing.

293-09-BZ

APPLICANT – Eric Palatnik, Esq., for Rami Esses, owner.
SUBJECT – Application October 15, 2009 – Special Permit
(§73-622) for the enlargement of an existing two family
home to be converted into a single family home contrary to
open space and floor area (§23-141(a)). R-2 zoning district.
Special Permit (§73-622) for the enlargement of an existing
two family home to be converted into a single family home
contrary to open space and floor area (§23-141(a)). R-2
zoning district.

PREMISES AFFECTED – 2501 Avenue M, northeast
corner of Avenue M and Bedford Avenue, Block 7643, Lot
8, Borough of Brooklyn.

COMMUNITY BOARD #8BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to January
26, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

BULLETIN

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Tuesday, December 15, 2009**

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156-03-BZ 135-35 Northern Boulevard, Queens
208-03-BZ 255 Shell Road, Brooklyn
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DOCKET

New Case Filed Up to December 15, 2009

326-09-BZ

38-15 138th Street, Block bounded by 37th Avenue on north, 138th Street on west, 39th on south, Union Street on east., Block 4978, Lot(s) p/o 25, Borough of **Queens, Community Board: 7**. Special Permit (73-66) to allow proposed building in mixed-use development, contrary to use regulations. C4-3 district.

327-09-BZ

255 Butler Street, Corner lot on Nevins Street, bound by Butler and Baltic Streets., Block 405, Lot(s) 27, Borough of **Brooklyn, Community Board: 6**. Special Permit (73-19) to allow a school. M1-2 district.

328-09-BZ

28-34 West End Avenue, West End Avenue and West 61st Street., Block 1152, Lot(s) 58,61, Borough of **Manhattan, Community Board: 7**. Variance to a middle school, contrary to bulk regulations. C4-7, C6-2 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

JANUARY 26, 2010, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 26, 2010, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

SPECIAL ORDER CALENDAR

818-59-BZ

APPLICANT – Akerman Senterfitt for 139 East 33rd Street Corporation, owner; Central Parking System of NY, Incorporated, lessee.

SUBJECT – Application July 24, 2009 – Extension of Term (§11-411) to permit the use of the surplus parking spaces of an accessory garage to a multiple dwelling for transient parking which expired on July 6, 2001. C1-9 & C6-1 zoning district.

PREMISES AFFECTED – 139 East 33rd Street, north side of 33rd Street and north west corner of 220/226 Lexington Avenue, Block 889, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #5M

582-83-BZ

APPLICANT – Carole S. Slater for Torri Associates c/o LaSeven, Incorporated, owner.

SUBJECT – Application December 23, 2009 – Extension of Term for a previously granted Variance (72-21) to permit the conversion of an existing six story building for commercial use with retail stores on the ground floor which expired on January 10, 2004; Amendment to permit (UG6) use in the cellar and to eliminate the Term; Waiver of the Rules. R8B zoning district.

PREMISES AFFECTED – 215 East 58th Street, North side of East 58th Street, between Second and Third Avenues. Block 1332, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #6M

375-02-BZ

APPLICANT – Moshe M. Friedman, for Congregation Tzolsa D'Shlomo, owner.

SUBJECT – Application June 4, 2009 – Application to request a reopening of BSA Cal. No. 375-02-BZ to allow an amendment to a previously-approved zoning variance and to extend the time to complete construction and obtain a Certificate of Occupancy. The proposed amendment would allow modification of the approved plans for a house of worship and accessory rectory.

PREMISES AFFECTED – 1559 59th Street, north side of 59th Street, 400' west from the intersection of 59th Street and 16th Avenue, Block 5502, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #12BK

58-07-BZ

APPLICANT – Eric Palatnik, P.C., for Vito Savino, owner. SUBJECT – Application October 27, 2009 – Application pursuant to §72-01 and §72-22 to amend the previously issued resolution to include two additional objections (proposed dwelling units less than the required size (ZR §23-23) and proposed side yard less than required side yard §23-461(a)). R3A zoning district.

PREMISES AFFECTED – 18-02 Clintonville, Block 4731, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #7BK

APPEALS CALENDAR

300-08-A

APPLICANT – Blank Rome LLP by Marvin Mitzner, for Dutch Kills Partners, LLC, owner.

SUBJECT – Application December 9, 2008 – An appeal seeking a determination that the property owner has acquired a common law vested right to continue development under the prior M1-3 zoning district regulations. M1-2/R5B.

PREMISES AFFECTED – 39-35 27th Street, east side of 27th Street, 125' northeast of the intersection of 27th Street and 40th Avenue, Block 397, Lot 2, Borough of Queens.

COMMUNITY BOARD #1Q

57-09-A thru 158-09-A

APPLICANT – Eric Palatnik, P.C. for Maguire Avenue Realty Corporation, owner.

SUBJECT – Application April 15, 2009 – An appeal seeking a determination that the owner has acquired a common law vested right to continue development commenced under the prior zoning district regulations .R3-2 (SSRD) zoning district.

PREMISES AFFECTED – Maguire Woods, Santa Monica Lane, Moreno Court, El Camino Loop, Malibu Court, Foothill Court and Moreno Court, Maguire Woods in the Woodrow section of Staten Island. Block 6979, Lots 64 thru 362, Borough of Staten Island.

COMMUNITY BOARD #3SI

280-09-A

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for 330 West 86th Street, LLC, owner.

SUBJECT – Application January 26, 2010 – Appeal challenging Department of Building's authority under the City Charter to interpret or enforce provisions of Article 16 of the General Municipal Law as it applies to the construction of a proposed 16 story+ penthouse on this site. R10A Zoning district.

PREMISES AFFECTED – 330 West 86th Street, south side of West 86th street, 280' west of the intersection of Riverside Drive and West 86th Street, Block 1247, Lot 49, Borough of

CALENDAR

Manhattan.

COMMUNITY BOARD #7M

JANUARY 26, 2010, 1:30 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 26, 2010, at 1:30 P.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

ZONING CALENDAR

224-09-BZ

APPLICANT – Sheldon Lobel, P.C., for Springfield-Hempstead Realty, LLC, owner; Walgreens Company, lessee.

SUBJECT – Application July 8, 2009 – Special Permit (§73-52) to allow for accessory commercial parking to be located in the residential portion of a split zoning lot. C2-3/R3-2 and R3-2 zoning districts.

PREMISES AFFECTED – 218-51 aka 218-59 Hempstead Avenue, Northwest corner of intersection of Hempstead Avenue, Block 10766, Lot 38, 46, 48, 51, Borough of Queens.

COMMUNITY BOARD #13Q

235-09-BZ

APPLICANT – Eric Palatnik, P.C., for Calvary Baptist Church of Jamaica, owner.

SUBJECT – Application July 24, 2009 – Variance (§72-21) to permit the development of a five-story not-for-profit residence for the elderly (Calvary Baptist Church). Proposal is contrary to ZR §23-144 (floor area), number of dwelling units (§23-221), height (§23-631), side yards (§23-462), rear yard (§23-471), and parking (§25-23). R3-2 zoning district.

PREMISES AFFECTED – 162-25 112th Road, Guy Brewer Boulevard and 112th Road, Block 12183, Lot 35 (tent), Borough of Queens.

COMMUNITY BOARD #12Q

248-09-BZ

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

SUBJECT – Application August 26, 2009 – Special Permit (§11-411 & §11-412) the re-instatement an automotive service station (UG16) which expired on July 24, 1991; Amendment to modify the layout of the site; and an Waiver of the Rules of the Rules of Practice and Procedure. R6 zoning district.

PREMISES AFFECTED – 3031 Bailey Avenue, northwest corner of Bailey Avenue and Albany Court, Block 3266, Lot 85, Borough of The Bronx.

COMMUNITY BOARD #8BX

281-09-BZ

APPLICANT – Marcie Kesner, Kramer Levin Naftalis & Frankel LLP, for Bayrock/Sapir Organization LLC, owner; WTS International, Incorporated, lessee.

SUBJECT – Application October 7, 2009 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (WTS International) on the fifth and sixth floors in an existing building. M1-6 zoning district.

PREMISES AFFECTED – 246 Spring Street, Spring Street, Sixth Avenue, Dominick Street, Varick Street. Block 491, Lot 36, Borough of Manhattan.

COMMUNITY BOARD #2M

311-09-BZ

APPLICANT – Eric Palatnik, P.C., for Michael Matalon, owner.

SUBJECT – Application November 24, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141(a)), side yard (§23-461(a)) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED – 1092 East 22nd Street, between Avenue J and K, Block 7603, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Jeff Mulligan, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, DECEMBER 15, 2009
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

389-85-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for ExxonMobil Corporation, owner; Mobil On The Run, lessee.

SUBJECT – Application October 5, 2009 – Extension of Time to obtain a Certificate of Occupancy for a UG16 Automotive Service Station (*Mobil*) which expires on December 9, 2009. C2-3/R7-1 zoning district.

PREMISES AFFECTED – 2090 Bronxdale Avenue, bounded by Brady Avenue, White Plains Road and Bronx Park East, Block 4283, Lot 1, Borough of The Bronx.

COMMUNITY BOARD #11BX

APPEARANCES –

For Applicant: Cindy 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 a reopening and an extension of time to obtain a certificate of occupancy for an automobile service station (Use Group 16) with accessory uses; and

WHEREAS, a public hearing was held on this application on November 24, 2009, after due notice by publication in *The City Record*, and then to decision on December 15, 2009; and

WHEREAS, the site is located on the north side of Bronxdale Avenue, bounded by Brady Avenue, White Plains Road and Bronx Park East, within a C2-3 (R7-1) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 26, 1985 when, under the subject calendar number, the Board granted a special permit pursuant to ZR § 73-211 authorizing the premises to be occupied by an automotive service station with accessory uses for a term of fifteen years; and

WHEREAS, the grant was extended on October 26, 1999 for a term of 15 years from the expiration of the prior grant, to expire November 26, 2015; a condition of the grant was that a new certificate of occupancy be obtained by October 26, 2000; and

WHEREAS, on December 9, 2008, the Board granted an extension of time to obtain a certificate of occupancy for one year, to expire December 9, 2009, and granted an amendment to legalize: (i) the conversion of the service building to an accessory convenience store; (ii) the enlargement of the two curb cuts located on White Plains Road from 30 feet to 35 feet and the enlargement of the curb cut located on Bronx Park East from 26 feet to 31 feet; (iii) the relocation of parking spaces from the Bronx Park East property line to the west side of the service building; and (iv) the addition of a sign on both the east and west sides of the service building; and

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

WHEREAS, based upon its review of the record, the Board finds that the requested one-year 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 November 26, 1985, so that as amended this portion of the resolution shall read: “to grant an extension of time to obtain a certificate of occupancy to December 15, 2010; *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 a certificate of occupancy shall be obtained by December 15, 2010;

THAT all signage shall comply with C2 zoning district regulations;

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. 210037244)

Adopted by the Board of Standards and Appeals December 15, 2009.

68-03-BZ

APPLICANT – Stuart A. Klein, Esq., for Torah M. Sinai, Incorporated, owner.

SUBJECT – Application October 20, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the conversion of an existing manufacturing building to a (UG3) day care center and (UG6) office use which expired on August 10, 2008 and a Waiver of the Rules. M1-2 zoning district.

PREMISES AFFECTED – 649 39th Street, northwest corner of the intersection of 39th street and 7th Avenue, Block 903,

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Lot 79, 80, 83, Borough of Brooklyn.

COMMUNITY BOARD #7BK

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, 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, within an M1-2 zoning district, the enlargement of an existing manufacturing building and the conversion of a portion of the building to a day care center (Use Group 3A), which expired on August 10, 2008; and

WHEREAS, a public hearing was held on this application on November 24, 2009 after due notice by publication in *The City Record*, and then to decision on December 15, 2009; 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 north side of 39th Street, between Fifth Avenue and Eighth Avenue, within an M1-2 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 10, 2004 when, under the subject calendar number, the Board granted: (1) a variance to permit the proposed enlargement of an existing building, and the conversion of a portion of the building for a day care center (Use Group 3A); and (2) a special permit pursuant to ZR § 73-44 to permit a reduction in the amount of parking required for the portion of the proposed building to be occupied with office use; and

WHEREAS, substantial construction was to be completed by August 10, 2008, in accordance with ZR § 72-23; and

WHEREAS, the applicant states that the conversion of the first and a portion of the second floor has been completed and that approximately 25,000 sq. ft. of the approved 34,000 sq. ft. of community facility space is being utilized, but 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 *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated August 10, 2004, 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

two years, to expire on December 15, 2011; *on condition:*

THAT substantial construction shall be completed by December 15, 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. 301031194)

Adopted by the Board of Standards and Appeals, December 15, 2009.

326-04-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Sephardic Center of Mill Basin, owner.

SUBJECT – Application October 29, 2009 – Extension of Time to Complete Construction of a previously granted Variance (§72-21) for the construction of a new Synagogue (*Sephardic Center of Mill Basin*) which expired on October 18, 2009. R-2 zoning district.

PREMISES AFFECTED – 6208-6216 Strickland Avenue, northeast corner of the intersection of Strickland Avenue and Mill Avenue, Block 8656, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #18BK

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 time to complete construction of a previously granted variance to permit, within an R2 zoning district, the construction of a synagogue, which expired on October 18, 2009; and

WHEREAS, a public hearing was held on this application on November 24, 2009 after due notice by publication in *The City Record*, and then to decision on December 15, 2009; and

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

WHEREAS, Community Board 18, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of the intersection of Strickland Avenue and Mill Avenue, within an R2 zoning district; and

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WHEREAS, the Board has exercised jurisdiction over the subject site since October 18, 2005 when, under the subject calendar number, the Board granted the proposed construction of a two-story plus synagogue; and

WHEREAS, substantial construction was to be completed by October 18, 2009, in accordance with ZR § 72-23; and

WHEREAS, a letter of substantial compliance was issued by the Board for the subject site on May 24, 2007, permitting several minor amendments to the approved plans and correcting an error in the floor area calculations; and

WHEREAS, the applicant states that the modified plans have been approved by the Department of Buildings and the congregation is now prepared to proceed with the development, but that additional time is needed 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 October 18, 2005, 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 December 15, 2013; *on condition*:

THAT substantial construction shall be completed by December 15, 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. 301780874)

Adopted by the Board of Standards and Appeals, December 15, 2009.

615-57-BZ

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

SUBJECT – Application November 17, 2009 – Extension of Time to obtain a Certificate of Occupancy and waiver of the rules for a Gasoline Service Station (Exxon) which expired on January 22, 2009. C1-3/R5B zoning district.

PREMISES AFFECTED – 154-11 Horace Harding Expressway, north side of Horace Harding Expressway between Kissena Boulevard and 154th Place, Block 6731, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Joshua 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 January 12, 2010, at 10 A.M., for decision, hearing closed.

140-92-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Evangel Church, owner.

SUBJECT – Application December 19, 2008 – Amendment of variance (§72-21) which allowed an enlargement of an existing school (UG 3). The amendment would further enlarge the school, contrary to height and setback (§43-43). M1-2/R5D & M1-2/R5B (Special Long Island City Mixed Use District).

PREMISES AFFECTED – 39-21 Crescent Street, southerly side of Crescent Street between 39th Avenue and 40th Avenue, Block 396, Lot 10 & 36, Borough of Queens.

COMMUNITY BOARD #1Q

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 January 26, 2010, at 10 A.M., for decision, hearing closed.

195-99-BZ

APPLICANT – Eric Palatnik, P.C., for Theodore Zorbas, owner.

SUBJECT – Application September 18, 2009 – Extension of Term (§11-411) for the continued use of a Gasoline Service Station (*Shell*) which expires on November 10, 2009. R-6 zoning district.

PREMISES AFFECTED – 112 Atlantic Avenue, south east corner of Atlantic Avenue and Henry Street, Block 285, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #6BK

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 January 12, 2010, at 10 A.M., for decision, hearing closed.

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75-00-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Matthew Realty LLC, c/o Nathan Katz Realty, LLC, owner; TVR Communications, lessee.

SUBJECT – Application October 26, 2009 – Extension of Term of a previously granted Variance (§72-21) to permit a real estate management offices (UG6) in a residential district which expires on July 25, 2010. This application also proposes to change within the same UG6 office use. R-5 zoning district.

PREMISES AFFECTED – 60-69 Woodhaven Boulevard, east side of Woodhaven Boulevard, north of Eliot Avenue, Block 3089, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

ACTION OF THE BOARD – Laid over to January 26, 2010, at 10 A.M., for continued hearing.

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

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 January 12, 2010, at 10 A.M., for decision, hearing closed.

208-03-BZ

APPLICANT – Stuart A. Klein, Esq., for Shell Road, LLC, owner; Orion Caterers, Incorporated, lessee.

SUBJECT – Application November 9, 2009 – Extension of Term of a previously granted Variance (§72-21) for a UG9 catering hall which expired on October 19, 2009. R4/C1-2/M1-1 OP zoning district.

PREMISES AFFECTED – 255 Shell Road, east side of Shell Road, between Avenue X and Bouck Court, Block 7192, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Jay Goldstein.

ACTION OF THE BOARD – Laid over to January 26, 2010, at 10 A.M., for continued hearing.

291-03-BZ

APPLICANT – Stuart A. Klein, Esq., for 6202-6217 Realty LLC, owner.

SUBJECT – Application June 5, 2009 – Application to extend the term and amend the prior granted variance to add an additional floor and increase the number of dwelling units, FAR, and the number of parking spaces. M1-1/R5B zoning districts.

PREMISES AFFECTED – 1380 62nd Street, corner of 62nd Street and 14th Avenue, Block 5733, Lots 35, 36, Borough of Brooklyn.

COMMUNITY BOARD #10BK

APPEARANCES – None.

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 January 26, 2010, at 10 A.M., for decision, hearing closed.

311-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Block 2285 Lite Corporation, owner.

SUBJECT – Application July 8, 2009 – Amendment to a previously granted Variance (§72-21) for a proposed one family dwelling which is contrary to lot coverage (§105-33) and maximum height (§23-631) regulations. R1-2(NA-1) zoning district.

PREMISES AFFECTED – 380 Lighthouse Avenue, south side of Lighthouse Avenue, 579' west of Winsor Avenue, Block 2285, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Todd Dale.

ACTION OF THE BOARD – Laid over to January 26, 2010, at 10 A.M., for continued hearing.

196-08-BZ

APPLICANT – Gage Parking Consultants, for 53-10 Associates, owner.

SUBJECT – Application October 13, 2009 – Reopening for an amendment of the existing public parking garage. C6-2 (Special Clinton District) zoning district.

PREMISES AFFECTED – 792 Tenth Avenue / 455 West 53rd Street, north east corner of Tenth Avenue and West 53rd Street, Block 1063, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEARANCES –

For Applicant: Jeremiah Candeau, Gary Spindler and John Meyer.

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ACTION OF THE BOARD – Laid over to January 26, 2010, at 10 A.M., for continued hearing.

APPEALS CALENDAR

83-08-A

APPLICANT – NYC Department of Buildings, for H. Patel, P.M. – Purvi Enterprises, LLC, owner.

SUBJECT – Application April 9, 2008 – An appeal seeking to revoke Certificate of Occupancy No. 301279319 issued on January 17, 2007 as it was issued in error due to failure to comply with ZR §62-711 requiring waterfront certification and the failure to comply with ZR §12-10(d) in the formation of the zoning lot R5 SP Sheepshead Bay District.

PREMISES AFFECTED – 3218 Emmons Avenue, Emmons Avenue between Bringham Street, and Bragg Street, Block 8815, Lot 590, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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, December 15, 2009.

170-09-A

APPLICANT – NYC Department of Buildings

OWNER – Kenbridge Realty Corporation

SUBJECT – Application May 12, 2009 – An appeal filed by the Department of Buildings seeking to amend Certificate of Occupancy to remove the reference to "Adult" Establishment "use on the second floor. M1-5/R-9 Special Mixed Use District.

PREMISES AFFECTED – 24-03 Queens Plaza North, northeast corner of Queens Plaza North and 24th Street, Block 414, Lot 5, Borough of Queens.

COMMUNITY BOARD #1Q

APPEARANCES –

For Applicant: John R. Egnatos-Beene.

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

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

Negative:.....0

THE RESOLUTION –

WHEREAS, the Department of Buildings (“DOB”) seeks to modify Certificate of Occupancy Number 400942655 (the “Current CO”), issued to the subject premises on May 2, 2002, on the basis that it improperly reflects a non-conforming adult establishment on the first floor of the existing building

located at the premises; and

WHEREAS, a public hearing was held on this application on September 15, 2009, after due notice by publication in the *City Record*, with a continued hearing on November 24, 2009, and then to decision on December 15, 2009; and

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

WHEREAS, the subject premises is located on the northeast corner of Queens Plaza North and 24th Street, in an M1-5/R9 zoning district within the Special Long Island City Mixed-Use District; and

WHEREAS, the Current CO reflects the following uses: (i) an employees lounge, office storage, kitchen and utility rooms in the cellar; and (ii) Use Group 6 stores and Use Group 12 adult eating and drinking establishment on the first floor; and

WHEREAS, DOB asserts that the adult establishment use on the first floor has been prohibited since July 26, 2001, when the premises was rezoned to an M1-5/R9 zoning district within the Special Long Island City Mixed-Use District; and

WHEREAS, DOB states that, pursuant to ZR § 42-01(a), adult establishments are prohibited in manufacturing districts in which residential use is permitted as-of-right; and

WHEREAS, DOB further states that, pursuant to ZR § 123-20, Special Mixed-Use Districts, such as the subject district, permit residential use as-of-right; and

WHEREAS, DOB states that, pursuant to ZR § 52-77, a non-conforming adult establishment must terminate within one year from the date it becomes non-conforming; thus, because the rezoning became effective on July 26, 2001, the adult establishment use at the subject building should have terminated on or before July 26, 2002; and

WHEREAS, DOB notes that its issuance of the Current CO was erroneous, because it was issued on May 2, 2002, which is after the date of the rezoning; and

WHEREAS, representatives of TC Entertainment Inc., the lessee of the first floor of the subject building (hereinafter, the “Opposition”), testified at hearing and made submissions to the record in opposition to the application; and

WHEREAS, the Opposition raised the following primary arguments: (1) the Board should not act on the subject application due to pending litigation; (2) the adult use regulations were not intended to apply to Special Mixed Use Districts and prohibiting adult establishments in a district specifically intended for mixed uses is invalid as a matter of constitutional law; and (3) the Board should re-start the one-year amortization period of ZR § 52-77; and

WHEREAS, as to the pending litigation, the Opposition asserts that the Board should not act on the subject application in the absence of a decision in Ten’s Cabaret, Inc. v. City of New York (Index No. 121197/02), which concerns the regulation of adult uses in New York City; and

WHEREAS, the Board disagrees with the Opposition, noting that the instant case can be distinguished from the issues under review in Ten’s Cabaret in that DOB’s request to modify the Current CO is based on the fact that an adult establishment

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is not permitted within the subject zoning district, and thus such use cannot be reflected on any certificate of occupancy within the subject district; and

WHEREAS, additionally, the Board notes that the outcome of Ten's Cabaret and the definition of what an adult establishment is does not have any bearing on whether an adult establishment is a conforming use in an M1-5/R9 zoning district; and

WHEREAS, as to the Special Mixed Use Districts, the Opposition asserts that the effect of adult uses in such districts was never analyzed because Special Mixed Use Districts had not yet been created when the adult use regulations prohibiting the operation of adult establishments near residential and specified community facility uses were enacted; and

WHEREAS, the Opposition further asserts that Special Mixed Use District regulations substantially alter the relationship between mixed uses, and the application of the adult use regulations to such districts is not supported; and

WHEREAS, the Board notes that ZR § 42-01(a) specifically prohibits adult establishments in a manufacturing zoning district where residential use is permitted as-of-right, such as in the subject M1-5/R9 zoning district; and

WHEREAS, as to an amortization period, the Opposition requests that the Board re-start the one-year period set forth in ZR § 52-77 based on the equitable defense of laches, the requirement for procedural due process, and the Board's power pursuant to City Charter § 666(7); and

WHEREAS, specifically, the Opposition alleges that DOB failed to pursue the modification to the Current CO in a timely fashion, and because DOB issued the Current CO in 2002, the owner lacked notice of the alleged non-conformity under ZR § 42-01; and

WHEREAS, the Opposition argues that restarting the amortization period is similarly demanded by the requirements of procedural due process, because the owner was not afforded notice that the use was non-conforming after the zoning change; and

WHEREAS, the Board notes that it is an administrative body rather than a court, so it is not appropriate for it to entertain equitable defenses; and

WHEREAS, the Board further notes that the owner had constructive notice of the subject non-conformity by virtue of the rezoning of the site to a zoning district in which adult establishments are prohibited; and

WHEREAS, additionally, the Board notes that the one-year amortization period began on July 26, 2001, more than eight years ago, so any argument for equitable relief, even if the Board were able to consider it, is unavailing; and

WHEREAS, DOB notified the Opposition to the non-conformity with zoning by letter dated October 14, 2008, more than one year ago; and

WHEREAS, based on the above, the Board finds the Opposition's invocation of the Board's powers pursuant to City Charter § 666(7) misplaced; and

WHEREAS, accordingly, the Board finds that the adult establishment use should have been terminated on or before July 26, 2002, pursuant to ZR § 52-77; and

WHEREAS, therefore, the Board finds that the reference

on the Current CO to adult establishment use on the first floor is contrary to the provisions of the Zoning Resolution.

Therefore it is Resolved that the application brought by the Deputy Commissioner of the Department of Buildings on May 12, 2009, seeking to modify Certificate of Occupancy No. 400942655 by removing any reference to "adult establishment" on the first floor, is hereby granted.

Adopted by the Board of Standards and Appeals, December 15, 2009.

244-09-BZY

APPLICANT – Sheldon Lobel, P.C., for Polven, LLC, owner.

SUBJECT – Application August 21, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6/C1-3 zoning district. R6B/C2-4 Zoning District.

PREMISES AFFECTED – 175 Vanderbilt Avenue, east side of Vanderbilt Avenue and Myrtle Avenue, Block 1901, Lots 19, 20, 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, 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 November 24, 2009, after due notice by publication in *The City Record*, and then to decision on December 15, 2009; 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 east side of Vanderbilt Avenue, between Myrtle Avenue and Willoughby Avenue, in a C2-4 (R6B) zoning district; and

WHEREAS, the subject site has 40'-3" of frontage along Vanderbilt Avenue and a total lot area of 5,832 sq. ft.; and

WHEREAS, the site is proposed to be developed with a six-story mixed-use commercial/residential building (the "Building"); and

WHEREAS, the Building is proposed to have a total floor area of 17,404 sq. ft.; and

WHEREAS, the development complies with the former C1-3 (R6) zoning district parameters; and

WHEREAS, however, on July 25, 2007 (hereinafter, the "Enactment Date"), the City Council voted to adopt the Fort Greene/Clinton Hill Rezoning, which rezoned the site from C1-3 (R6) to C2-4 (R6B); and

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WHEREAS, on November 26, 2006, Alteration Permit No. 302251783-01-EW-OT (hereinafter, the "Foundation Permit") was issued by the Department of Buildings ("DOB") permitting foundation work in connection with New Building Application No. 302094418; on April 3, 2007, New Building Permit No. 302094418-01-NB (hereinafter, the "New Building Permit") was issued by 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

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 September 3, 2009, DOB stated that the New Building 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 New Building 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 July 25, 2009 has been considered; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the proposed development subsequent to the issuance of the permit includes: 100 percent of the superstructure, fire stairs, balconies, decking, elevator shaft, dense glass installation, and fire proofing; 90 percent of the stucco and cinder block work; 85 percent of the roof and water proofing; 80 percent of framing; 75 percent of electrical wiring, plumbing roughing, and electrical roughing; 70 percent of elevator work and heating and cooling work; 65 percent of sprinkler work; 50 percent of façade work; and 30 percent of sheetrock taping and prime work; and

WHEREAS, in support of this statement, the applicant has submitted the following: construction contracts; a construction schedule detailing the work completed since the issuance of the Foundation Permit; an affidavit from the general contractor enumerating the completed work; copies of lien waivers evidencing payments made by the applicant; an affidavit from the general contractor confirming that the payments indicated were received; and photographs of the

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building's interior and exterior; 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 July 25, 2009; and

WHEREAS, the Board notes that, based on visual inspections, a substantial amount of physical construction has been completed; and

WHEREAS, as to costs, the applicant represents that the total expenditures paid for the development are \$1,594,800, or approximately 48 percent of the \$3,308,000 cost to complete; and

WHEREAS, as noted, the applicant has submitted copies of lien waivers and an affidavit from the general contractor confirming that the payments indicated were received; 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. 302094418-01-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 December 15, 2011.

Adopted by the Board of Standards and Appeals, December 15, 2009.

291-09-A

APPLICANT – Gary D Lenhart, for The Breezy Point Cooperative, Inc., owner; Kathleen & Thomas Owens, lessees.

SUBJECT – Application October 13, 2009 – Reconstruction and enlargement of an existing single family home not fronting on a mapped street contrary to General City law Section 36 and the proposed upgrade of the existing legal nonconforming private disposal system located partially in the bed of the service road is contrary to Department of Buildings Policy. R4 zoning district.

PREMISES AFFECTED – 33 Queens Walk, east side of Queens Walk, 115' north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO 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 October 6, 2009, acting on Department of Buildings Application No. 420014692, 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 Article 3, Section 36 of the General City Law
- B) The existing dwelling to be reconstructed and enlarged does not have at least 8% of the total perimeter of the building fronting directly upon a legally mapped street or frontage space is contrary to Section 27-291 of the Administrative Code.

A2 – The proposed upgraded private disposal system is partially in the bed of the service road contrary to Building Department policy;” and

WHEREAS, a public hearing was held on this application on December 15, 2009, after due notice by publication in the *City Record*, and then to closure and decision on the same date; and

WHEREAS, by letter dated November 13, 2009, 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 October 6, 2009, acting on Department of Buildings Application No. 420014692 is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received October 13, 2009”–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;

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

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

Adopted by the Board of Standards and Appeals, December 15, 2009

205-05-A

APPLICANT – Gary D Lenhart, for The Breezy Point Cooperative, Inc., owner; Sheila Cardinale, lessee.

SUBJECT – Application September 1, 2009 – Amendment of to a previously granted General City Law Section 35 waiver to permit the construction of a single family home within the bed of a mapped street. R4 zoning district.

PREMISES AFFECTED – 47 Graham Place, north side of Graham Place, approximately 60’ west of mapped Beach 204th Street, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #14Q

APPEARANCES –

For Applicant: Gary Lenhart.

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 January 12, 2010, at 10 A.M., for decision, hearing closed.

313-08-A

APPLICANT – Howard Goldman , LLC & Berger & Kramer , LLP for Chuck Close, for Proprietary Lessee of Studio and Basement Cooperative at 20 Bond Street , lessee.

SUBJECT – Application December 22, 2008 – Appeal to Department of Building’s refusal to revoke permits and approvals for a six-story commercial building. M1-5B zoning district.

PREMISES AFFECTED – 363-371 Lafayette Street, east side of Lafayette Street between Great Jones and Bond Streets, Block 530, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to March 9, 2010, at 10 A.M., for an continued hearing.

217-09-A

APPLICANT – Marvin B. Mitzner, Esq., for 514-516 East 6th Street, owner.

SUBJECT – Application July 7, 2009 – An appeal seeking to vary the applicable provisions under the Multiple Dwelling Law as it applies to the enlargement of non-fireproof tenement buildings. R7-2 zoning district.

PREMISES AFFECTED – 514-516 East 6th Street, south

side of East 6th Street, between Avenue A and B, Block 401, Lots 17 and 18, Borough of Manhattan.

COMMUNITY BOARD #3M

APPEARANCES –

For Applicant: Marvin Mitzner.

For Opposition: Lisa Kaydan of Council Member Rosie Mendez’ Office and Harvey Epstein.

ACTION OF THE BOARD – Laid over to February 9, 2009, at 10 A.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.

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**REGULAR MEETING
TUESDAY AFTERNOON, DECEMBER 15, 2009
1:30 P.M.**

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

ZONING CALENDAR

299-08-BZ

CEQR #09-BSA-049X

APPLICANT – Sheldon Lobel, P.C., for The Lantern Group, Inc., owner.

SUBJECT – Application December 4, 2008 – Variance (§72-21) to allow for a nine-story, 104 unit community facility building (non profit institution with sleeping accommodations), contrary to floor area and use regulations (ZR §24-111, §42-00). R6/C1-4, R6/C2-4 and M1-4 zoning districts.

PREMISES AFFECTED – 3857-3861 Third Avenue, northwest intersection of Claremont Parkway and Third Avenue, block 2919, Lots 39, 42, 43, 44, Borough of Bronx.

COMMUNITY BOARD #3BX

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 Bronx Deputy Borough Commissioner, dated November 7, 2008, acting on Department of Buildings Application No. 210040374, reads in pertinent part:

- “1. Proposed community facility building (Use Group 3) located on a zoning lot partially in an M1-4 zoning district is contrary to ZR Section 42-00.
2. Proposed FAR exceeds permitted FAR and is contrary to ZR Section 24-111.
3. Proposed floor area exceeds permitted floor area and is contrary to ZR Section 24-111;” and

WHEREAS, this is an application under ZR § 72-21, to permit, on a site partially within a C1-4 (R6) zoning district, partially within a C2-4 (R6) zoning district, and partially within an M1-4 zoning district, the construction of a nine-story, 104-unit community facility building with sleeping accommodations (Use Group 3), contrary to ZR §§ 42-00 and 24-111; and

WHEREAS, a public hearing was held on this application on November 24, 2009, after due notice by publication in the *City Record*, and then to decision on

December 15, 2009; and

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

WHEREAS, this application is brought on behalf of The Lantern Group, Inc. (“the Lantern Group”), a not-for-profit entity; and

WHEREAS, Community Board 3, Bronx, recommends approval of the proposed application; and

WHEREAS, at hearing, certain members of the community had questions about the use and operation of the proposed building; and

WHEREAS, in response, the applicant described the proposal to the community members; and

WHEREAS, the site is located on the west side of Third Avenue, between Claremont Parkway and East 172nd Street, partially within a C1-4 (R6) zoning district, partially within a C2-4 (R6) zoning district, and partially within an M1-4 zoning district; and

WHEREAS, the subject site has approximately 153’-4” of frontage on Third Avenue, with an irregular depth and a total lot area of 14,749 sq. ft.; and

WHEREAS, the applicant notes that the site is a single zoning lot consisting of four separate tax lots; tax lots 39, 42, 43 and 44; and

WHEREAS, the zoning lot is divided by a zoning district boundary line, such that a 2,683 sq. ft. portion of the site, located at the northwestern corner of the zoning lot, is within an M1-4 zoning district; and

WHEREAS, the remainder of the site is split between a C1-4 (R6) zoning district to the south and a C2-4 (R6) zoning district to the northeast; and

WHEREAS, the site is currently occupied by a parking lot; and

WHEREAS, the applicant originally proposed a ten-story, 111-unit building with a floor area of 87,010 sq. ft. (5.8 FAR) and a building height of 104 feet; and

WHEREAS, the applicant now proposes to construct a nine-story, 104-unit building to be occupied by a community facility use with sleeping accommodations (Use Group 3), which is not permitted as-of-right in the M1-4 zoning district; additionally the proposed floor area of 73,800 sq. ft. (5.3 FAR); exceeds the maximum floor area of 29,320 sq. ft. (2.43 FAR) permitted for a community facility use in the C1-4 (R6) and C2-4 (R6) zoning districts; and

WHEREAS, the applicant notes that although no portion of the proposed building will be located within the M1-4 zoning district, the garden located in the proposed rear yard is an accessory use to the proposed community facility building and is located within the M1-4 zoning district; thus, a waiver for ZR § 42-00 is required; 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 subsurface soil conditions; (2) the site’s high water table; and (3) the site’s division by a zoning district boundary; and

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WHEREAS, as to the subsurface soil conditions, the applicant states that the site is subject to an uneven distribution of subsurface rock formation; and

WHEREAS, specifically, the applicant submitted a geotechnical report reflecting that the site is burdened by bedrock located between eight and 11 feet below grade on the western portion of the site and between 90 and 115 feet below grade on the eastern portion of the site; and

WHEREAS, the applicant states that as a result of this unique subsurface condition, rock removal will be required on the western portion of the site to accommodate the new building cellar and foundations, and long piles will have to be driven to a depth of between 90 and 115 feet in order to reach the bedrock on the eastern portion of the site; and

WHEREAS, as to the high water table, the applicant's geotechnical report reflected that ground water was encountered at a depth of eight feet below grade; and

WHEREAS, the applicant states that the foundations of the proposed building will be located three to five feet below the level of the ground water; and

WHEREAS, the applicant further states that, due to the site's high water table, a thick concrete slab will have to be installed under the entire building to provide weight to counteract the uplift from the water; and

WHEREAS, the applicant further states that dewatering will be necessary during the construction of the foundations to lower the water levels and provide a dry working area, and an extensive waterproofing system will be required under the entire building and vertically on the foundation walls; and

WHEREAS, the applicant represents that the subsurface soil conditions, combined with the site's high water table, greatly increase construction costs and contribute to unnecessary hardship and practical difficulties in utilization of the site; and

WHEREAS, the applicant submitted a letter from its architect stating that, due to the subsurface conditions, there is no way to construct an as-of-right building on this site that would be large enough to justify the cost of the necessary foundation system; and

WHEREAS, the applicant represents that the subject site is also unique because it is the only site in the surrounding area divided between three zoning districts: a C1-4 (R6) zoning district to the south; a C2-4 (R6) zoning district to the northeast; and an M1-4 zoning district to the northwest; and

WHEREAS, the applicant states that, while a community facility use is permitted as-of-right in the C1-4 (R6) and C2-4 (R6) zoning districts, such use is prohibited in an M1-4 zoning district; and

WHEREAS, the applicant represents that the only part of the subject site within an M1-4 zoning district consists of an irregularly-shaped 2,683 sq. ft. portion with no frontage on any of the surrounding roads; and

WHEREAS, the applicant represents that this condition restricts the viability of a conforming use on the M1-4 portion of the site; and

WHEREAS, the applicant notes that, for zoning lots divided by a district boundary, ZR § 77-11 permits the use regulations applicable to the district in which more than 50

percent of the lot area is located to apply to the entire lot when the greatest distance from the mapped district boundary to the boundary of the lot line in which less than 50 percent is located does not exceed 25 feet; and

WHEREAS, the applicant states that the distance from the M1-4 district boundary line to the lot line of the portion of the subject site located within the M1-4 zoning district is greater than 25 feet; thus ZR § 77-11 is not applicable; and

WHEREAS, the applicant concludes that the unique positioning of the site within a split zoning district further adds to the hardship encountered at the site; and

WHEREAS, additionally, the applicant states that the proposed floor area and use waivers are necessary to construct a facility that meets the Lantern Group's programmatic needs of providing affordable and supportive housing for low-income families and individuals, and providing on-site social service programs to the residents; and

WHEREAS, the applicant states that the proposed development will allow the Lantern Group to increase the number of low-income and special needs families and individuals that can be served in the greater Bronx area and provide residents with a modern, functional facility; and

WHEREAS, the applicant represents that it will receive funding from the New State Homeless Housing Assistance Program ("HHAP") and the New York State Housing Finance Agency ("HFA") in anticipation of the development of the facility; and

WHEREAS, the applicant represents that the proposed facility, including the number and kind of units, is based on models for such housing established by the New York City Housing Development Corporation ("HDC") and the New York City Department of Housing Preservation and Development ("HPD"), and followed by the Lantern Group at other locations; and

WHEREAS, by letter dated August 25, 2009, HHAP stated that the proposed development could be awarded funding to cover the costs of establishing a homeless housing program, including acquisition, construction, professional fees, site testing, and start up; and

WHEREAS, by letter dated October 29, 2009, HFA stated that the proposed development is eligible for tax exempt bond and four percent "as of right" tax credit financing; and

WHEREAS, the applicant represents that if the requested variance is not granted, the financial assistance from HHAP and HFA is unlikely to be available, thereby preventing the construction of the proposed building; and

WHEREAS, by letter dated September 3, 2009, HPD stated that a small portion of the subject site (part of tax lot 42) is located within the Bathgate Urban Renewal Area ("URA"), and that HPD intends to file an application with the Department of City Planning ("DCP") to have the portion removed from the URA; and

WHEREAS, the applicant further represents that HHAP program requirements for the subject site mandate that: (1) 30 percent of all apartments are reserved for families referred by the New York City Department of

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Homeless Services (“DHS”) shelter system or a related homelessness prevention agency; (2) the Lantern Group maintains supportive programs at the site for individualized services, which include case management, counseling, benefits counseling and services, multi-disciplinary counseling, and child and youth services; and (3) the applicant employ an experienced professional responsible for property management and ensuring efficient delivery of programmatic services to tenants; and

WHEREAS, the applicant notes that the proposed program satisfies all of the above-mentioned HHAP program requirements; and

WHEREAS, specifically, the applicant states that 41 of the proposed 104 units will be reserved for homeless veterans referred by DHS, and on-site social service programs will be provided by the Community Lantern Corporation, a social service affiliate of the Lantern Group, with a professional staff of social workers and counselors to provide counseling, case management, and employment and educational assistance for all tenants; and

WHEREAS, the applicant notes that the social services facility will occupy the cellar and a portion of the first floor of the proposed building; and

WHEREAS, the applicant states that the Lantern Group intends to utilize the operating income generated from the rent roll to cover the cost of the planned social services; and

WHEREAS, the applicant further states that, therefore, the proposed 104 units are necessary to sustain a sufficient amount of operating income to provide for these services; and

WHEREAS, the applicant states that an as-of-right building would have a floor area of only 29,320 sq. ft. (2.43 FAR), which would not be able to accommodate the applicant’s programmatic needs; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate and in conjunction with the programmatic needs of the Lantern Group, create practical difficulties and unnecessary hardships in developing the site in strict conformity with current zoning; and

WHEREAS, the applicant need not address ZR § 72-21(b) since the Lantern Group 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 variance, if granted, will not negatively impact the character of the neighborhood, or impact adjacent uses; and

WHEREAS, the applicant represents that the land uses surrounding the site are characterized by a mix of residential, commercial, and community facility uses; and

WHEREAS, the applicant submitted a 400-ft. radius diagram reflecting that there are a number of community facility uses located in the surrounding area, including three schools and a church building; and

WHEREAS, the applicant represents that the area is also characterized by New York City public housing developments, including a 16-story building and a 21-story building within

four blocks of the subject site; and

WHEREAS, as to bulk, the applicant submitted a floor area chart reflecting that there are 13 buildings in the surrounding area that exceed the allowable FAR, including a building located two blocks away from the subject site, on the corner of Fulton Avenue and 171st Street, with an FAR of 6.62; and

WHEREAS, the applicant also submitted a building height chart and a corresponding map, reflecting that, within four blocks of the subject site, there are seven buildings with frontage along Third Avenue that are taller than the proposed building; and

WHEREAS, the Board notes that an FAR of 4.8 would be permitted in the subject zoning district for a community facility without sleeping accommodations; and

WHEREAS, the applicant notes that, other than floor area, all bulk parameters comply with zoning district regulations; and

WHEREAS, the applicant represents that the proposed building would be permitted as-of-right in the R8A zoning district located one block north of the site; 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, but is a result of the unique site conditions and the Lantern Group’s programmatic needs; and

WHEREAS, as noted above, the applicant originally proposed a ten-story, 111-unit building with a floor area of 87,010 sq. ft. and a total height of 104 feet; and

WHEREAS, the Board finds that the revised proposal is the minimum necessary to afford the Lantern Group 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 6NYCRR, 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. 09BSA049X dated December 11, 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; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, the 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

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(RAP) and Construction Health and Safety Plan (CHASP) on December 11, 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 35 dBA of window-wall noise attenuation with an alternate means of ventilation on all facades of the subject building in order to achieve an interior noise level of 45 dBA in each 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.

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 the construction of a nine-story, 104-unit community facility building with sleeping accommodations (Use Group 3), contrary to ZR §§42-00 and 24-111; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received June 16, 2009"—six (6) sheets; and *on further condition*;

THAT the following shall be the bulk parameters of the building: a maximum floor area of 78,300 sq. ft. (5.3 FAR); a total height of 93 feet; and a rear yard with a depth of 22'-6", as reflected on the BSA-approved plans;

THAT any change in ownership, operator, or control of the site from that proposed herein shall require the prior approval of the Board;

THAT 35 dBA of window-wall noise attenuation (with an alternate means of ventilation for each dwelling unit) shall be provided on all facades of the subject building;

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 or a Notice of No Objection;

THAT a Uniform Land Use Review Procedure application shall be filed with DCP to remove the relevant portion of the site from the URA, and its removal shall be secured prior to the issuance of a building permit;

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, December 15, 2009.

250-09-BZ

CEQR #09-BSA-019M

APPLICANT – Kramer Levin Naftalis & Frankel, LLP., for 532 Madison Syndicate, owner; Madison/Fifth Associates LLC c/o Stahl Real Estate, lessee.

SUBJECT – Application August 28, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (*Ultimate Training Center*) on the sixth and seventh floors in an existing seven-story commercial building. C5-3 (MiD) zoning district.

PREMISES AFFECTED – 532 Madison Avenue, East 54th Street, Fifth Avenue; East 55th Street, Block 1290, Lot 15, Borough of Manhattan.

COMMUNITY BOARD #6M

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 Superintendent, dated November 9, 2009, acting on Department of Buildings Application No. 120028228, reads in pertinent part:

“Proposed ‘physical cultural establishment’ is not permitted as-of-right in ZD C5-3. Reference to applying for a BSA special permit pursuant to ZR section 73-36;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in a C5-3 zoning district within the Special Midtown District, a physical culture establishment (PCE) on the sixth and seventh floors of a seven-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 24, 2009, after due notice by publication in the *City Record*, and then to decision on December 15, 2009; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of the intersection of Madison Avenue and East 54th Street, in a C5-3 zoning district within the Special Midtown District; and

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

WHEREAS, the PCE occupies a total floor area of

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approximately 3,558 sq. ft. on the sixth and seventh floors; and
WHEREAS, the PCE is operated as Ultimate Training Center; and

WHEREAS, the proposed hours of operation are: 6:30 a.m. to 11:00 p.m., daily; 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 applicant requests that the term of the special permit expire on April 30, 2019, in order to coincide with the term of the applicant's ground lease; 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. 10BSA139M, dated August 11, 2009; 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 in a C5-3 zoning district within the Special Midtown District, the legalization of a PCE on the sixth and seventh floors of an existing seven-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 10, 2009"-three (3) sheets and "Received December 2, 2009"-one (1) sheet and *on further condition*:

THAT the term of this grant shall expire on April 30, 2019;

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 signage shall comply with C5 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 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, December 15, 2009.

195-07-BZ

APPLICANT – Greenberg Traurig by Deirdre A. Carson, for Bond Street Partners LLC (as to lot 64) c/o Convermat, owner.

SUBJECT – Application August 9, 2007 – Variance (§72-21) to allow hotel and retail uses below the floor level of the second story, contrary to use regulations (§42-14(d)(2)). M1-5B zoning district.

PREMISES AFFECTED – 8-12 Bond Street, Northwest corner of Bond and Lafayette Streets, Block 530, Lot 62 & 64, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 1:30 P.M., for deferred decision.

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97-08-BZ

APPLICANT – Eric Palatnik, P.C., for Chesky Berkowitz, owner; Central UTA, lessee.

SUBJECT – Application April 18, 2008 – Special Permit (§73-19) to allow the legalization of an existing school (*Central UTA*) (UG 3). M1-1 district.

PREMISES AFFECTED – 84 Sanford Street, between Park Avenue and Myrtle Avenue, Block 1736, Lot 14, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Eric Palatnik.

ACTION OF THE BOARD – Laid over to January 26, 2010, at 1:30 P.M., for adjourned hearing.

197-08-BZ

APPLICANT – Stuart A. Klein, for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application July 23, 2008 – Variance (§72-21) to permit a four-story and penthouse residential building, contrary to §23-141 (FAR, open space ratio), §23-22 (number of dwelling units), §23-45 (front yard), §23-462 (side yard), and §23-631 (wall height). R4 district.

PREMISES AFFECTED – 341/349 Troy Avenue, aka 1515 Carroll Street, corner of Troy Avenue and Carroll Street, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

APPEARANCES –

For Applicant: Harold Weinberg.

ACTION OF THE BOARD – Laid over to January 26, 2010, at 1:30 P.M., for adjourned hearing.

220-08-BZ

APPLICANT – Moshe M. Friedman, for Samuel Jacobowitz, owner.

SUBJECT – Application August 28, 2008 – Variance (§72-21) to permit the enlargement of a non-conforming one-family dwelling, contrary to §42-10. M1-1 zoning district. PREMISES AFFECTED – 95 Taaffe Place, east side, 123'-3.5" south of intersection of Taaffe Place and Park Avenue, Block 1897, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Moshe M. Friedman and Harold Weinberg.

ACTION OF THE BOARD – Laid over to February 9, 2010, at 1:30 P.M., for continued hearing.

254-08-BZ

APPLICANT – Eric Palatnik, P.C., for Yeshiva Ohr Yitzchok, owner.

SUBJECT – Application October 15, 2008 – Variance (§72-21) to legalize and enlarge a Yeshiva (*Yeshiva Ohr Yitzchok*) contrary to §42-11 (use regulations), §43-122 (floor area), §43-43 (wall height, number of stories, and sky exposure

plane). §43-301 (required open area). M1-1D zoning district. PREMISES AFFECTED – 1214 East 15th Street, Western side of East 15th Street between Avenue L and Locust Avenue. Block 6734, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #14BK

APPEARANCES –

For Applicant: Eric Palatnik, Lewis E. Garfinkel and Rabbi Groner.

ACTION OF THE BOARD – Laid over to February 9, 2010, at 1:30 P.M., for continued hearing.

302-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for James Woods, owner.

SUBJECT – Application December 10, 2008 – Variance to permit an existing semi-detached residential building contrary to side yard regulations (ZR §23-462) R5 district. PREMISES AFFECTED – 4368 Furman Avenue, 224' south of the southeast corner of the intersection of Furman Avenue and Nereid Avenue, Block 5047, Lot 12, Borough of The Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Adam Rothkrug and Gino Longo.

For Opposition: Davis.

ACTION OF THE BOARD – Laid over to February 9, 2010, at 1:30 P.M., for continued hearing.

309-08-BZ

APPLICANT – Rothkrug, Rothkrug & Spector LLP, for 147th Avenue Building Corporation, owner.

SUBJECT – Application December 19, 2008 – Variance (§72-21) for the construction of a three story, two-family home on a vacant corner lot contrary to front yards (§23-45) and floor area (§23-141). R4-1 zoning district.

PREMISES AFFECTED – 1717 Pitman Avenue, northwest corner of intersection of Digney Avenue and Pitman Avenue, Block 5049, Lot 21, Borough of The Bronx.

COMMUNITY BOARD #12BX

APPEARANCES –

For Applicant: Adam Rothkrug.

ACTION OF THE BOARD – Laid over to February 2, 2010, at 1:30 P.M., for continued hearing.

43-09-BZ

APPLICANT – Harold Weinberg, P.E., for Paul S. Grosman, owner.

SUBJECT – Application March 10, 2009 – Special Permit (§73-19) to allow a school (*Southside Charter High School*) in a recently constructed building, contrary to use regulations. M1-2 district.

PREMISES AFFECTED – 198 Varet Street, southside 170'-6" west of White Street, between White Street and Bushwick Avenue, Block 3117, Lot 24, Borough of Brooklyn.

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COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

ACTION OF THE BOARD – Laid over to January 26, 2010, at 1:30 P.M., for continued hearing.

53-09-BZ

APPLICANT – Harold Weinberg, P.E., for David Salamon, owner.

SUBJECT – Application April 6, 2009 – Variance (§72-21) for the construction of a three-family home on a vacant undersized lot. This application seeks to vary floor area (§23-141); front yard (§23-45) side yard (§23-461) and parking (§25-161) in an R5 zoning district.

PREMISES AFFECTED – 540 Schenck Avenue, southwest corner of Dumont Avenue, between Schenck Avenue and Hendrix Street, Block 4075, Lot 118, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: Harold Weinberg and Frank Sellitto.

For Opposition: Elaine Smith, Pearl C. Thorne and Neville Thorne.

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 January 12, 2010, at 10 A.M., for decision, hearing closed.

180-09-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Steven Smith, owner.

SUBJECT – Application June 1, 2009 – Variance (§72-21) to allow for a commercial building (UG6) contrary to use regulations (§22-00). R3-1 zoning district.

PREMISES AFFECTED – 1735 Richmond Avenue, 296.35' north of the intersection of Richmond Avenue and Croft Place, block 2072, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #2SI

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 January 26, 2010, at 1:30 P.M., for decision, hearing closed.

182-09-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Mita, Inc., owner.

SUBJECT – Application June 4, 2009 – Variance (§72-21) to legalize the existing UG 3 novitiate and UG 4 house of

worship (*Congregation Mita*), contrary to §§ 24-35 (side yard) and 24-36 (rear yard). R7-2 zoning district.

PREMISES AFFECTED – 612 West 180th Street, 180th Street between Wadsworth and St. Nicholas Avenues, Block 2162, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #12M

APPEARANCES –

For Applicant: Eric Palatnik and Carlo Nuzzi.

ACTION OF THE BOARD – Laid over to February 2, 2010, at 1:30 P.M., for continued hearing.

218-09-BZ

APPLICANT – Jeffrey A. Chester, for Rich Gene Realty Corporation, owner; McDonald's Corporation, lessee.

SUBJECT – Application July 8, 2009 – Special Permit (§73-243) to allow an accessory drive-through facility to an eating and drinking establishment (*McDonald's*). C1-3/C8-2 zoning district.

PREMISES AFFECTED – 57 Empire Boulevard, between Mckeever Place and Bedford Avenue, bounded by Sullivan Place on south, Block 1306, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Jeffrey A. Chester.

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 January 12, 2010, at 1:30 P.M., for decision, hearing closed.

239-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York University, owner.

SUBJECT – Application August 5, 2009 – Variance (§72-21) to allow for the development of a 6 story community facility building (NYU Center for Academic and Spiritual Life) contrary to lot coverage (ZR §24-11) and height and setback regulations (ZR §24-522, §33-431). R7-2/C1-5 and R7-2 Districts.

PREMISES AFFECTED – 238 Thompson Street aka 56 Washington Square South, block bounded by Thompson and West 3rd Streets, Laguardia Place, Washington Square South Block 538, Lot 27, Borough of Manhattan.

COMMUNITY BOARD #2M

APPEARANCES – None.

ACTION OF THE BOARD – Laid over to January 12, 2010, at 1:30 P.M., for postponed hearing.

253-09-BZ

APPLICANT – MetroPCS New York, LLC, for Jangla Realty Corp., owner; MetroPCS New York, LLC, lessee.

SUBJECT – Application September 4, 2009 – Special Permit (§73-30) to install public utility wireless

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telecommunications facility on roof of existing building. R4 zoning district.

PREMISES AFFECTED – 53-00 65th Place, southwest corner of 53rd Avenue and 65th Place, Block 2374, Lot 160, Borough of Queens.

COMMUNITY BOARD #5Q

APPEARANCES –

For Applicant: John Coughlins and Robert Toms.

For Opposition: Gary Giordano of Community Board 5Q, Susan Kohl and Walter Sanchez.

ACTION OF THE BOARD – Laid over to February 2, 2010, at 1:30 P.M., for continued hearing.

Jeff Mulligan, Executive Director

Adjourned: P.M.