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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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Volume 89, No. 28-30

July 22, 2004

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### DIRECTORY

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**Affecting Calendar Number:**

140-04-A	39 Bowery Street, Manhattan
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# DOCKETS

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**245-04-BZ** B.BK. 102/04 Franklin Avenue, west side, 182' south of Park Avenue, Block 1898, Lots 45 and 46, Borough of Brooklyn. N.B. #301668791. Proposed five-story, nine unit multiple dwelling, Use Group 2, located in an M1-1 zoning district, is contrary to Z.R. §42-10.

**COMMUNITY BOARD #3BK**

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**246-04-BZ** B.M. 20 Maiden Lane, bounded by Maiden and Liberty Lanes and Nassau and Liberty Streets, Block 64, Lots 1 and 6, Borough of Manhattan. Applic. #103799267. Proposed construction of a 16-story, building, with a ground floor restaurant, and hotel on floors 2 through 16, located in a C5-5 zoning district, which does not comply with the zoning requirements for height, lot coverage and setback, is contrary to Z.R. §91-31, §91-32 and §91-33.

**COMMUNITY BOARD #1M**

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**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.

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# CALENDAR

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**AUGUST 17, 2004, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, August 17, 2004, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **40-63-BZ**

APPLICANT - Francis R. Angelino, Esq., for Park Hill Tenants Corp., owner; Majestic Car Park LLC, lessee.

SUBJECT - Application January 12, 2004 - request for a waiver of the Rules of Practice and Procedure and reopening for an extension of term of variance which permitted transient parking in the unused and surplus spaces in an existing multiple dwelling accessory garage.

PREMISES AFFECTED - 1199 Park Avenue, northeast corner of East 94th Street, Block 1525, Lot 1, Borough of Manhattan.

**COMMUNITY BOARD #8**

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### **67-91-BZ**

APPLICANT - Davidoff & Malito, LLP by Howard S. Weiss, Esq., for HNF Realty LLC, owner; Cumberland Farms, Inc., lessee.

SUBJECT - Application March 16, 2004 and updated June 29, 2004 - request for a waiver of the Rules of Practice and Procedure, reopening for an extension of term of variance which expired March 17, 2002 and for an amendment to allow the sale of convenience store items in place of accessory gasoline service station items.

PREMISES AFFECTED - 260-09 Nassau Boulevard, 54-47 to 54-67 Little Neck Parkway, northeast corner of the intersection with Little Neck Parkway, Block 8274, Lots 134, 135, Borough of Queens.

**COMMUNITY BOARD #11**

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### **383-03-A**

APPLICANT - Zygmunt Staszewski, P.E., for Cammeby's Management Company, LLC, owner; Barry Pincus, lessee.

SUBJECT - Application December 9, 2003 - Proposed retention of the existing 10-story atrium and open access stair unenclosed, which is contrary to the "Old Code", Art.26-209(6.4.1.9)(2), as part of a "residential conversion" of an existing Commercial Class "E" building to a residential J-2 occupancy.

PREMISES AFFECTED - 5 Beekman Street, southwest corner of Nassau Street, southeast corner of Theater Alley, Block 90, Lot 14, Borough of Manhattan.

**COMMUNITY BOARD #1**

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### **155-04-A**

APPLICANT - Walter T. Gorman, P.E., for Breezy Point Cooperative, Inc, owner; Richard & Dawn Hennessy, lessees.

SUBJECT - Application April 12, 2004 - Proposed enlargement of the first floor, and the addition of a new second floor, to an existing one family dwelling, not fronting on a legally mapped street, is contrary to Section 36, Article 3 of the General City Law.

PREMISES AFFECTED - 4 Marion Walk, southwest corner of West End Avenue, Block 16350, Part of Lot 400, Borough of Queens.

**COMMUNITY BOARD #14**

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# CALENDAR

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**AUGUST 17, 2004, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, *Tuesday afternoon*, August 17, 2004, at 1:30 P.M., at 40 Rector Street, 6<sup>h</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **158-04-BZ**

APPLICANT - Sheldon Lobel, P.C., for Albert Cohen, owner.  
SUBJECT - Application April 15, 2004 - under Z.R. §72-21 to permit the proposed horizontal enlargement, to a detached one-family dwelling, Use Group 1, on a narrow lot with non-complying side yards, and also encroaches in the required rear yard, located in an R5 zoning district, which is contrary to Z.R. §23-48, §54-31 and §23-47.

PREMISES AFFECTED - 1035 Ocean Parkway, between Avenues "I" and "K", Block 6527, Lot 76, Borough of Brooklyn.  
**COMMUNITY BOARD #12BK**

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### **184-04-BZ**

APPLICANT - Robert Piscioneri, R.A., for Morris Park Community Association, owner.  
SUBJECT - Application May 3, 2004 - under Z.R. §72-21 to permit the proposed addition of a second floor, to be used as accessory offices, in conjunction with the community center on the first floor, located in an R4 zoning district, which does not comply with the zoning requirements for lot coverage, front, side and rear yards, is contrary to Z.R. §54-31, §24-11, §24-34 and §24-37.

PREMISES AFFECTED - 1824 Bronxdale Avenue, east side, 251' north of Morris Park Avenue, Block 4123, Lot 42, Borough of The Bronx.

**COMMUNITY BOARD #11BX**

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*Pasquale Pacifico, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, JULY 13, 2004  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.

The minutes of the regular meetings of the Board held on Tuesday morning and afternoon, May 11, 2004, were approved as printed in the Bulletin of May 20, 2004, Volume 89, No. 20-21.

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## SPECIAL ORDER CALENDAR

### 889-55-BZ, Vol. II

APPLICANT - J & H Management Corp., for Everything Auto Repair, lessee.

SUBJECT - Application October 21, 2003 - request for a waiver of the Rules of Practice and Procedure and reopening for an extension of term of variance which expired May 1, 2003.

PREMISES AFFECTED - 69-13/25 (69-15 Official) 164<sup>th</sup> Street, east side 110' south of 69<sup>th</sup> Avenue, Block 6931, Lot 38, Borough of Queens.

### COMMUNITY BOARD #8Q

APPEARANCES - None.

**ACTION OF THE BOARD** - Rules of Practice and Procedure waived, application reopened, resolution amended and term of Variance extended.

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

THE RESOLUTION -

WHEREAS, the applicant requested a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of the term of the variance which expired on May 1, 2003; and

WHEREAS, a public hearing was held on this application on March 2, 2004 after due notice by publication in *The City Record*, with continued hearings on April 27, 2004, May 25, 2004, June 22, 2004 and then laid over to July 13, 2004 for decision; and

WHEREAS, on December 3, 1957, the Board granted an application to erect and maintain in a residential district, a gasoline service station with accessory uses for a term of fifteen years; and

WHEREAS, since the original grant, the applicant has obtained subsequent extensions of the term of the variance, the most recent extension being granted on October 25, 1994; and

WHEREAS, the applicant has also requested an amendment to the resolution to permit a change in use,  
**274-90-BZ**

APPLICANT - George E. Berger, for Long Island University, owner.

SUBJECT - Application December 22, 2003 - request for a waiver

pursuant to Z.R. §11-413, from gasoline service station to automobile repairs with hand tools only; and

WHEREAS, the following uses will be discontinued: auto body work and heavy transmission work, lubritorium, auto-washing, offices, automobile sales, parking and storage of motor vehicles.

*Resolved*, that the Board of Standards and Appeals, waives the Rules of Practice and Procedure, *reopens and amends* the resolution pursuant to §11-413, said resolution having been adopted on December 3, 1957, to extend the term of the Variance which expired on May 1, 2003, so that as amended, this portion of the resolution shall read: "to permit the extension of the term of the Variance for an additional five (5) years from May 1, 2003 to expire on May 1, 2008 and to permit a change in use, pursuant to Z.R. §11-413, from gasoline service station to automobile repairs with hand tools only, and a discontinuance of the following uses: auto body work and heavy transmission work, lubritorium, auto-washing, offices, automobile sales, parking and storage of motor vehicles, *on condition* that all work shall substantially conform to drawings as filed with this application marked "Received June 8, 2004"- (1) sheet; and *on further condition*:

THAT no auto body work, welding or torching will be conducted on the site;

THAT no automobile repairs will be conducted on the open portion of the lot;

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 landscaping and fencing will be installed and maintained as per the approved plans;

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 Application #401735958)

Adopted by the Board of Standards and Appeals, July 13, 2004.

of the Rules of Practice and Procedure, reopening for an extension of term of variance which expired January 27, 2002 and for an amendment to the resolution.

PREMISES AFFECTED - 85 DeKalb Avenue, north side DeKalb

# MINUTES

Avenue, west of Ashland Place, Block 2086, Lot 34, Borough of Brooklyn.

## COMMUNITY BOARD #2BK

APPEARANCES -

For Applicant: George Berger.

**ACTION OF THE BOARD** - Rules of Practice and Procedure waived, application reopened, resolution amended and term of variance extended.

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

THE RESOLUTION -

WHEREAS, the applicant requests a waiver of the Rules of Practice and Procedure, a re-opening to amend the resolution, and an extension of the term of the special permit which expired on January 27, 2002; and

WHEREAS, a public hearing was held on this application on April 27, 2004, after due notice by publication in *The City Record*, with continued hearings on May 25, 2004 and June 22, 2004, and then laid over to July 13, 2004 for decision; and

WHEREAS, the applicant seeks to amend the resolution to permit: (1) an increase in parking spaces on floors one through six of the subject building; (2) the removal of the front walls of several storage rooms for conversion into parking spaces on floors one through six; and (3) the enlargement of an accessory office and store and the construction of a new bathroom, all located on the first floor; and

WHEREAS, the applicant represents that these amendments are necessary because of the newer, smaller vehicles now being used, and that there has been no increase in the bulk of the subject building; and

WHEREAS, in 1955, under BSA Calendar no. 430-55-BZ, pursuant to sections 19A(j) and 7c of the 1916 Zoning Resolution, the Board permitted in a residential use district, the change in occupancy of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> floors from a legal non-conforming use of a public garage to manufacturing uses without the required additional loading berth; and

WHEREAS, in 1964, under BSA Calendar No. 189-64-BZ, pursuant to Z.R. §11-412 and §72-21, the Board granted a change in occupancy of the basement from non-storage garage and auto repairs and a change in occupancy of the second, third and fourth floors from manufacturing to factory, showroom and offices (Use Group 17) with loading and unloading for a term of twenty (20) years; and

WHEREAS, in 1974, under BSA Calendar No. 209-74-BZ, pursuant to Z.R. §11-413, the Board granted a special permit to permit a change in use of the basement and first floor to a public parking garage; and

Adopted by the Board of Standards and Appeals, July 13, 2004.

## 103-02-BZ

APPLICANT - Sheldon Lobel, P.C., for Bnei Aharon, Inc., owner.

WHEREAS, on January 28, 1992, pursuant to Z.R. §§11-411 and 11-413, the Board granted a special permit, to allow in an R6 zoning district, the legalization of the extension of a public parking garage (Use Group 8) and structural alteration of retail stores (Use Group 6) on the first floor, the legalization of the change in use of floors 2 through 4 of a building containing manufacturing, auto repair, public parking and retail stores from manufacturing (Use Group 17) and auto repair (Use Group 16) to public parking garage (Use Group 8), and the extension of a variance for such use for floors two through four; and

Resolved, that the Board of Standards and Appeals *reopens and amends* the resolution, said resolution having been adopted on January 28, 1992, expiring on January 27, 2002, so that as amended this portion of the resolution shall read: "to permit the extension of the term of special permit for an additional ten (10) years from July 13, 2004 expiring on July 13, 2014, and to permit: (1) an increase in parking spaces on floors one through six of the subject building; (2) the removal of the front walls of several storage rooms for conversion into parking spaces on floors one through six; and (3) the enlargement of an accessory office and store and the construction of a new bathroom, all located on the first floor; *on condition* that all work shall substantially conform to drawings as filed with this application, marked "Received June 1, 2004" (8) sheets, and *on further condition*;

THAT the premises shall maintained free of debris and graffiti;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT all windows shall be kept in good repair;

THAT the hours of operation shall be limited to 7:00 A.M. to 11:00 P.M., seven days a week;

THAT the maximum number of parking spaces allowed in the existing building is (425) four hundred and twenty five.

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

THAT signage shall comply with the requirements of a C1 zoning district;

THAT all light and air requirements shall be as approved by the Department of Buildings;

THAT mechanical ventilation shall be as approved by the Department of Buildings;

THAT the layout of the parking shall be as approved by the Department of Buildings;

THAT the development, as approved, is subject to verification by the New York City Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department.

SUBJECT - Application December 2, 2003 - reopening for an amendment to the resolution.

PREMISES AFFECTED - 1516 East 24<sup>th</sup> Street, East 24<sup>th</sup> Street, 105' south of Avenue "O" and Kings Highway, Block 6770, Lot 12, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

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# MINUTES

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## APPEARANCES -

For Applicant: Irving Minkin.

**ACTION OF THE BOARD** - Application reopened and amended.

## THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

## THE RESOLUTION -

WHEREAS, a public hearing was held on this application on March 30, 2004 after due notice by publication in *The City Record*, with continued hearings on April 13, 2004, May 11, 2004, June 22, 2004, and then laid over to July 13, 2004 for decision; and

WHEREAS, the applicant requests a re-opening to amend the resolution to permit development of a partial third floor; and

WHEREAS, the applicant represents that the proposed construction is necessary in order to meet the programmatic needs of the synagogue located on the premises; and

WHEREAS, the applicant represents that the proposed residential floor area will be used only as an accessory use to the synagogue for the resident Rabbi and his family; and

WHEREAS, the proposed increase in floor area is allowed as-of-right in an R6 zoning district; and

WHEREAS, the proposed changes will not increase any previous waivers or variance granted for the rear yard; and

WHEREAS, in response to the request of the Board, the plans have been revised to reflect a pitched roof, in order to achieve compatibility with neighboring structures.

*Resolved*, that the Board of Standards and Appeals *reopens and amends* the resolution pursuant to Sections 72-01 and 72-22 of the Zoning Resolution, said resolution having been adopted on October 1, 2002, so that as amended this portion of the resolution shall read: "To permit development of a partial third floor *on condition* that all work shall substantially conform to the drawings as they apply to the objections above noted, filed with this application marked "Received June 4, 2004"- (9) sheets; and on further condition:

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

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT all light and air requirements for the subject building 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;

## 173-92-BZ

APPLICANT - Law Offices of Howard Goldman LLC, for Bremen House, Inc., owner.

SUBJECT - Application February 20, 2004 - reopening for an extension of term of special permit granted pursuant to Z.R.§73-36 that permitted a physical culture establishment on the second floor of a building, located in a C2-8 zoning district.

PREMISES AFFECTED - 220 East 86<sup>th</sup> Street, between 2nd and

THAT the Department of Buildings must ensure compliance 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 # 300189622)

Adopted by the Board of Standards and Appeals, July 13, 2004.

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## 519-57-BZ

APPLICANT - Carl A. Sulfaro, Esq., for BP Amoco Corporation, owner.

SUBJECT - Application November 24, 2003 - request for a waiver of the Rules of Practice and Procedure, reopening for an extension of term of variance which expired June 19, 2003 and for an amendment to the resolution.

PREMISES AFFECTED - 2071 Victory Boulevard, northwest corner of Bradley Avenue, Block 462, Lot 35, Borough of Staten Island.

## COMMUNITY BOARD #1SI

APPEARANCES -

For Applicant: Carl A. Sulfaro.

**ACTION OF THE BOARD** - Laid over to September 14, 2004, at 10 A.M., for continued hearing.

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## 722-68-BZ

APPLICANT - Sheldon Lobel, P.C., for Matthews Pines, owner; Speedstar Motors, Inc., lessee.

SUBJECT - Application July 30, 2003 - reopening for an amendment to legalize a change of use from wholesale storage and packaging establishment, with an accessory office and loading area (Use Group 16) to automotive repair and sales (Use Group 16) and warehouse (Use Group 16), with accessory offices, located in an R-6 zoning district.

PREMISES AFFECTED - 388-392 Kings Highway, West 3<sup>rd</sup> Street and Kings Place, Block 6678, Lot 68, Borough of Brooklyn.

## COMMUNITY BOARD #11BK

APPEARANCES -

For Applicant: Irving Minkin.

**ACTION OF THE BOARD** - Laid over to September 21, 2004, at 10 A.M., for continued hearing.

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3rd Avenues, Block 1531, Lot 38, Borough of Manhattan.

## COMMUNITY BOARD #8M

APPEARANCES -

For Applicant: Chris Wright.

## THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

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# MINUTES

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Negative:.....0

**ACTION OF THE BOARD** - Laid over to August 10, 2004, at 10 A.M., for decision, hearing closed.

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## 176-99-BZ

APPLICANT - The Agusta Group, for Marathon Parkway Assoc., LLC, owner.

SUBJECT - Application May 11, 2004- reopening for an extension of time to complete construction.

PREMISES AFFECTED - 45-17 Marathon Parkway, east side 110.48' south of Northern Boulevard, Block 8226, Lot 10, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES -

For Applicant: Sol Korman.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

**ACTION OF THE BOARD** - Laid over to August 10, 2004, at 10 A.M., for decision, hearing closed.

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## 359-03-A

APPLICANT - The Agusta Group, for Joseph Atari, owner.

SUBJECT - Application November 20, 2003 - proposed two story one family dwelling, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED - 220-43 135<sup>th</sup> Avenue, north side, 670' from 219<sup>th</sup> Street, Block 13101, Lot 15, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES - None.

**ACTION OF THE BOARD** - Appeal granted on condition.

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Queens Borough Commissioner, dated November 3, 2003, acting on Department of Buildings N.B. Application No. 401712535, reads, in pertinent part:

“Construction of a dwelling in the bed of a mapped

## 379-03-A

APPLICANT - Gary Lenhart, R.A., for The Breezy Point Cooperative, owner; Kathy Doherty, lessee.

SUBJECT - Application December 4, 2003 - proposed reconstruction and enlargement of an existing one family dwelling, situated within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED - 127 Arcadia Walk, east side, 501.12' south of Rockaway Point Boulevard, Block 16350, Part of Lot 400, Borough of Queens.

### COMMUNITY BOARD #14Q

street is contrary to General City Law 35. Refer to Board of Standards and Appeals for their determination.”; and

WHEREAS, by the letter dated May 6, 2004, the Fire Department has reviewed the above project and has no objections; and

WHEREAS, by the letter dated January 29, 2004, the Department of Environmental Protection has reviewed the above project and has no objections; and

WHEREAS, by letter dated April 2, 2004, the Department of Transportation has reviewed the above project and has no objections as this site is not presently included in DOT’s Capital Improvement Program; and

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

*Resolved*, that the decision of the Queens Borough Commissioner, dated November 3, 2003, acting on Department of Buildings N.B. Application No. 401712535, is modified under the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above, *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received November 20, 2003,” -(1) sheet; that the proposal comply with all applicable R3-2 zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with, 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 this approval is limited to the relief granted by the Board in response to specifically cited and filed 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 on July 13, 2004.

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APPEARANCES -

For Applicant: Gary Lenhart.

**ACTION OF THE BOARD** - Appeal granted on condition.

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Chin and Commissioner Miele.....5

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Queens Borough Commissioner, dated November 19, 2003 and updated on May 14, 2004 acting on Department of Buildings ALT 1.

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Application No. 401731097, reads in pertinent part:

“A-1 The existing building to be altered lies within the bed of a mapped street contrary to General City Law Article 3, Section 35;

A-2 - The proposed upgraded private disposal system in the bed of a mapped street contrary to Department of Buildings Policy;” and

WHEREAS, by the letter dated May 6, 2004, the Fire Department states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated January 21, 2004, the Department of Environmental Protection has reviewed the above project and has no objections; and

WHEREAS, by letter dated April 21, 2004, the Department of Transportation has reviewed the above project and has no objections; and

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

*Resolved*, that the decision of the Queens Borough Commissioner, dated November 19, 2003 and updated on May 14, 2004 acting on DOB ALT 1. Application No. 401731097 is modified under the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the drawing filed with the application marked, “Received May 18, 2004”- (1) sheet; that the proposal comply with all applicable R4 zoning district requirements; and that all applicable laws, rules, and regulations shall be complied with; *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 this approval is limited to the relief granted by the Board in response to specifically cited and filed 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.

A2 - The building is not considered within 100' of a corner, therefore, 30'0" rear yard is required for a second story enlargement.”; and

WHEREAS, the subject matter has two components: 1) a request for a waiver pursuant to General City Law § 36; and 2) an interpretative appeal of a DOB objection concerning the definition of a “corner” under the Zoning Resolution; and

WHEREAS, the Fire Department has reviewed the above project and has no objections; and

WHEREAS, the Department of Buildings states that the objection designated “A1” will be satisfied upon a grant of a GCL §36 waiver for the Board; and

Adopted by the Board of Standards and Appeals on July 13, 2004.

## 393-03-A

APPLICANT - Joseph A. Sherry, for Breezy Pt. Cooperative Inc., owner; Phillip & Stacey Benoit, owners.

SUBJECT - Application December 23, 2003 - proposed enlargement and alteration to an existing one family dwelling, not fronting on a legally mapped street, which is contrary to Section 36, Article 3 of the General City Law. The building is not considered within 100' of a corner, therefore, 30'0" rear yard is required for second story enlargement.

PREMISES AFFECTED - 2 Roxbury Avenue, southeast corner of Marshall Avenue, Block 16340, Lot 50, Borough of Queens.

## COMMUNITY BOARD #14Q

APPEARANCES -

For Applicant: Loretta Papa.

For Opposition: Janine Gaylard.

**ACTION OF THE BOARD** - Appeal granted on condition.

**THE VOTE TO GRANT** -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

**THE RESOLUTION** -

WHEREAS, the decision of the Queens Borough Commissioner, December 9, 2003, acting on Department of Buildings (“DOB”) Application No. 401737750, 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 [is] contrary to Section 27-291 of the Administrative Code of the City of New York.

WHEREAS, the Board finds that the applicant has submitted adequate evidence to warrant a waiver pursuant to GCL §36 under certain conditions; and

WHEREAS, the record indicates that the subject house is part of an existing development, located entirely within the boundaries of Lot 50, Block 16340, which is entirely under the ownership of the Breezy Point Cooperative (the “Coop”), and therefore constitutes a single zoning lot; and

WHEREAS, the subject premises is a plot of land within this zoning lot; and

WHEREAS, DOB states that it treats the individual plots within the above-mentioned zoning lot as separate zoning lots under a “Z.R. §12-10(a) lot of record theory based upon the [Coop’s] existence prior to 1961”; and

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WHEREAS, DOB also states that pursuant to Z.R. §23-47, a rear yard at least 30' deep is required for the subject plot, absent any exceptions; and

WHEREAS, the applicant argues that the subject plot is within 100' of a corner formed by Roxbury Avenue and a service road, and is therefore considered a corner lot for purposes of rear yard requirements; and

WHEREAS, the applicant argues further that as a corner lot, the subject plot is exempt from the rear yard requirement pursuant to Z.R. §23-541, which provides, in part, that no rear yard is required within 100 feet of the point of intersection of two street lines intersecting at an angle of 135 degrees or less; and

WHEREAS, DOB argues that in order for the subject plot to be considered a corner lot for rear yard purposes, both Roxbury Avenue and the service road must meet the definition of "street" set forth at Z.R. §12-10; and

WHEREAS, Z.R. §12-10 ("Street"), subsection d, provides that a street may be defined as "any other public way on which on December 15, 1961 was performing the functions usually associated with a way on the City Map"; and

WHEREAS, DOB's position is that since the service road is currently being utilized for the parking of vehicles, it can not be considered a street under the above-mentioned definition, and, consequently, the intersection of Roxbury Avenue and the service road can not meet the definition of "corner lot", since said definition requires an intersection of two streets; and

WHEREAS, the applicant has provided evidence to the Board establishing that the service road in question was in existence prior to and on December 15, 1961, and was performing the functions usually associated with a street on that date; and

WHEREAS, this evidence also establishes that the Coop currently maintains the service road through the parking area open for both pedestrian traffic and emergency vehicles; and

WHEREAS, the Board notes that the parking area is still connected to, and a part of, the service road; and

WHEREAS, therefore, the Board finds that the intersection of Roxbury Avenue and this particular service road can be considered a corner; and

WHEREAS, because the subject plot is treated as a zoning lot by the Department of Buildings and because it SUBJECT - Application March 2, 2004 - proposed enlargement to an existing one family dwelling, not fronting on a legally mapped street, is contrary to Section 36, Article 3 of the General City Law. PREMISES AFFECTED - 8 Beach 221<sup>st</sup> Street, south side, 127.34' east of Rockaway Point Boulevard, Block 16350, Lot 400, Borough of Queens.

## COMMUNITY BOARD #14Q

### APPEARANCES -

For Applicant: Loretta Papa.

**ACTION OF THE BOARD -** Appeal granted on condition.

### THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

adjoins the intersection of two ways that can be considered streets, it may be treated as a "corner lot" for rear yard purposes; and

WHEREAS, accordingly, no rear yard is required, pursuant to Z.R. 23-47; and

WHEREAS, the Board notes that this finding is limited to the particular facts present in this appeal.

*Resolved*, that the decision of the Queens Borough Commissioner dated December 9, 2003, acting on Department of Buildings ("DOB") Application No. 401737750, as to the objection designated "A1", is modified under the power vested in the Board by §36 of the General City Law, and as to the objection designated "A2" is reversed, 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 23, 2003"-(1) sheet; and that the proposal comply with all other applicable zoning district requirements and all other applicable laws, rules, and regulations; and *on further condition*:

THAT this approval and determination is limited to the subject premises only and no determination with the effect of precedent is being made by the Board as to any other comparable service road within the Coop area or any other part of the City;

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

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

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

Adopted by the Board of Standards and Appeals, July 13, 2004.

## 65-04-A

APPLICANT - Joseph A. Sherry, for Breezy Pt. Cooperative, Inc., owner; Gregory & Tara Fillinger, lessees.

Negative:.....0  
THE RESOLUTION -

WHEREAS, the decision of the Queens Borough Commissioner, dated February 18, 2004 acting on Department of Buildings ALT 1. Application No. 401764621, reads in pertinent part:

"The site and building is not fronting on an official mapped street therefore, no permit or Certificate of Occupancy can be issued as per 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 of the

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Administrative Code of the City of New York.”; and  
WHEREAS, by the letter dated April 1, 2004, the Fire Department has reviewed the above project and has no objections; and

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

*Resolved*, that the decision of the Queens Borough Commissioner, dated February 18, 2004, acting on Department of Buildings ALT 1. Application No. 401764621 is modified under 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 2, 2004”-(1) sheet; that the proposal comply with all applicable R4 zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; *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 this approval is limited to the relief granted by the Board in response to specifically cited and filed 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 on July 13, 2004.

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## 73-04-A thru 124-04-A

APPLICANT - Fischbein Badillo Wagner Harding for Strickland Realty, LLC, owner.

SUBJECT - Application March 9, 2004 - Proposed construction of a one family dwelling, not fronting on a legally mapped street, is

57 Bell Point Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2010, Borough of Brooklyn. Applic.#301812475.

59 Bell Point Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2011, Borough of Brooklyn. Applic.#301812484.

65 Bell Point Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2012, Borough of Brooklyn. Applic.#301812493.

67 Bell Point Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2013, Borough of Brooklyn. Applic.#301812509.

73 Bell Point Drive, west side of Strickland Avenue,

contrary to Section 36, Article 3 of the General City Law.

## PREMISES AFFECTED -

11 Bell Point Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2001, Borough of Brooklyn. Applic.#301815542.

23 Bell Point Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2002, Borough of Brooklyn. Applic.#301815490.

25 Bell Point Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2003, Borough of Brooklyn. Applic.#301812402.

31 Bell Point Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2004, Borough of Brooklyn. Applic.#301812411.

33 Bell Point Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2005, Borough of Brooklyn. Applic.#301812420.

39 Bell Point Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2006, Borough of Brooklyn. Applic.#301812439.

41 Bell Point Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2007, Borough of Brooklyn. Applic.#301812448.

47 Bell Point Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2008, Borough of Brooklyn. Applic.#301812457.

49 Bell Point Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2009, Borough of Brooklyn. Applic.#301812466.

between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2014, Borough of Brooklyn. Applic.#301812518.

75 Bell Point Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2015, Borough of Brooklyn. Applic.#301812527.

83 Bell Point Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2016, Borough of Brooklyn. Applic.#301815481.

5 Clear Water Road, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2017, Borough of Brooklyn. Applic.#301809657.

15 Clear Water Road, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield



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22 Harbor Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2047, Borough of Brooklyn. Applic.#301810798.

16 Harbor Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2048, Borough of Brooklyn. Applic.#301810805.

14 Harbor Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2049, Borough of Brooklyn. Applic. #301810814.

6 Harbor Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2050, Borough of Brooklyn. Applic.#301810823.

22 Bell Point Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2051, Borough of Brooklyn. Applic.#301810841.

10 Bell Point Drive, west side of Strickland Avenue, between prolongations of East 57<sup>th</sup> Place and Mayfield Drive, Block 8470, Lot 2052, Borough of Brooklyn. Applic.#301810832.

## COMMUNITY BOARD #18BK

### APPEARANCES -

For Applicant: Howard Hornstein.

**ACTION OF THE BOARD -** Appeal granted on condition.

### THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and

*Resolved*, that the decisions of the Brooklyn Borough Commissioner, dated March 4, 2004, acting on DOB N.B. Application Nos. 301815542, 5490, 2402, 2411, 2420, 2439, 2448, 2457, 2466, 2475, 2484, 2493, 2509, 2518, 2527, 5481, 301809657, 05338, 01529, 301815356, 5347, 5365, 301809675, 09358, 301810716, 0725, 5472, 5536, 5506, 5515, 5524, 5551, 5560, 5579, 5588, 5597, 5631, 5622, 5604, 5613, 0734, 0743, 0752, 0761, 0770, 0789, 0798, 0805, 0814, 0823, 0841, 0832, are modified under the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the drawing filed with the application marked, "Received June 22, 2004"- (1) sheet; that the proposal comply with all applicable R3-1 zoning district requirements; and that all applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT no building permit shall be issued by the Department of Buildings unless and until the subject proposal had obtained approval from the City Planning Commission;

THAT no Board approval is required for the merger of any lots shown on the approved plot plan; such mergers may be 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;

Commissioner Chin.....5  
Negative:.....0

### THE RESOLUTION -

WHEREAS, the decisions of the Brooklyn Borough Commissioner, dated March 4, 2004, acting on N.B. Application Nos. 301815542, 5490, 2402, 2411, 2420, 2439, 2448, 2457, 2466, 2475, 2484, 2493, 2509, 2518, 2527, 5481, 301809657, 05338, 01529, 301815356, 5347, 5365, 301809675, 09358, 301810716, 0725, 5472, 5536, 5506, 5515, 5524, 5551, 5560, 5579, 5588, 5597, 5631, 5622, 5604, 5613, 0734, 0743, 0752, 0761, 0770, 0789, 0798, 0805, 0814, 0823, 0841, 0832, reads in pertinent part:

"Proposed property does not front on a legally mapped street. Refer to Board of Standards & Appeals as per General City Law Section 36."; and

WHEREAS, by the letter dated May 10, 2004, the Fire Department has reviewed the above project and has no objections provided that all houses with the exception of the existing building on Lot 2001 fronting on Strickland Avenue must be fully sprinklered; and

WHEREAS, the plot plan approved herein shows a total of 52 separate lots; and

WHEREAS, the Board's grant herein expressly allows the applicant or any subsequent owner the ability to merge lots into a larger lot without filing an amendment at the BSA or receiving a letter of substantial compliance; such mergers may be approved by the Department of Buildings; and

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

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

THAT the Department of Buildings must ensure compliance 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 on July 13, 2004.

## 129-04-A

APPLICANT - Zygmunt Staszewski, for Breezy Point Co-op, Inc, owner; Robert Bainbridge, lessee.

SUBJECT - Application March 11, 2004 - proposed alteration of an existing one family dwelling, and the addition of a second floor, not fronting on a legally mapped street, is contrary to Section 36, Article 3 of the General City Law.

PREMISES AFFECTED - 30 Marion Walk, west side, 44.56' north of West End Avenue, Block 16350, Lot 400, Borough of Queens.

## COMMUNITY BOARD #14Q

### APPEARANCES -

For Applicant: Howard Hornstein.

**ACTION OF THE BOARD -** Appeal granted on condition.

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## THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

## THE RESOLUTION -

WHEREAS, the decision of the Queens Borough Commissioner, dated March 8, 2004, acting on Department of Buildings ALT 1. Application No. 401815050, reads in pertinent part:

“A1- The street giving access to the existing building is to be altered is not duly placed on the map of the City of New York

- a) A Certificate of Occupancy may not be issued as per Article 3, Section 36 of the General City Law.
- b) Existing dwelling to be altered does not have at least 8% of total perimeter of building fronting directly upon a legally mapped street or frontage space and therefore contrary to Section C27-291 of the Administrative Code of the City of New York.”; and

WHEREAS, by the letter dated March 19, 2004, the Fire Department has reviewed the above project and has no objections; and

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

*Resolved*, that the decision of the Queens Borough Commissioner, dated March 8, 2004, acting on Department of Buildings ALT 1. Application No. 401815050 is modified under the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the drawing filed with the application marked, “Received June 28, 2004”-(1) sheet; and that the proposal comply with all applicable R4

Negative:.....0

Adopted by the Board of Standards and Appeals, July 13, 2004.

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### 18-04-A

APPLICANT - Robert Miller, for Breezy Point Co-op, Inc., owner; Mr. Ronald Kirsche, lessee.

SUBJECT - Application February 4, 2004 - Proposed addition of a second floor, to an existing one family dwelling, not fronting on a legally mapped street, is contrary to Section 36, Article 5 of the General City Law.

PREMISES AFFECTED - 10 Irving Walk, west side, 105.69' south of Oceanside Avenue, Block 16350, Lot 400, Borough of Queens.

#### COMMUNITY BOARD #14Q

APPEARANCES - None.

**ACTION OF THE BOARD** - Laid over to August 10, 2004, at 10 A.M., for continued hearing.

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### 44-04-A

APPLICANT - NYC Department of Buildings.

zoning district requirements; that all applicable laws, rules, and regulations shall be complied with; *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 this approval is limited to the relief granted by the Board in response to specifically cited and filed 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 on July 13, 2004.

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### 331-03-A

APPLICANT - The Agusta Group, for Nelson Catano, owner.

SUBJECT - Application October 27, 2003 - The legalization of an existing mercantile occupancy, within a frame class IID construction building, located within the fire district, is not permitted as per §27-296 and Table 4-1 of the NYC Building Code.

PREMISES AFFECTED - 37-44 103<sup>rd</sup> Street, west side, 410.75' south of 37th Avenue, Block 1768, Lot 32, Borough of Queens.

#### COMMUNITY BOARD #3Q

APPEARANCES - None.

**ACTION OF THE BOARD** - Application withdrawn.

## THE VOTE TO WITHDRAW -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

OWNER OF RECORD: Martin Suss

LESSEE: William J. Newstad; Endeavor Abstract; Paladin Abstract.

SUBJECT - Application February 25, 2004 - Application to revoke or modify Certificate of Occupancy No. 500353422, issued on 2/28/00, on the grounds that the CO was issued with the mistaken understanding that the non-conforming use was continuous, thus improperly allowing a retail store in a residential zoning district. PREMISES AFFECTED - 1491 Richmond Road, bounded by Norden Street and Forest Road, Block 869, Lot 374, Borough of Staten Island.

#### COMMUNITY BOARD #2SI

APPEARANCES -

For Applicant: Janine Gaylard.

For Opposition: Stuart Klein.

**ACTION OF THE BOARD** - Laid over to August 17, 2004, at 10 A.M., for continued hearing.

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## 53-04-A thru 62-04-A

APPLICANT - New York City Department of Buildings

OWNER OF RECORD: Thomas Huang

SUBJECT - Applications February 26, 2004 - Application to revoke Certificate of Occupancy No. 401223289, on the basis that the Certificate of Occupancy allows conditions at the referenced premises that are contrary to the Zoning Resolution and the Administrative Code.

### PREMISES AFFECTED -

140-26A 34<sup>th</sup> Avenue, Block 4994, Lot 24, Borough of Queens.

140-28 34<sup>th</sup> Avenue, Block 4994, Lot 224, Borough of Queens.

140-28A 34<sup>th</sup> Avenue, Block 4994, Lot 224, Borough of Queens.

140-30 34<sup>th</sup> Avenue, Block 4994, Lot 125, Borough of Queens.

140-30A 34<sup>th</sup> Avenue, Block 4994, Lot 225, Borough of Queens.

140-32 34<sup>th</sup> Avenue, Block 4994, Lot 126, Borough of Queens.

140-32A 34<sup>th</sup> Avenue, Block 4994, Lot 27, Borough of Queens.

140-34 34<sup>th</sup> Avenue, Block 4994, Lot 127, Borough of Queens.

140-34A 34<sup>th</sup> Avenue, Block 4994, Lot 227, Borough of Queens.

SUBJECT - Application April 5, 2004 - Under Z.R. §12-10 to reverse the NYC Department of Buildings' revocation of the above referenced permits. The permits had allowed for the subdivision of Lot 52 from Lots 55, 58, and 61 and the construction of new building on Lot 52.

PREMISES AFFECTED - 133 Sterling Place, a/k/a 22 Seventh Avenue, northwest corner, Block 942, lots 48 and 52, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

#### APPEARANCES -

For Applicant: Howard Hornstein.

For Opposition: Janine Gayland.

**ACTION OF THE BOARD** - Laid over to August 10, 2004, at 10 A.M., for postponed hearing.

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*Pasquale Pacifico, Executive Director.*

Adjourned: 11:00 A.M.

140-36 34<sup>th</sup> Avenue, Block 4994, Lot 327, Borough of Queens.

### COMMUNITY BOARD #11Q

#### APPEARANCES -

For Applicant: Janine Gayland.

**ACTION OF THE BOARD** - Laid over to January 11, 2005, at 10 A.M., for continued hearing.

### 66-04-A

APPLICANT - Joseph A. Sherry, for Breezy Pt. Cooperative, Inc., owner; John & Patricia Brennan, lessee.

SUBJECT - Application March 2, 2004 - proposed enlargement to an existing one family dwelling, not fronting on a legally mapped street, and has a private disposal system in the bed of a mapped street, is contrary to Section 36, Article 3 of the General City Law and Department of Buildings' policy.

PREMISES AFFECTED - 976 Bayside, southeast corner of Bayside Connection, Block 16350, Lot 300, Borough of Queens.

### COMMUNITY BOARD #14Q

#### APPEARANCES -

For Applicant: Joseph A. Sherry.

**ACTION OF THE BOARD** - Laid over to August 10, 2004, at 10 A.M., for continued hearing.

### 148-04-A

APPLICANT - Jenkins & Gilchrist Parker Chaplin, LLP and Fischbein Badillo Wagner Harding

OWNER OF RECORD: Sterling & Seventh LLC.

### REGULAR MEETING

**TUESDAY AFTERNOON, JULY 13, 2004**

**2:00 P.M.**

Present: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.

### ZONING CALENDAR

### 82-03-BZ

#### CEQR #03-BSA-145K

APPLICANT - Sullivan Chester & Gardner LLP, for Diamond Street Properties, Inc., owners.

SUBJECT - Application March 5, 2003 - under Z.R. §72-21 to permit the conversion of a vacant industrial building in an M3-1 zone to mixed use residential/commercial, contrary to Z.R. §42-00.

PREMISES AFFECTED - 51 North 8<sup>th</sup> Street, a/k/a 91 Kent Avenue, northeast corner, Block 2309, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

#### APPEARANCES -

For Applicant: Jeffrey Chester.

**ACTION OF THE BOARD** - Application granted on

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condition.

## THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

## THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated February 12, 2003 acting on DOB Application No. 301476748 reads:

“Change of use from manufacturing to mixed use residential and commercial contrary to zoning, refer to Board of Standards and Appeals.” and

WHEREAS, a public hearing was held on this application on December 16, 2003 after due notice by publication in *The City Record*, with continued hearings on February 24, 2004, March 9, 2004, April 13, 2004, and June 8, 2004 and then to July 13, 2004 for decision; and

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

WHEREAS, Community Board 1, Brooklyn recommended approval of this application; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardships in developing the subject lot in conformity with underlying district regulations: (1) the existing building’s ground floor consists of five different rooms or sections with differing elevations, with steel beams and columns studded throughout, and low ceiling heights, all of which impede the free movement of goods and material; (2) there is no efficient way to move goods or material to the second floor of the existing building due to the lack of an elevator; (3) neither of the existing building’s two loading docks can accommodate a tractor-trailer; (4) the existing building would require substantial and cost prohibitive renovations even to make it useable as a warehouse; and

WHEREAS, the costs of demolishing the existing building, excavating the site and installing pilings for the construction of a conforming use are cost prohibitive; and

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

WHEREAS, the applicant has submitted a feasibility study demonstrating that developing the entire premises with an as-of-right manufacturing use would not yield the owner a reasonable return; and

WHEREAS, the listing broker for the site submitted an affidavit stating that a conforming use on the subject premises has attracted little or no market interest, because prospective tenants are seeking a building with high ceilings, adequate loading facilities and an efficient use of space for the flow of goods and material; and

WHEREAS, upon the Board’s request, the applicant submitted a supplemental letter from its financial consultant,

WHEREAS, this is an application under Z.R. §72-21, to convert a vacant industrial building in an M3-1 zone to mixed-use residential/commercial, contrary to Z.R. §42-00; and

WHEREAS, the subject lot is located on the southwest corner of Kent Avenue and North 8<sup>th</sup> Street in Williamsburg, Brooklyn, and is comprised of one tax lot with a total lot area of approximately 18,014 sq. ft.; and

WHEREAS, the lot is currently occupied with an existing two-story building containing 30,114 sq. ft. of floor area that was previously used by a company that assembled and labeled cardboard packaging; the applicant maintains that the building has been vacant since August of 2002; and

WHEREAS, the proposed development currently contemplates the partial conversion and enlargement of the existing building into a mixed use residential/commercial space with two (2) ground floor retail spaces, thirty-nine (39) proposed residential apartment units, and twenty (20) parking spaces at the cellar level; and

WHEREAS, the original proposal contemplated the partial conversion and enlargement of the existing building into two separate structures separated by an inner courtyard with a total of sixty-five (65) residential units, twenty-three (23) parking spaces, six (6) retail spaces and a café; and

attesting to excessive costs associated with demolishing the existing structure and the cost of developing a conforming manufacturing use; and

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

WHEREAS, the applicant represents that the proposed development will not affect the character of the neighborhood for the following reasons: (1) the proposed development is in accordance with the New York Department of City Planning’s rezoning of the neighborhood currently underway; and (2) the proposed development will complement the proposed park across the street from the premises; and

WHEREAS, the Board has conducted a site visit and has reviewed the submitted land use map and concludes that mixed residential/commercial use of the site is compatible with the context of the neighborhood; and

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

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

WHEREAS, in response to the Board’s concerns, the applicant has reconfigured the property in the following ways: (1) reducing the overall bulk of the building; (2) reducing the number of dwelling units; (3) reducing the number of accessory parking spaces; (4) reducing the elevation of the building; (5) reducing the FAR to 3.0; and

WHEREAS, therefore, the Board finds that the proposal

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

WHEREAS, the Board has conducted an environmental review of the proposed action, the Final Environmental Assessment Statement (EAS) and has carefully considered all areas of environmental concern as delineated in the Technical Analyses section 23 in the EAS; and

WHEREAS, the Final EAS finds that the project as proposed would not have foreseeable significant adverse impacts on land use and other relevant areas of environmental concern, and that it is consistent with Local Waterfront Revitalization Policies; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that would require the preparation of an Environmental Impact Statement; and

Resolved, that the Board of Standards and Appeals issues a Negative Declaration pursuant to Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617.7 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §72-21 and grants a variance to permit the conversion of a vacant industrial building in an M3-1 zone to mixed use residential/commercial, contrary to Z.R. §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 with this application marked “Received May 25, 2004, 2004”-(12) sheets and “Received June 21, 2004”-(3) sheets; and *on further condition*:

THAT all applicable fire safety measures as shown on the approved plans will be complied with;

THAT substantial construction be completed in accordance with Z.R. §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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 13, 2004.

## 84-03-BZ

### CEQR #03-BSA-147Q

APPLICANT - Sheldon Lobel, P.C., for Nissan Perla, Partner: N.P. Holdings, LLC, owner.

SUBJECT - Application October 24, 2003 - Under Z.R. §72-21 to permit the construction of a five-story and six-story with penthouse residential building (Use Group 2) in an R5 zoning district with a C1-2 overlay, which creates non-compliances with regard to floor area ratio, total height, perimeter wall height, lot area per dwelling unit, and rear yard equivalents, contrary to Z.R. §§23-22, 23-141, 23-631, and 23-533.

PREMISES AFFECTED - 35-40 30<sup>th</sup> Street, a/k/a 35-37 29<sup>th</sup> Street, between 35<sup>th</sup> and 36<sup>th</sup> Avenues, Block 341, Lot 6, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES -

For Applicant: Jordan Most.

**ACTION OF THE BOARD** - Application granted on condition.

THE VOTE TO REOPEN HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated July 1, 2004, acting on Department of Buildings Application No. 401291641 reads:

“(1) Proposed plans are contrary to Z.R. §23-141 in that the proposed floor area ratio exceeds the maximum permitted floor area ratio of 1.65, (2) Proposed plans are contrary to Z.R. §23-631 in that the proposed total height and perimeter wall height is greater than permitted, (3) Proposed plans are contrary to Z.R. §23-222 in that the proposed lot area per dwelling unit is less than required, and (4) Proposed plans are contrary to Z.R. §23-533 in that the proposed rear yard equivalents are less than required;” and

WHEREAS, a public hearing was held on this application on October 21, 2003 after due notice by publication in *The City Record*, with continued hearings on October 28, 2003, December 23, 2003, February 24, 2004, March 23, 2004, April 27, 2004 and June 8, 2004, and then to July 13, 2004 for decision; and

WHEREAS, the premises and surrounding area had a

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

WHEREAS, both Community Board 1, Queens and the Queens Borough President recommend conditional approval of this application; and

WHEREAS, this is an application under Z.R. §72-21, to permit the construction of a five-story and six-story plus penthouse residential building (Use Group 2) in an R5 zoning district with a C1-2 overlay, which creates non-compliances with regard to floor area ratio, total height, perimeter wall height, lot area per dwelling unit, and rear yard equivalent, contrary to Z.R. §§23-22, 23-141, 23-631, and 23-533; and

WHEREAS, the subject lot fronts both 29<sup>th</sup> and 30<sup>th</sup> Street between 35<sup>th</sup> and 36<sup>th</sup> Avenues, in the Long Island City section of Queens, and is within an R5 zoning district, with a C1-2 commercial overlay covering approximately two-fifths of the site; and

WHEREAS, the premises is currently occupied with a two-story garage and auto repair facility, in use since the early 1990s; and

WHEREAS, the proposal contemplates the construction of a five-story and six-story plus penthouse residential

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardships in developing the subject lot in compliance with underlying district regulations: (1) the presence of underground and above ground storage tanks; (2) the Premises is currently benefited by a variance for certain non-residential uses; (3) the existing building is obsolete and not marketable in light of the dense residential development surrounding the Premises; (4) the incompatible nature between the property's current use (commercial use) and the surrounding uses (residential); (5) the change in grade of the property, descending from 30<sup>th</sup> Street to 29<sup>th</sup> Street; (6) the Premises is located on two narrow streets (29<sup>th</sup> Street and 30<sup>th</sup> Street which are 60 feet wide); and (7) the lot is split into two different zoning classifications (40% zoned in C1-2 and 60% zoned R5); and

WHEREAS, the Board finds that the following are unique physical conditions that, when considered in the aggregate, create unnecessary hardship and practical difficulty in developing the site in conformity with the current zoning regulations: (1) the presence of underground and above ground storage tanks, necessitating the need for two-level excavation and foundation work; (2) the change in grade of the property, descending from 30<sup>th</sup> Street to 29<sup>th</sup> Street; and (3) premium demolition costs associated with the unique features of the existing building; and

WHEREAS, the applicant states that the unique physical conditions lead to economic hardship in constructing a complying development, and has submitted a feasibility study in support of this claim; and

WHEREAS, opposition to the application submitted a letter contesting certain aspects of the feasibility study; and

WHEREAS, upon the Board's recommendation at the hearing on June 8, 2004, the applicant has submitted a supplemental statement in response to the opposition letter, which the Board finds sufficient and credible; and

building with sixty-two (62) residential units and sixty-two (62) on-site underground parking spaces; and

WHEREAS, due to the slope of the subject lot, the building will technically be five stories on the 30<sup>th</sup> Street frontage and six stories on the 29<sup>th</sup> Street frontage; and

WHEREAS, the proposal allows a floor area ratio ("FAR") of 2.69 (1.65 is permitted); a total height of 54' along 30<sup>th</sup> Street and 61'-9" along 29<sup>th</sup> Street (33 feet is permitted); a perimeter wall height of 45' along 30<sup>th</sup> Street and 52'-9" along 29<sup>th</sup> Street (30 feet is permitted); a lot area per dwelling unit of 392 sq. ft. per dwelling unit (900 sq. ft. per dwelling unit is the permitted minimum); and a rear yard equivalent of 20 feet (30 feet is required); and

WHEREAS, earlier versions of the proposal contemplated a much larger building; specifically, the originally submitted building design had nine stories (plus penthouse), a 5.73 FAR, 122 residential units and a maximum height of 104 feet; and

WHEREAS, at the request of the Board, and after submission of various other proposals reflecting increasingly diminished bulk, the bulk of the proposed building was reduced to the levels of the current proposal; and

WHEREAS, therefore, the Board finds that evidence in the record, including the submitted feasibility study, demonstrates that, because of the subject lot's unique physical conditions, developing the site with a complying development would not yield a reasonable return; and

WHEREAS, the applicant states that there are buildings of comparable height in the immediate vicinity of the subject lot; specifically, there is an adjacent six-story building, and three other six-story buildings less than 200 feet away; and

WHEREAS, the applicant submitted extensive materials regarding the surrounding as-built context as it relates to FAR, height, open space and lot coverage, including three separate neighborhood character maps; and

WHEREAS, additionally, the applicant submitted supplemental area photographs; and

WHEREAS, the applicant states that maps show that when examining FAR, building height, and open space ratio, the proposed building is more compliant with as-built conditions in the surrounding neighborhood than other existing structures; and

WHEREAS, the Board has reviewed the maps, photos, and applicant analysis, and finds them sufficient and credible; and

WHEREAS, the Board, based upon its review of these materials and upon its site visit, concludes that the proposed building's bulk and height is compatible with the built context of the surrounding neighborhood; and

WHEREAS, the applicant also claims that elimination of the existing non-conforming commercial/manufacturing use improves the surrounding area, which is predominantly residential and mixed-use residential/commercial; and

WHEREAS, the applicant has submitted revised plans that reflect the relocation of the vehicular ramp from the southwest side yard to beneath the proposed building on the northeast corner, which addresses an opposition concern that the ramp would negatively impact on adjacent

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residential use; and

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

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

WHEREAS, due to the significant reductions of the proposed building's bulk, the Board finds that this proposal is the minimum necessary to afford the owner relief; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and the Final Environmental Assessment Statement and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that would require the preparation of an Environmental Impact Statement; and

Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and

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

THAT all applicable fire safety measures as shown on the approved plans will be complied with;

THAT the layout of the parking area shall be as approved by the Department of Buildings;

THAT substantial construction be completed in accordance with Z.R. §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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 13, 2004.

## 118-03-BZ

### CEQR #03-BSA-171K

APPLICANT - Slater & Beckerman, LLP, for 1101 Prospect LLC, owner.

SUBJECT - Application April 11, 2003 - under Z.R. §72-21 to permit the proposed construction of a six-story residential and community facility building, Use Group 2 and 4, located in an R5B zoning district, which does not comply with the zoning requirements for floor area ratio, open space, lot coverage, number of dwelling units, community facility bulk regulations, front and yards, height and setback, is contrary to Z.R. §23-141(b), §23-22, §24-01, §24-162, §23-45, §24-34, §24-35 and §24-521.

PREMISES AFFECTED - 1101 Prospect Avenue, a/k/a 1677 11<sup>th</sup>

§6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §72-21 and grants a variance to permit the construction of a five-story and six-story with penthouse residential building (Use Group 2) in an R5 zoning district with a C1-2 overlay, which creates non-compliances with regard to floor area ratio, total height, perimeter wall height, lot area per dwelling unit, and rear yard equivalents, contrary to Z.R. §§23-22, 23-141, 23-631, and 23-533; *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 23, 2004"-(15) sheets; and *on further condition*:

THAT all lighting located on the subject property will be directed down and away from adjacent residential buildings;

THAT the proposed parking area shall not contain more than 66 parking spaces;

THAT the entire premises will be fully sprinklered;

THAT landscaping and fencing shall be provided and maintained in accordance with BSA approved plans;

Avenue, northeast corner, Block 5256, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #7BK

APPEARANCES -

For Applicant: Stuart Beckerman.

**ACTION OF THE BOARD** - Application denied.

THE VOTE TO GRANT -

Affirmative:.....0

Negative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated December 16, 2003, acting on Department of Buildings Application No. 301513495, reads, in pertinent part:

"Proposed residential and community facility building in R5B residence district does not comply with regulations governing floor area ratio, number of dwelling units, and applicability of community facility bulk regulations, contrary to Zoning Resolution Sections 23-141(b), 23-22, 24-01, and 24-162.;" and

WHEREAS, a public hearing was held on this application on February 24, 2004 after due notice by publication in the City Record, with continued hearings on April 13, 2004, June 15, 2004, and then laid over to July 13, 2004 for decision; and

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

WHEREAS, this is an application under Z.R. §72-21, to permit the proposed construction of a four-story residential and community facility building, Use Groups 2 and 4, located in an R5B zoning district, which does not comply with the zoning requirements for floor area ratio, number of dwelling units, and community facility bulk regulations,

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contrary to Z.R. §§23-22, 24-01, 23-141(b), 24-162, and

WHEREAS, the subject zoning lot is 100' by 101'10", with 12,538 sq. ft. of total area, located on the east corner of the intersection of Prospect and 11<sup>th</sup> Avenues, and is currently occupied by a one-story building, with a legal non-conforming use of Auto & Truck Service Garage (Use Group 16); and

WHEREAS, the applicant proposes the demolition of the existing building, and the construction of a four-story mixed-use building, with a for-profit day care center on the first floor, and residential units on floors 2 through 4; and

WHEREAS, the initial application was for a six-story mixed-use commercial and residential building that contemplated additional waivers of setback and yard requirements; and

WHEREAS, under the current proposal, the following waivers are requested: a total FAR of 1.55 (1.35 is permitted); 24 dwelling units (19 are permitted); and a

WHEREAS, the Board finds that the estimated demolition cost of the existing building is minor; and

WHEREAS, the applicant states that an existing non-conforming structure may be considered a unique physical condition even if it is not obsolete, because Z.R. §72-21 requires that findings be related to development of the zoning lot in strict conformity with the zoning, and it would be inconsistent to characterize maintenance of the non-conforming use within the existing building as development of the zoning lot in strict conformity with zoning; and

WHEREAS, the Board notes that maintenance of the non-conforming use at the site would not require any discretionary Board approval, as non-conforming uses are allowed to be continued pursuant to Z.R. §52-11; therefore, its continued existence is in strict conformity with the Z.R.; and

WHEREAS, pursuant to Z.R. §72-21(a), the applicant must provide substantial evidence of a unique physical condition which leads to practical difficulties or unnecessary hardship in complying with use or bulk provisions of the underlying district; and

WHEREAS, in the context of this finding, the Board is being asked to evaluate a proposed development and its ability to strictly comply with zoning provisions in light of the unique conditions inherent to the site; no analysis is required of whether the existing use is conforming or lawfully non-conforming; and

WHEREAS, accordingly, the Board rejects applicant's argument that the non-conforming status of the existing building is a unique physical condition; and

WHEREAS, the applicant alleges that the soil remediation costs are substantial, and contribute to the negative effect on the economic feasibility of a conforming development; and

WHEREAS, the Board notes that the confirmed environmental costs were estimated to be approximately \$100,000, but the proposal's total development costs were approximately \$6.5 million; and

WHEREAS, opposition to this application claims, and the Board agrees, that a relatively minor amount of soil contamination does not make the property unique; and

community facility FAR of 0.6 (0.4 is the maximum); and

WHEREAS, the applicant alleges that the following are unique physical conditions, which create practical difficulties and unnecessary hardships in constructing a building in conformity with underlying district regulations: (1) the existence of a non-conforming commercial building and the cost of its demolition, (2) soil contamination, and (3) the location of the premises on a heavily trafficked commercial intersection; and

WHEREAS, the Board disagrees that demolition of an existing non-conforming structure constitutes a unique physical condition in of itself; some evidence of premium demolition costs associated with structural uniqueness of such a structure must be shown; and

WHEREAS, the applicant has failed to provide any evidence showing that demolition of the existing garage building will require extraordinary or premium demolition expenditures; and

WHEREAS, the Board rejects applicant's argument that the location of the premises on an allegedly busy commercial intersection constitutes a unique physical conditions; and

WHEREAS, the applicant has failed to prove that the intersection is any more busy than numerous others within the neighborhood, and the Board notes that expanding the definition of uniqueness to include location of a lot at a busy intersection in a city with innumerable busy intersections is contrary to the definition of what is unique; and

WHEREAS, the Board also observes that there is conforming residential development at the intersection, and that, at hearing, testimony was provided from an area resident that the traffic at the intersection is not heavy; and

WHEREAS, based on its review of the record and its site visit, the Board finds that the applicant has failed to provide substantial evidence that the subject lot possesses unique physical conditions, even when considered in the aggregate, that create practical difficulties and unnecessary hardships in developing the site in strict compliance with current zoning, and that the application therefore fails to meet the finding set forth at Z.R. §72-21(a); and

WHEREAS, because the applicant has failed to provide substantial evidence in support of the finding set forth at Z.R. §72-21(a), the application also fails to meet the finding set forth at Z.R. §72-21(b); and

WHEREAS, the Board notes that the financial study submitted in support of the application contained inconsistent information, and that with only slight adjustments, could have shown that a reasonable return from complying development was possible; and

WHEREAS, the Board also notes that the applicant did not submit an analysis of a three-story residential condominium building, that would likely result in a higher return; and

WHEREAS, accordingly, the Board finds that the submitted financial information fails to constitute substantial evidence showing that there is no reasonable possibility that development of the subject lot in strict compliance with the applicable provisions of the Zoning Resolution will bring a reasonable return; and

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WHEREAS, because the subject application fails to meet the findings set forth at Z.R. §72-21(a) and (b), it must be denied.

*Resolved*, the decision of the Borough Commissioner, dated December 16, 2003, acting on Department of Buildings Application No. 301513495, must be sustained, and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, July 13, 2004.

## 223-03-BZ

### CEQR #04-BSA-001Q

APPLICANT - C Anthony Mulrain c/o Greenberg Traurig, LLP, for Majority Baptist Church, owner; Omnipoint Communications, Inc.,

#### THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

#### THE RESOLUTION -

WHEREAS, the decision of the Department of Buildings, dated June 2, 2003 acting on Application No. 401404805, reads in pertinent part:

“Request for formal denial to appeal to the Board of Standards and Appeals as per Z.R. §73-30”; and

WHEREAS, a public hearing was held on this application on April 20, 2004 after due notice by publication in the *City Record*, with a continued hearing on June 15, 2004, and then to July 13, 2004 for a decision; and

WHEREAS, this is an application under Z.R. §73-30 to permit, in a C2-2 overlay district within an R3-2 Zoning District, the erection of an eighty-three (83) foot tall cellular monopole (“the Facility”), which has been designed to resemble a flagpole, and which requires a special permit pursuant to Z.R. §§22-21 and 22-11; and

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

WHEREAS, the applicant has submitted a copy of a lease agreement between the operator of the monopole and Majority Baptist Church, which allows the operator to place the Facility on church property; and

WHEREAS, the applicant states that the Facility will contain nine (9) small panel antennas located inside the flagpole, and completely hidden from view; and

WHEREAS, the applicant will locate three (3) base transceiver stations at the base of the flagpole; and

WHEREAS, the applicant maintains that these proposed equipment cabinets will be screened from public view by a combination of fence and landscaping; and

WHEREAS, pursuant to Z.R. §73-30, the Board may grant a special permit for a non-accessory radio tower such as the 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

lessee.

SUBJECT - Application July 1, 2003 - under Z.R. §73-30 to permit in a C2-2 overlay district within an R3-2 Zoning District, the erection of an eighty-three (83) foot tall cellular monopole, which has been designed to resemble a flagpole, and which requires a special permit pursuant to Z.R. §§22-21 and 22-11.

PREMISES AFFECTED - 115-15 Farmers Boulevard, bounded by 115<sup>th</sup> Road and 115<sup>th</sup> Avenue, Block 11032, Lot 4, Borough of Queens.

## COMMUNITY BOARD #12Q

### APPEARANCES -

For Applicant: Robert Gandioso.

**ACTION OF THE BOARD** - Application granted on condition.

WHEREAS, the applicant represents that the Facility has been designed to resemble a flagpole in all respects in order to minimize adverse visual and environmental effects on the neighborhood; that the construction and operation of the Facility will comply with all applicable laws, regulations, standards, and conditions, including those reasonably imposed under the Special Permit; that no odor, dust, noise, or vibrations will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, proposed utilities servicing the Facility, such as electric power and telephone lines, will be placed underground; and

WHEREAS, the applicant anticipates that initially it will be the sole user of the Facility, but agrees with the Board’s request to design the Facility to enable the location of additional federally licensed telecommunications service providers’ antennas within the flagpole; and

WHEREAS, the applicant further represents that the height is the minimum necessary to provide seamless coverage within the area intended to be served; and

WHEREAS, the proposed Facility will have no lighting except for the small directed beam to illuminate the flag, and no commercial or retail signage except for the small emergency contact sign as required by the Federal Communications Commission (FCC); and

WHEREAS, the applicant represents that the Facility will not be an attractive nuisance since it will be secured by a gated six feet high (6’) fence with privacy slats; and

WHEREAS, the applicant has submitted an affidavit of a Radio Frequency Engineer indicating that the proposed site is ideal because it will enable the applicant to fill a significant coverage gap (evidenced by interrupted or disconnected calls and transmission and reception problems) without adversely impacting the aesthetics of the surrounding area by constructing an obtrusive free-standing telecommunications tower; and

WHEREAS, the applicant has also submitted an analysis of the Radiofrequency Environment of the proposed Facility and results indicate that the maximum level of RF (radiofrequency) energy associated with simultaneous and continuous operation of all proposed transmitters will be less than 1.2% of the safety criteria adopted by the FCC as mandated by the Telecommunications Act of 1996; and

WHEREAS, as addressed at the public hearing held on

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April 20, 2004, the applicant represents that the proposed plans reflect an additional slot for another carrier to promote co-location, privacy slats within the proposed fencing, and access to the Facility across the site; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed pole and related equipment will be located, designed and operated so that there will be no detrimental effect on the privacy, quiet, light and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at Z.R. §73-30; and

WHEREAS, the Board has conducted an environmental review of the proposed action and the Final Environmental Assessment Statement and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that would require the preparation of an Environmental Impact Statement.

Therefore, it is Resolved that the Board of Standards and Appeals issues a Negative Declaration under 6 N.Y.C.R.R. Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes the required findings and *grants* a special permit under Z.R. §73-03 and §73-30, to permit, in a C2-2 overlay district within an R3-2 Zoning District, the erection of an eighty-three (83) foot tall cellular monopole, which has been designed to resemble a flagpole, and which requires a special permit pursuant to Z.R. §§22-21 and 22-11, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received May 27, 2004"-(4) sheets; and *on further condition*;

THAT the proposed fencing consist of an opaque PVC fence;

THAT the pole be designed to include additional slots for other carriers to promote co-location;

THAT routine repairs and service of the pole and related equipment shall be limited to Monday through Friday between the hours of 9:00 A.M. and 5:00 P.M.;

THAT all fencing and landscaping will be located and maintained in accordance with BSA approved plans;

THAT the flag will be replaced at least one time per year, properly maintained at all times and lit at night;

THAT any lighting will be positioned away from residential uses;

THAT no commercial or retail signage will be posted;

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

THAT any graffiti located on the site shall be removed within 48 hours;

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

THAT this approval is contingent upon CPC approval of the proposal, and no building permit shall be issued until such approval is obtained;

THAT substantial construction shall be completed in accordance with Z.R. §72-23;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other

WHEREAS, the Board further finds that under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of such special permit use at the particular site are outweighed by the advantages to be derived by the community by the grant of such special permit; and

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

WHEREAS, therefore, the Board finds that the application meets the general findings required for special permits set forth at Z.R. §73-03(a) and (b); and 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, July 13, 2004.

## 224-03-BZ

### CEQR #04-BSA-002Q

APPLICANT - C Anthony Mulrain c/o Greenberg Traurig, LLP, for Mal Pal Realty Corp., owner; Omnipoint Communications, Inc., lessee.

SUBJECT - Application July 1, 2003 - under Z.R. §73-30 to permit in an R3-2 Zoning District, the erection of an eighty-five (85) foot stealth flagpole that will serve as a non- accessory telecommunications tower, which requires a special permit pursuant to Z.R. §§22-21 and 22-11.

PREMISES AFFECTED - 139-19 109<sup>th</sup> Avenue, bounded by 139<sup>th</sup> and 142<sup>nd</sup> Streets, Block 10068, Lots 210, 213, 214 and 215, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES -

For Applicant: Robert Gandioso.

**ACTION OF THE BOARD** - Application granted on condition.

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Department of Buildings, dated June 30, 2003 acting on Application No. 4016188070, reads in pertinent part:

"Request for formal denial to appeal to the Board of Standards and Appeals as per Z.R. §73-30";

and

WHEREAS, a public hearing was held on this application on April 20, 2004, after due notice by publication in the *City Record*, with a continued hearing on June 15, 2004, and then to July 13, 2004 for a decision; and

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WHEREAS, this is an application under Z.R. §73-30 to permit, in an R3-2 Zoning District, the erection of an eighty-five (85) foot stealth flagpole that will serve as a non-accessory telecommunications tower ("Facility"), which requires a special permit pursuant to Z.R. §§22-21 and 22-11; and

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

WHEREAS, pursuant to Z.R. §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 Facility will have no adverse visual and environmental effects on the neighborhood; that the construction and operation of the Facility will comply with all applicable laws, regulations, standards, and conditions, including those reasonably imposed under the Special Permit; that no odor, dust, noise, or vibrations will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, proposed utilities servicing the Facility, such as electric power and telephone lines, will be placed underground; and

WHEREAS, the applicant maintains that the proposed equipment cabinets will be screened from public view by a combination of fence and landscaping; and

WHEREAS, the applicant anticipates that it initially will be the sole user of the Facility, but agrees with the Board's request to design the Facility to enable the location of additional federally licensed telecommunications service providers' antennas within the flagpole; and

WHEREAS, the applicant further represents that the height is the minimum necessary to provide seamless coverage within the area intended to be served; and

WHEREAS, the proposed Facility will have no lighting except for the small directed beam to illuminate the flag, and no commercial or retail signage except for the small emergency contact sign as required by the Federal Communications Commission (FCC); and

WHEREAS, the applicant represents that the Facility will not be an attractive nuisance since it will be secured by a gated six (6') feet high fence with privacy slats; and

WHEREAS, the applicant has submitted an affidavit of a Radio Frequency Engineer indicating that the proposed site is ideal because it will enable the applicant to fill a significant coverage gap (evidenced by interrupted or disconnected calls and transmission and reception problems) without adversely impacting the aesthetics of the surrounding areas by constructing an obtrusive free-standing telecommunications tower; and

WHEREAS, the applicant has also submitted an analysis of the Radiofrequency Environment of the proposed Facility and results indicate that the maximum level of RF (radiofrequency) energy associated with simultaneous and continuous operation of all proposed transmitters will be less than 0.8% of the safety criteria adopted by the FCC as

Caliendo, Commissioner Miele and Commissioner Chin; and

WHEREAS, the applicant states that the Facility will contain twelve (12) small panel antennas; and

WHEREAS, the applicant contemplates the location of three (3) base transceiver stations at the base of the flagpole, which will be completely fenced, landscaped and screened from public view; and

mandated by the Telecommunications Act of 1996; and

WHEREAS, as addressed at the public hearing held on April 20, 2004, the applicant represents that the proposed plans reflect the replacement of the proposed monopole with an eighty-five (85) foot stealth flagpole, an additional slot for another carrier to promote co-location, opaque PVC fencing, landscaping that consists of a large box planter with four (4) Juniperus Chinensis to further screen the base of the Facility; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed pole and related equipment will be located, designed and operated so that there will be no detrimental effect on the privacy, quiet, light and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at Z.R. §73-30; and

WHEREAS, the Board further finds that under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of such special permit use at the particular site are outweighed by the advantages to be derived by the community by the grant of such special permit; and

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

WHEREAS, therefore, the Board finds that the application meets the general findings required for special permits set forth at Z.R. §73-03(a) and (b); and

WHEREAS, the Board has conducted an environmental review of the proposed action and the Final Environmental Assessment Statement and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that would require the preparation of an Environmental Impact Statement.

Therefore, it is Resolved that the Board of Standards and Appeals issues a Negative Declaration under 6 N.Y.C.R.R. Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes the required findings and *grants* a special permit under Z.R. §73-03 and §73-30, to permit, in an R3-2 Zoning District, the erection of an eighty-five (85) foot stealth flagpole that will serve as a non-accessory telecommunications tower, which requires a special permit pursuant to Z.R. §§22-21 and 22-11, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received June 24, 2004"-(6) sheets; and *on further condition*;

THAT the proposed fencing consist of an opaque PVC fence;

THAT the pole be designed to include additional slots

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for other carriers to promote co-location;

THAT routine repairs and service of the pole and related equipment shall be limited to Monday through Friday between the hours of 9:00 A.M. and 5:00 P.M.;

THAT all fencing and landscaping will be located and maintained in accordance with BSA approved plans;

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

THAT any graffiti located on the site shall be removed within 48 hours;

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

THAT this approval is contingent upon CPC approval of the proposal, and no building permit shall be issued until such approval is obtained;

THAT substantial construction shall be completed in accordance with Z.R. §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) and/or configuration(s) not related to the relief granted."

Adopted by the Board of Standards and Appeals, July 13, 2004.

## 249-03-BZ

### CEQR #04-BSA-018K

APPLICANT - Sheldon Lobel, P.C., for D & J Herms Realty, Inc., owner.

SUBJECT - Application July 31, 2003 - under Z.R. §72-21 to permit the proposed construction of a four-story and cellar building, with one commercial unit on the ground floor and eight residential units on the second, third and fourth floors, on a site located within a C8-2 zoning district, which does not permit residential use and is therefore contrary to ZR §32-10.

PREMISES AFFECTED - 265 Bedford Avenue, southeast corner of North First Street, Block 2381, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

APPEARANCES -

For Applicant: Janice Cahalane.

**ACTION OF THE BOARD** - Application granted on condition.

### THE VOTE TO GRANT

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

### THE RESOLUTION -

WHEREAS, the decision of the Borough Superintendent, dated July 21, 2003, acting on Application No. 301551354, reads:

"Proposed construction of a residential building is

THAT the flag will be replaced at least one time per year, properly maintained at all times and lit at night;

THAT any lighting will be positioned away from residential uses;

THAT no commercial or retail signage will be posted;

not permitted in a C8-2 zoning district as per Section 32-10 of the Zoning Resolution." and

WHEREAS, a public hearing was held on this application on January 6, 2004 after due notice by publication in The City Record, with continued hearings on January 27, 2004, March 9, 2004, April 27, 2004, June 8, 2004, and then to July 13, 2004 for decision; and

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

WHEREAS, this is an application under Z.R. §72-21, to permit the proposed construction of a four-story and cellar building, with one commercial unit on the ground floor and eight residential units on the second, third and fourth floors, on a site located within a C8-2 zoning district, which does not permit residential use and is therefore contrary to Z.R. §32-10; and

WHEREAS, the subject zoning lot is located on the southeast corner of the intersection of Bedford Avenue and North First Street in Williamsburg, Brooklyn, with a total area of approximately 3,050 sq. ft.; and

WHEREAS, the applicant represents that there are unique physical conditions, which create practical difficulties and unnecessary hardships in developing the subject lot in conformity with underlying district regulations including the underdeveloped size of the building in relation to the surrounding properties and the fact that the subject zoning lot is the only lot within the C8-2 zoning district that does not front Grand Street (a commercial thoroughfare; and

WHEREAS, the Board notes that the subject zoning lot is an irregularly shaped trapezoidal corner lot with a frontage of 54' along Bedford Avenue, 54'10.5" along North First Street and depths of 61'4" and 52'6"; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in aggregate with the shape, shallowness and small size of the lot, create unnecessary hardship and practical difficulty in developing the site in conformity with the current zoning; and

WHEREAS, the applicant has submitted a feasibility study demonstrating that developing the entire premises with a conforming use would not yield the owner a reasonable return; and

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

WHEREAS, the applicant represents that the proposed variance will not affect the character of the neighborhood which is characterized by residential and mixed-use development; and

WHEREAS, at the request of the Board, the applicant has reduced the size of the building from an FAR of 3.51 to

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3.0 and has removed the penthouse level, thereby reducing the height from 50'0" to 42'6"; and

WHEREAS, therefore, the Board now finds that the WHEREAS, the Board has conducted a site visit and has reviewed the submitted land use map and concludes that mixed residential and retail use of the site is appropriate given the context of the neighborhood; and

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

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

WHEREAS, the Applicant has submitted a feasibility study with an analysis of a development with three-story building with an FAR of 2.2, which was determined to be infeasible; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and the applicant's environmental study and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that would require the preparation of an Environmental Impact Statement; and

Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §72-21 and grants a variance to permit the proposed construction of a four-story and cellar building, with one commercial unit on the ground floor and eight residential units on the second, third and fourth floors, on a site located within a C8-2 zoning district, which does not permit residential use and is therefore contrary to ZR §32-10; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received May 24, 2004"-(7) sheets and "June 18, 2004"-(3) sheets; and *on further condition*;

THAT substantial construction be completed in accordance with Z.R. §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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July

WHEREAS, the applicant states that the following are unique physical conditions which create an unnecessary

proposed bulk of the building will be compatible with the built context surrounding the site; and

13, 2004.

## 300-03-BZ

### CEQR #04-BSA-050M

APPLICANT - Slater & Beckerman, for TC Interprises, LLC, owner.

SUBJECT - Application September 18, 2003 - under Z.R. §72-21 to permit the construction of a 6-story residential building with a FAR of 3.83, which would not conform to the use regulations of the underlying M1-2 district, which is contrary to Z.R. § 42-10.

PREMISES AFFECTED - 326 East 126<sup>th</sup> Street, south side, between First and Second Avenues, Block 1802, Lot 36, Borough of Manhattan.

### COMMUNITY BOARD #11M

#### APPEARANCES -

For Applicant: Stuart Beckerman.

**ACTION OF THE BOARD** - Application granted on condition

#### THE VOTE TO GRANT:

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

#### THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated September 9, 2003 acting on Application No. 103533231 reads:

"Proposed residential use is not permitted in M1-2 District. It is contrary to ZR 42-10;" and

WHEREAS, a public hearing was held on this application on April 13, 2004 after due notice by publication in *The City Record*, with a continued hearing on May 25, 2004 and then to July 13, 2004 for decision; and

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

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

WHEREAS, this is an application under Z.R. §72-21, to permit the construction of a 6-story residential building, which does not conform to the use regulations of the underlying M1-2 district, contrary to Z.R. §42-10; and

WHEREAS, the subject premises is a vacant lot situated between First and Second Avenues along East 126<sup>th</sup> Street, Manhattan, comprised of one tax lot with a total lot area of 4,162 square feet; and

WHEREAS, the proposed development contemplates the construction of a six-story, twenty-three unit residential building, with a floor area ratio ("FAR") of 3.83 and a total height of approximately 65 feet; and

hardship in constructing a conforming commercial or manufacturing building: (1) the small size of the zoning lot

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makes it less attractive to the kinds of conforming uses that otherwise might be viable at the subject location; (2) the location of the zoning lot on a block dominated by residential uses and by a side street with limited pedestrian and vehicular traffic renders the lot unmarketable for conforming uses appropriate to its size; (3) the zoning lot was formerly occupied by a residential building that was demolished several years ago and has remained vacant ever since; and

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

WHEREAS, the applicant has submitted an economic analysis demonstrating that developing the entire premises with a conforming use would not yield the owner a reasonable return; and

WHEREAS, the applicant states that an as-of-right use of the subject site for industrial purposes is at a competitive disadvantage because it is too small to meet the needs of industrial tenants, and its side-street location is not conducive to truck access, parking, and loading activities; and

WHEREAS, the applicant states that an as-of-right use of the subject site for office space would not command significant rents because it would allow only for a small, off-location building; and

WHEREAS, the applicant submitted a supplemental letter from its financial consultant in response to the Board's request for an analysis of an R7-2 housing scenario which stated that such development would result in the construction of two fewer units and a slight reduction in size of all other units; and

WHEREAS, the applicant states that an R7-2 housing scenario would reduce the effective income by ten percent without a corresponding reduction in operating costs; and

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

WHEREAS, the applicant represents that the proposed building, a medium density multiple dwelling, will not alter the mixed-use 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 updated traffic counts which indicate that the volume of traffic on the block of the proposed building is low, suggesting that the combination of off-ramp and local traffic is not so great as to have a negative impact on future residents; and

WHEREAS, the proposed building is adjacent to another building that contains 30 residential units and a FAR of approximately 4.2; and

WHEREAS, the Board finds that the residential use of the proposed building is not incompatible with other uses in

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

THAT the Department of Buildings must ensure

the area, and notes that there are other five- and six-story residential buildings immediately surrounding the instant site; and

WHEREAS, the Board also finds that the bulk and height of the proposed building is compatible with the built context surrounding the site; and

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action, the Final Environmental Assessment Statement (EAS) and has carefully considered all areas of environmental concern as delineated in the Technical Analyses section 23 in the EAS; and

WHEREAS, the Final EAS finds that the project as proposed would not have foreseeable significant adverse impacts on land use and other relevant areas of environmental concern; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that would require the preparation of an Environmental Impact Statement; and

Resolved, that the Board of Standards and Appeals issues a Negative Declaration pursuant to Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617.7 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §72-21 and grants a variance to permit the construction of a 6-story residential building with a FAR of 3.83, which would not conform to the use regulations of the underlying M1-2 district, which is contrary to Z.R. §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 18, 2003"-(9) sheets; and *on further condition*:

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

THAT any graffiti located in the premises shall be removed within 48 hours;

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

THAT substantial construction be completed in accordance with Z.R. §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;

compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or

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configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 13, 2004.

## 307-03-BZ

### CEQR #04-BSA-057M

APPLICANT - Fried, Frank Harris, Shriver & Jacobson, by Adrienne W. Bernard, Esq., for Clatco Company, LLC, 543 Realty Co., LLC and Broadway 110 Developers, LLC, owners.

SUBJECT - Application October 2, 2003 - under Z.R. §72-21 to permit the construction of a 14-story mixed-use residential and commercial building on a lot within a R8 zoning district (with a partial C1-4 overlay), which does not comply with district requirements concerning lot coverage, height, street wall height, and setbacks, contrary to Z.R. §§35-24, 23-145 and 23-633.

PREMISES AFFECTED - 543/45 West 110<sup>th</sup> Street, (a/k/a Cathedral Parkway), and 2840/46 Broadway, northeast corner, Block 1882, Lots 1 and 6, Borough of Manhattan.

### COMMUNITY BOARD #9M

APPEARANCES - None.

**ACTION OF THE BOARD** - Application granted on condition.

#### THE VOTE TO REOPEN HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

#### THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

#### THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

#### THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated September 25, 2003, acting on Application No. 103516358, reads:

“Proposed residential lot coverage, (in corner lot) is exceeding the maximum allowed. This is contrary to section 23-145 ZR. Layout indicates that proposed lot coverage is greater than 80 percent;

Proposed enlargement/obstructions above the maximum permitted height (Table B) is contrary to section 35-24 (d) ZR. No building shall exceed the maximum building height permitted. Obstructions

WHEREAS, lot 6 is occupied by a two-story former bank building with approximately 150 feet of frontage on 110<sup>th</sup> Street, currently used by a methadone treatment program and as storage space for the Market; and

WHEREAS, the proposed development contemplates the construction of a 14-story, fifty-four unit residential building, developed under the Z.R.’s Quality Housing

are contrary to section 33-42 ZR;

Since this enlargement is being developed pursuant to the Quality Housing program the height regulations of section 35-24 ZR apply as per section 35-22 ZR. Proposed street walls on wide street are contrary to section 35-24 (b)(2) ZR.

Street wall located on street line shall extend to at least to a minimum height base of Table B;

Required setback for wide street must be provided on portion of building fronting 110<sup>th</sup> street as per section 35-24 (c)(1) ZR;

For portion of building located in R8 District, provide required setback for tall buildings as specified in section 23-633 (a)(b) ZR. Enlargement is obstructing the required 10'-0" setback from required rear yard;” and

WHEREAS, a public hearing was held on this application on January 13, 2004 after due notice by publication in *The City Record*, with continued hearings on March 2, 2004, March 30, 2004, and May 18, 2004, and then to July 13, 2004 for decision; and

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

WHEREAS, Community Board 9, Manhattan, recommended approval of this application; and

WHEREAS, State Assembly Member Daniel O’Donnell recommended approval of this application; and

WHEREAS, certain community groups and individuals opposed the application, and testified at hearing and/or made written submissions in opposition; and

WHEREAS, various other community groups and individuals supported the application, and also testified at hearing and/or made written submissions in support; and

WHEREAS, this is an application under Z.R. §72-21, to permit the construction of a 14-story mixed-use residential and commercial building on a lot within a R8 zoning district (with a partial C1-4 overlay), which does not comply with district requirements concerning lot coverage, building height, street wall height, and setbacks, contrary to Z.R. §§35-24, 23-145 and 23-633; and

WHEREAS, the subject zoning lot is comprised of two adjacent tax lots (lots 1 and 6), on a site located on the northeast corner of Broadway and West 110<sup>th</sup> Street, which are both wide streets under the Zoning Resolution; and

WHEREAS, the total lot area is 13,638 sq. ft.; and

WHEREAS, lot 1 is occupied by a two-story commercial building with approximately 91 feet of frontage on Broadway, currently used by five retail uses, including the West Side Market (the “Market”); and

provisions, with a building height of 155 feet and a street wall height of 132.5 feet; and

WHEREAS, pursuant to the Quality Housing provisions, for the subject site, a 7.2 Floor Area Ratio (“FAR”) is allowed, a street wall on the entire frontage of the site of between 60 and 85 feet is required, and a maximum building height of 120 feet is permitted; and

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WHEREAS, the proposal also includes the restoration of the existing two-story commercial building on lot 1, with new, enhanced retail space on the ground floor, and the construction of an accessory parking facility consisting of 90 parking spaces, to be located at the two cellar levels; and

WHEREAS, the applicant represents that the proposed building requires the following waivers: (1) an increase in the total residential corner lot coverage, to 12,138 sq. ft. (10,456 sq. ft., or 80%, is permitted); (2) an increase in maximum street wall height on the West 110<sup>th</sup> Street portion of the site, to 132'6" feet (85 feet is the maximum); (3) a decrease in minimum street wall height on the Broadway portion of the site, to 35 feet (60 feet is the minimum); (4) an increase in building height, to 155 feet (120 feet is permitted); and (5) an allowance for a setback at 132'6" feet (one is required between 60 to 85 feet); and

WHEREAS, the overall height of the building, including the bulkhead and mechanicals, is 170 feet, 8 inches; and

WHEREAS, the above specifications reflect a significant decrease in the applicant's original proposal, which contemplated the construction of a 15-story, fifty-five unit residential building with a building height of approximately 176 feet and a street wall height of approximately 142 feet; and

WHEREAS, the proposed building's residential FAR is within the as-of-right 7.2 FAR for a building developed pursuant to the Quality Housing provisions; and

WHEREAS, the proposal would allow for an eight foot separation between the new building and the adjacent building, which would not otherwise be required under an as-of-right scheme; and

WHEREAS, the Applicant states that the following are unique physical conditions which create unnecessary hardships and practical difficulties in constructing a complying building on the site: (1) the site's shallow depth of ninety-one feet, (2) the site's location immediately adjacent to the 110<sup>th</sup> Street subway station, which is a designated New York City Landmark, (3) the location of two New York City Transit bus stops, which prevents the central location of construction equipment and increases construction costs, and (4) the added expense to be incurred for the removal from the premises of a 930 square foot bank vault; and

WHEREAS, the applicant claims that these unique physical conditions both create premium construction costs and diminish the marketability (and thus income generation potential) of a complying development; and

WHEREAS, opposition to the application claims: (1) that the shallowness of the lot is not uncommon for lots facing Broadway in the vicinity; (2) that the location of a lot near a

WHEREAS, therefore, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardships and practical difficulties in developing the site in strict compliance with the current applicable zoning regulations; and

WHEREAS, applicant has submitted an economic analysis purporting to demonstrate that developing the entire premises with a complying building would not yield the owner a reasonable return; and

subway station or bus stops is not a unique situation in New York City; and (3) that any premium cost associated with the bank vault is negligible when compared to the development costs for the entire proposal; and

WHEREAS, the applicant, in response, maintains: (1) the shallowness of the site is unique given that the depth runs from 110<sup>th</sup> Street, not Broadway, and thus a rear yard requirement is triggered, which constrains complying development; (2) although a premium cost estimate related to the landmark status of the subway station can not be ascertained at this time, as such costs will become determinable only upon Transit Authority review of construction plans, premium costs will nevertheless exist and are anticipated to be substantial; (3) the lot is burdened with two bus stops, which is an unusual condition on avenues and major cross streets; and (4) the bank vault construction costs need to be analyzed in the aggregate with the other claimed unique features; and

WHEREAS, applicant states that due to the two bus stops, the staging area for construction of a building would be so located as to necessitate the use of a tower crane, which is expensive to install and use; and

WHEREAS, the Board notes that the lot's close proximity to a landmarked subway station is not a common condition within the neighborhood or the City, nor is the existence of two bus stops affecting one lot; and

WHEREAS, the Board observes that each of the unique physical features contribute to premium costs associated with constructing a complying street wall on the Broadway frontage of the site, and that to avoid such costs (which would make complying development infeasible), a street wall waiver is necessary to relocate the proposed building's bulk off of the street to the interior of the site, which, in turn, necessitates that the building be built higher in order to accommodate the as-of-right FAR; and

WHEREAS, additionally, the Board observes that the shallowness of the lot is the particular unique feature that necessitates the setback and lot coverage waivers, in that a large portion of the site's depth must be left open to respect the lot coverage provision applicable to the corner lot portion of the site and to the rear yard in the interior portion of the site; as the building rises, the setback requirements converge with the lot coverage requirements and result in floor plates with inefficient and unmarketable units, and attendant decreased feasibility for a complying development; and

WHEREAS, opposition has questioned the credibility of the data used by the applicant in this feasibility study; and

WHEREAS, applicant has submitted responses to such opposition claims, and the Board finds such responses credible and sufficient; in particular, the Board notes that a letter submitted from Douglas Elliman dated June 17, 2004, and a letter from Freeman Frazier, also dated June 17, 2004, provide a reasonable response to the claims of opposition; and

WHEREAS, the Board notes that opposition's claims

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as to the financial feasibility of the proposed as-of-right scenario rely upon financial assumptions that are not within the realm of accepted Board practice, including: (1) the methodology of estimating sales prices on a global basis, which does not appropriately adjust for relevant characteristics of various units; and (2) use of contract of sale prices for comparables where sufficient, reliable financial information based upon closed transactions is available; and

WHEREAS, applicant, at the request of the Board, analyzed an alternative scheme of constructing a thirteen-story building and found that such a scheme results in an undesirable floor plan layout, which does not generate a reasonable return; and

WHEREAS, opposition has submitted as-of-right floor plans that they allege could earn a reasonable return (hereinafter referred to as the "Opposition Plans"); and

WHEREAS, the applicant's architect, in a written submission dated June 22, 2004, responded that a review of the Opposition Plans shows that the apartments that result do not meet reasonable standards of marketability, thus negatively impacting the feasibility of conforming development; and

WHEREAS, opposition disagrees with the applicant's conclusions regarding the feasibility of conforming development; and

WHEREAS, the Board notes that the applicant has taken the position that the unique site conditions lead to both construction cost premiums and to income generation deficiencies that are addressed by the requested waivers; thus, the marketability of the units is an essential consideration; and

WHEREAS, the Board further notes although a complying building could possibly be designed for the subject site, after a review of both applicant's and opposition's submissions, the Board concludes that complying development would not possess marketable units and is therefore not financially viable; and

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

WHEREAS, the applicant states that the proposal, if constructed, will be compatible with the prevailing built context in the neighborhood, and will not negatively impact the appropriate use of adjacent property; and

WHEREAS, evidence in the record indicates that: (1)

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

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

WHEREAS, as noted above, the applicant will construct the proposed building voluntarily and as-of-right pursuant to the Z.R.'s Quality Housing provisions, which leads to a height and street wall height requirement (which require waivers), but also allows construction of a building within the

the area surrounding the site consists mainly of 11 to 15 story residential buildings along Broadway and West 110<sup>th</sup> Street, interspersed with lower retail structures; (2) to the east of, and abutting, the subject site is a 14-story residential building, and across West 110<sup>th</sup> Street to the south is a new 12-story Columbia University building; and (3) the street walls of the mid-rise apartments along West 110<sup>th</sup> Street rise 10 to 12 stories, usually without setbacks; and

WHEREAS, the applicant has submitted a drawing showing the as-built conditions on the north side of West 110<sup>th</sup> Street; specifically, this drawing shows that directly adjacent to the subject site there is an approximately 154 feet high building (160 feet to the top of the penthouse), and across the street there is an approximately 153 feet building; and

WHEREAS, the applicant has also submitted a drawing showing the as-built conditions on the east side of Broadway; specifically, this drawing show that across the street from the subject site there is an approximately 152 feet high building; and

WHEREAS, based upon its review of the drawings and its own site visit, the Board finds that the both the building height and street wall height of the proposed building is compatible with that of neighboring buildings; and

WHEREAS, opposition claims that location of the mechanical equipment on the northern side of the proposed building will have a negative effect on neighboring residents; and

WHEREAS, the Board does not find that the location of the mechanical equipment will have any substantial negative effect on adjacent residents, and notes that all bulkheads and mechanicals will necessarily have to comply with all applicable Building Code provisions; and

WHEREAS, therefore, because of the compatibility with the built context of the neighborhood, the Board finds that the requested height waivers will not negatively impact the surrounding neighborhood; and

WHEREAS, applicant has submitted a traffic and parking assessment which indicates that the proposed parking garage, which is as-of-right, is unlikely to result in significant traffic impacts; and

WHEREAS, applicant's traffic and parking assessment also states an intent to undertake measures to enhance pedestrian safety including the installation of a flashing light and ringing bells to both visually and audibly alert pedestrians to the presence of an exiting vehicle; and

permitted FAR of 7.2 (no waiver of FAR is thus necessary); and

WHEREAS, if the applicant were proceeding under non-Quality Housing height factor zoning (which would not trigger a height or street wall height requirement), they would be permitted a lesser FAR, which would necessitate a large FAR waiver request in order for the project to realize a reasonable return; and

WHEREAS, the Board finds that proceeding under the Quality Housing program leads to a proposal that requires a lesser degree of variance, because no FAR waiver is

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necessary; and

WHEREAS, the Board also notes that the applicant, in response to Board and community concerns, agreed to lower the street wall height to 132'6" and the building height to 155'; and

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

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

WHEREAS, the Board notes that it has held four hearings on the subject matter and has accorded both the applicant and opposition ample opportunity to provide oral and written testimony, including post-closing submissions; specifically, opposition was instructed that they would be able to submit a response to applicant's May 25 submission by June 8, which was in fact submitted and subsequently considered by the Board; and

WHEREAS, subsequently, two opposition submissions were made on July 6, 2004, and one was made on July 8; and

WHEREAS, while the Board did not provide for opposition submission on these dates, the Board nevertheless accepts them for placement in the record and Board consideration because the Board is re-opening the record on the date hereof for acceptance of applicant plans with minor amendments; and

WHEREAS, the applicant has stated to the Board, through its staff, that it stands on its prior submissions and does not wish to respond to the late opposition submissions; and

WHEREAS, at hearing, the Board asked the applicant to examine whether floor to floor heights could be reduced so as to reduce the total height of the building; and

WHEREAS, in a July 8, 2004 opposition submission, Jonathan Schachter, complained to the Board that opposition should be afforded a chance to address applicant's response to the floor to floor height issue; and

WHEREAS, the Board's intent in asking the applicant to examine floor to floor heights was specifically pointed towards the goal of a reduction in total height, and, as stated in its June 28, 2004 submission, the applicant did in fact reduce the total height of the building; and

WHEREAS, applicant represents that it is aware of the surrounding community's interest in seeing the return of the Market, and states that it will enter into good faith negotiations with the owners of the Market to conclude a lease for space in the proposed building; and

## **314-03-BZ**

### **CEQR #04-BSA-061M**

APPLICANT - Deirdre A. Carson, Esq., for 17-18 Management Co. LLC, c/o White, Inc., owner; AMAC, lessee.

SUBJECT - Application October 16, 2003 - under Z.R. §§73-01, 73-03 and 73-19 to permit the legalization of an existing school, Use Group 3A, located in an 11 story loft building, in an M1-6M zoning district, is contrary to Z.R. §42-00 and §42-12.

PREMISES AFFECTED - 18 West 18<sup>th</sup> Street, a/k/a 25 West 17<sup>th</sup> Street, a through lot, 356' west of the intersection of Fifth Avenue

WHEREAS, the Board has conducted an environmental review of the proposed action and the Final Environmental Assessment Statement and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that would require the preparation of an Environmental Impact Statement.

*Resolved*, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §72-21 and grants a variance to permit the construction of a 14-story mixed-use residential and commercial building on a lot within a R8 zoning district (with a partial C1-4 overlay), which does not comply with district requirements concerning lot coverage, height, street wall height, and setbacks, contrary to Z.R. §§ 35-24, 23-145 and 23-633; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 16, 2004"-(9) sheets and "Received June 22, 2004"-(2) sheets and "Received July 7, 2004"-(2) sheets *on further condition*:

THAT there shall be no more than 90 parking spaces in the parking facility;

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

THAT the all fire safety provisions will be complied with;

THAT the layout of the parking facility shall be as approved by the Department of Buildings;

THAT substantial construction be completed in accordance with Z.R. §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) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, July 13, 2004.

and 17<sup>th</sup> and 18<sup>th</sup> Streets, Block 819, Lot 56, Borough of Manhattan.

## **COMMUNITY BOARD #5M**

APPEARANCES - None.

**ACTION OF THE BOARD** - Application granted on condition.

THE VOTE TO GRANT -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

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Negative:.....0

## THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated October 2, 2003, acting on Department of Buildings Application No. 102589094, reads:

“Proposed school (Use Group 3) is not [a] permitted use in M1-6M District, it is contrary to Z.R. §42-00”; and

WHEREAS, a public hearing was held on this application on May 11, 2004 after due notice by publication in *The City Record*, with a continued hearing on June 22, 2004 and then to decision on July 13, 2004; and

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

WHEREAS, Community Board 5, Manhattan, recommends conditional approval of the application; and

WHEREAS, this is an application to permit the continued operation of a school without sleeping accommodations (Use Group 3), located within an M1-6M zoning district, which requires a special permit under Z.R. §73-19; and

WHEREAS, the subject premises is located in the middle of West 17<sup>th</sup> and 18<sup>th</sup> Streets, between Fifth and Sixth Avenues, is within an M1-6 zoning district, and is improved with an eleven story loft-style building (the “Building”), which covers approximately ninety percent (90%) of the zoning lot and is built without setbacks; and

WHEREAS, the applicant represents that the existing school (the “School”) has served the educational needs of autistic children since 1961 and has occupied several floors of the Building under a lease agreement since 1991; and

WHEREAS, the applicant currently occupies a total of 30,750 square feet in the Building, with 6,150 square feet on the first floor and 12,300 square feet on each of the second and third floors; and

WHEREAS, the first floor has a kitchen which serves the lunch room on the second floor, and the second and third floors have classrooms, offices, activity rooms, storage and conference space; and

WHEREAS, the applicant states that the school currently serves 351 children and adults with autism; and

WHEREAS, the School offers several services and

WHEREAS, evidence in the record indicates that the proposed school is located 265 feet from a C6-4M zoning district boundary line, where the school is permitted as-of-right; thus the Board finds that the requirement of Z.R. §73-19(b) is met; and

WHEREAS, the applicant has submitted an Environmental Assessment Statement and a supplemental environmental study indicating that noise levels from the traffic and surrounding area are within acceptable levels and that despite high noise levels on the second floor adjacent to the wall fronting West 17<sup>th</sup> Street, exterior noise levels are not significant enough to pose an adverse impact; and

WHEREAS, the Board finds that adequate separation from noise, traffic and other adverse effects of the surrounding non-residential district is achieved through the

programs which include a pre-school for children age two to five and their parents, program for school age children age five to sixteen, as well as after-school and Saturday programs for children and adults with autism; and

WHEREAS, the applicant represents that the School hours will be Monday through Friday, 8:00 A.M to 4:30 P.M, with some specified nights until 9:00 or 10:00 P.M. for parent meetings, and, on occasion, special events will be held at the School on Saturday and Sunday between 8:00 A.M to 4:00 P.M ; and

WHEREAS, the School currently has 161 staff and a majority of them use public transportation; and

WHEREAS, the applicant has demonstrated difficulty in obtaining land for the development of a school within the neighborhood to be served of an adequate size and within districts where the school is permitted as-of-right; and

WHEREAS, upon the recommendation of the Board at the hearing on May 11, 2004, the applicant has submitted additional materials which expand upon the Z.R. §73-19(a) requirement and represents that there is no practical possibility of obtaining a site of adequate size for the school in a zoning district where it is permitted as-of-right, and relocation would not be feasible because: (1) the subject site’s central location is critical to the School’s ability to serve the special needs population, which is drawn from the entire metropolitan area, (2) there is a lack of vacant land in nearby zoning districts where the School is permitted as-of-right, (3) the construction of a new facility would be financially unfeasible, (4) the rents payable in existing buildings in the nearest adjacent zoning district substantially exceed the School’s means, and (5) the School needs to be located near the ground floor because use of the elevators would not be desirable for students with special needs such as autism; and

WHEREAS, in response to the Board’s request to describe in greater detail the character of the uses on the block on which the School is located, the applicant maintains that West 17<sup>th</sup> and 18<sup>th</sup> Streets, between Fifth and Sixth Avenues, reflect a wide range of uses from community facility and philanthropic use to light manufacturing, with the predominant use being office and residential above retail stores; and

WHEREAS, therefore, the Board finds that the requirements of Z.R. §73-19(a) are met; and

use of sound attenuating exterior wall and window construction; thus the Board finds that the requirements of Z.R. §73-19(c) are met; and

WHEREAS, the applicant represents that the majority of students will arrive and leave school by public transportation and will be supervised at all times; and

WHEREAS, the applicant represents that the School will continue to use the separate entrance, elevator and stairway on West 17<sup>th</sup> Street as the primary means of entering and exiting the Building; and

WHEREAS, there will be a “No Standing” zone during school hours (7 AM to 4 PM) on West 17<sup>th</sup> Street, for the School’s vans; and

WHEREAS, therefore, Board finds that the requirements of Z.R. §73-19(d) are met; and

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WHEREAS, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §73-19; and

WHEREAS, the Board notes that the subject zoning district (M1-6M) allows residential conversions and is therefore distinguishable from a typical M zoning district; and

WHEREAS, the Board further finds that under the conditions and safeguards imposed, the hazards or disadvantages to the community at large of such special permit use at the particular site are outweighed by the advantages to be derived by the community by the grant of such special permit; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and the Final Environmental Assessment Statement and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that would require the preparation of an Environmental Impact Statement.

*Resolved*, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §73-19 and grants a Special Permit, to allow the continued operation of a school without sleeping accommodations (Use Group 3), located within a M1-6M zoning district, which requires a special permit under Z.R. §73-19; *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 "October 16, 2003"-(5) sheets; and *on further condition*:

THAT the premises shall comply with all applicable fire safety measures;

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

SUBJECT - Application March 16, 2004 - under Z.R. §72-21 to permit a variance to vary the applicable rear yard requirements (from thirty feet to twenty) triggered by an as of right conversion of floors 12 through 30, and a portion of the lobby, of a thirty-story building, from hotel use to residential use (Use Group 6), located on a site split by C6-6 and C6-4.5 zoning districts, contrary to Z.R. §§23-47 and 54-31.

PREMISES AFFECTED - 866 Third Avenue, west side, between 52<sup>nd</sup> and 53<sup>rd</sup> Streets, Block 1307, Lot 1004, 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 Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

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

THAT the Department of Buildings must ensure compliance 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 13, 2004.

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**338-03-BZ**

**CEQR #04-BSA-070K**

APPLICANT - Eric Palatnik, P.C., for Michael Kohl, owner.

SUBJECT - Application October 31, 2003 - under Z.R. §72-21 to permit the legalization of commercial offices and a dental laboratory on the second floor of a two story building, located in an R5 zoning district, is contrary to Z.R. §22-11.

PREMISES AFFECTED - 726 Avenue "Z", south side, 203.56' east of Ocean Parkway, Block 7238, Lot 32, Borough of Brooklyn.

**COMMUNITY BOARD #13BK**

APPEARANCES -

For Applicant: Moshe Friedman.

**ACTION OF THE BOARD** - Application withdrawn.

THE VOTE TO WITHDRAW -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, July 13, 2004.

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**133-04-BZ**

**CEQR #04-BSA-145M**

APPLICANT - Jay A. Segal, Esq., for 866 3rd Next Generation Hotel, LLC, c/o The Witkoff Group, owner.

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated February 23, 2004, acting on DOB Application No. 103701353, reads:

"The proposed change of use from commercial to residential creates a new non-complying rear yard for the residential use in that the required (MIN) rear yard is 30'-0" as per section 23-47 ZR. Therefore it is also contrary to section 54-31(ZR)"; and

WHEREAS, a public hearing was held on this application on June 22, 2004 after due notice by publication in *The City Record*, and then to decision on July 13, 2004; and

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

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and Commissioners Miele, and Chin; and

WHEREAS, Community Board 6, Manhattan recommended approval of this application; and

WHEREAS, this is an application under Z.R. §72-21, to waive the applicable rear yard requirements triggered by an as of right conversion of floors 12 through 30, and a portion of the lobby, of a thirty-story building, from hotel use to residential use (Use Group 6), located on a site split by C6-6 and C6-4.5 zoning districts, contrary to Z.R. §§23-47 and 54-31; and

WHEREAS, the subject lot is located on Third Avenue between 52<sup>nd</sup> and 53<sup>rd</sup> Streets, is comprised of one tax lot with a total lot area of approximately 25,097 sq. ft., and is divided between two commercial zoning districts (C6-6 and C6-4.5); and

WHEREAS, the lot is currently occupied with an existing thirty-story building, covering the entire zoning lot and containing 431,113 sq. ft. of floor area, occupied by: (1) retail establishments on the ground floor, (2) an outpatient clinic operated by the Memorial Sloan Kettering Cancer Center, which occupies a portion of the 1<sup>st</sup> floor and floors 2 through 11 and (3) the Courtyard Marriot Hotel (the "Hotel") that currently has meeting rooms, a restaurant and bar on the 12<sup>th</sup> floor, 308 guest rooms on floors 13 through 30, and a lobby and service area on the first floor; and

WHEREAS, the proposed development contemplates the conversion of the Hotel portion of the existing building into approximately 200 residential apartments, including 87 studios, 94 one-bedroom units and 19 two-bedroom units; and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardships in developing the subject lot in compliance with underlying district regulations: (1) the unique configuration of the Hotel's floors cannot earn a reasonable return from any commercial use; (2) the deep floor-plates on the building's upper floors allow for an unusually low number of guest rooms per floor and for this reason the Hotel is not financially productive as compared to other Hotels in the same market; and

WHEREAS, the applicant represents that a variance to modify the rear yard requirements for the interior portion of the lot from (30) thirty feet to (20) twenty feet would not alter the essential character of the neighborhood as the lack of a full 30 foot rear yard affects only the interior lot portion of the existing building; and

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

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

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

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

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

WHEREAS, the applicant submitted an architectural/financial analysis of eleven comparable hotel properties that demonstrates that standard hotel floor-plates (typically 50 by 80 feet) service a double-loaded corridor with rooms on both sides and typically generate rooms with an average of 353 square feet; and

WHEREAS, if the Hotel had sufficient floor plates to achieve this average efficiency of 353 square feet, it would have 570 rooms on floors 13-30, which is 263 rooms more than the current 307 rooms, and this difference produces the financial inefficiencies discussed above; and

WHEREAS, the Board finds that the aforementioned unique physical conditions, when considered in the aggregate, create unnecessary hardship and practical difficulties in developing the site in conformity with the current zoning; and

WHEREAS, the applicant has submitted a feasibility study demonstrating that the return on equity on the Hotel is not reasonable, and that the high costs of converting the building to another conforming commercial use, such as office use, would also result in an unreasonable return on equity; and

WHEREAS, the proposed variance is required because, while the actual residential conversion is permitted as-of-right under the current zoning, compliance with residential rear yard requirements would entail demolition of a portion of the building, and the financial and logistical requirements of such a project would effectively eliminate the financial benefits of the conversion; and

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

WHEREAS, the applicant represents that the proposed variance will not affect the character of the neighborhood since there would be no exterior alteration of the existing building, and the other uses in the building would not be changed; and

Assessment Statement and Supplemental Report, and has carefully considered all relevant areas of environmental concern; and

WHEREAS, the evidence demonstrates no foreseeable significant environmental impacts that would require the preparation of an Environmental Impact Statement; and

Resolved, that the Board of Standards and Appeals issues a Negative Declaration under 6 NYCRR Part 617 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and makes each and every one of the required findings under Z.R. §72-21 and grants a variance to vary the applicable rear yard requirements (from thirty feet to twenty) triggered by an as of right conversion of floors 12 through 30, and a portion of the lobby, of a thirty-story building, from hotel use to residential use (Use Group 6), located on a site split by C6-6 and C6-4.5 zoning districts, contrary to Z.R. §§23-47 and 54-31; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this

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application "Received March 16, 2004" -(9) sheets; and on further condition:

THAT substantial construction be completed in accordance with Z.R. §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;

THAT should DOB determine that a 30 foot rear yard is required on the foyer level of the building, the Board has no objection to the waiver granted herein being made applicable to such level;

THAT all light and air requirements shall be as approved by DOB;

THAT DOB must ensure compliance 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 13, 2004.

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## 161-02-BZ

APPLICANT - SFS Associates, for Coral Cove, LLC, owner.

SUBJECT - Application May 20, 2002 - under Z.R. § 72-21 to permit the proposed construction of a six story residential building, Use Group 2, located in a C3 zoning district, which does not comply with the zoning requirements for floor area ratio, perimeter wall, height, lot area per dwelling unit, setback, sky exposure and parking, is contrary to Z.R. §§23-00 and 25-00.

PREMISES AFFECTED - 2433 Knapp Street, corner of Knapp Street and Avenue "X", Block 8833, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

## 221-03-BZ

APPLICANT - Martyn & Don Weston, for 253 West 28<sup>th</sup> Street, Corp., owner.

SUBJECT - Application June 26, 2003 - under Z.R. §72-21 to permit the legalization of three existing residential units, located on the third, fourth and fifth floors, of a five story mixed use building, in an M1-1 zoning district, which is contrary to Z.R. §42-00.

PREMISES AFFECTED - 253/55 West 28<sup>th</sup> Street, north side, 105'-1" east of Eighth Avenue, Block 778, Lot 7, Borough of Manhattan.

### COMMUNITY BOARD #5M

#### APPEARANCES -

For Applicant: Don Weston.

For Opposition: Stuart Klein.

#### THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

**ACTION OF THE BOARD** - Laid over to September 21, 2004, at 1:30 P.M., for decision, hearing closed.

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#### APPEARANCES -

For Applicant: Peter Hirshman, Den Lentrek and Robert Pauls.

For Opposition: Raymond Schaefer and George R. Broadhead.

**ACTION OF THE BOARD** - Laid over to September 14, 2004, at 1:30 P.M., for continued hearing.

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## 183-03-BZ

APPLICANT - Agusta & Ross, for North Berry Capital Group, LLC, owner.

SUBJECT - Application June 3, 2003- under Z.R. §72-21 to permit the proposed forty-three unit multiple dwelling, with retail space on the ground floor, and underground accessory parking throughout for twenty-two vehicles, Use Groups 2 and 6, located in an M1-2 zoning district, which is contrary to Z.R. §42-10.

PREMISES AFFECTED - 118 Berry Street, 116 North Seventh Street, a/k/a 116/26 North Seventh Street and 118/20 Berry Street, northwest corner, Block 2326, Lots 18 and 19 (tentative Lot 18), Borough of Brooklyn.

### COMMUNITY BOARD #1BK

#### APPEARANCES -

For Applicant: Mitchell Ross, Karl Fischer and Simon Sattan.

For Opposition: Peter Gillespie.

**ACTION OF THE BOARD** - Laid over to August 17, 2004, at 1:30 P.M., for continued hearing.

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## 231-03-BZ

APPLICANT - Sheldon Lobel, P.C., for Isaac Douek Jacqueline Douek Maurice Douek, owners.

SUBJECT - Application July 29, 2003 - under Z.R. §72-21 to permit the proposed construction of a six story building, with a mezzanine and cellar, to contain eighteen residential units, Use Group 2, located in an M1-1 zoning district, which is contrary to Z.R. §42-00.

PREMISES AFFECTED - 63 and 65 Columbia Street, southeast corner of Congress Street, Block 299, Lots 7 and 8, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

#### APPEARANCES -

For Applicant: Janice Cahalane and Albert Marrigo.

#### THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

**ACTION OF THE BOARD** - Laid over to September 14, 2004, at 1:30 P.M., for decision, hearing closed.

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## 258-03-BZ

APPLICANT - Law Office of Howard Goldman, PLLC, for Thames Realty, LLC, owner.

SUBJECT - Application August 12, 2003 - under Z.R. §72-21 to permit the legalization of twenty-three residential units, in a four story building, located in an M1-1 zoning district, which is contrary to Z.R. §42-00.

PREMISES AFFECTED - 47 Thames Street, between Morgan Street and Knickerbocker Avenue, Block 3008, Lot 31, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

APPEARANCES -

For Applicant: Chris Wright.

**ACTION OF THE BOARD** - Laid over to August 17, 2004, at 1:30 P.M., for continued hearing.

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## 261-03-BZ

APPLICANT - Sheldon Lobel, P.C., for PLK Realty Corp., owner.

SUBJECT - Application August 18, 2003 - under Z.R. §72-21 to permit the legalization of an existing one story building, as an auto repair shop, Use Group 16, located in an R7-1 zoning district, which is contrary to Z.R. §23-00.

PREMISES AFFECTED - 1404/06 Stebbins Avenue, northeast corner of East 170<sup>th</sup> Street, Block 2965, Lot 36, Borough of The Bronx.

### COMMUNITY BOARD #3BX

APPEARANCES -

SUBJECT - Application November 19, 2003 - under Z.R. §72-21 to permit the proposed enlargement to an existing single family residence, Use Group 1, located in an R5 zoning district, which does not comply with the zoning requirements for lot coverage, also rear and side yards, is contrary to Z.R. §23-146 and §23-47.

PREMISES AFFECTED - 1651 52<sup>nd</sup> Street, north side, 334'-4 1/2" west of 17<sup>th</sup> Avenue, Block 5466, Lot 69, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

APPEARANCES -

For Applicant: Harold Weinberg.

**ACTION OF THE BOARD** - Laid over to August 10, 2004, at 1:30 P.M., for postponed hearing.

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## 364-03-BZ

APPLICANT - Rothkrug Rothkrug Weinberg & Spector, for Alprof Realty LLC/VFP Realty LLC, owners.

SUBJECT - Application November 24, 2003 - under Z.R. §72-21 to permit the proposed construction of an automotive car wash and Lubratorium, Use Group 2, located in a C2-2(R6) zoning district, which is contrary to Z.R. §32-00.

PREMISES AFFECTED - 34-11 Far Rockaway Boulevard, southeast corner of Sea Girt Boulevard, Block 15950, Lots 14 and 24, Borough of Queens.

### COMMUNITY BOARD #14Q

APPEARANCES -

For Applicant: Richard Lobel.

## THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

**ACTION OF THE BOARD** - Laid over to August 17, 2004, at 1:30 P.M., for decision, hearing closed.

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## 341-03-BZ

APPLICANT - Sheldon Lobel, P.C., for Chelsea Ventura, LLC, owner.

SUBJECT - Application November 6, 2003 - under Z.R. §72-21 to permit the proposed construction of a new residential building, on a merged zoning lot with an existing multiple dwelling, which creates non-compliances with respect, floor area ratio, number of dwelling units, and rear yard equivalent, is contrary to Z.R. §23-145, §23-22 and §23-533.

PREMISES AFFECTED - 343 West 16<sup>th</sup> Street, between Eighth and Ninth Avenues, Block 740, Lot 12, Borough of Manhattan.

### COMMUNITY BOARD #4M

APPEARANCES -

For Applicant: Irving Minkin.

**ACTION OF THE BOARD** - Laid over to August 17, 2004, at 1:30 P.M., for continued hearing.

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## 358-03-BZ

APPLICANT - Harold Weinberg, P.E., for Rita Citronenbaum, owner.

For Applicant: Adam W. Rothkrug, Ala Profeter and Ferando Leal.

For Opposition: Marlen Waayer and Steve Cooper.

**ACTION OF THE BOARD** - Laid over to September 14, 2004, at 1:30 P.M., for continued hearing.

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## 365-03-BZ

APPLICANT - Rothkrug Rothkrug Weinberg & Spector, for Avi Mansher, owner.

SUBJECT - Application November 25, 2004 - under Z.R. §72-21 to permit the construction of a two story, two family dwelling, Use Group 2, which does not provide the required side yard which is contrary to Z.R. §23-462.

PREMISES AFFECTED - 224-20 Prospect Court, a/k/a 225<sup>th</sup> Street, northwest corner, Block 13071, Lot 74, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES -

For Applicant: Adam Rothkrug.

For Opposition: Judy Charrington.

**ACTION OF THE BOARD** - Laid over to August 17, 2004, at 1:30 P.M., for continued hearing.

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# MINUTES

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## 366-03-BZ

APPLICANT - Moshe M. Friedman, P.E., for Ahava Ve Ahava Yeshiva Ketana, Inc., owner.

SUBJECT - Application November 25, 2003 - under Z.R. §72-21 to permit the proposed vertical enlargement to an existing school, Use Group 3, located in an R5 Ocean Parkway-Subdistrict, which does not comply with the zoning requirements for floor area, floor area ratio, open space, lot coverage, front yard, side yards, minimum side yard, loading, height and setback, which is contrary to Z.R. §113-51, §24-11, §113-545, §23-45, §113-543, §23-461, §113-55, §23-631 and §113-22(a).

PREMISES AFFECTED - 2001 East 7<sup>th</sup> Street, southeast corner of Avenue "S", Block 7089, Lot 77, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

#### APPEARANCES -

For Applicant: Josef Friedman

For Opposition: Michael Tosic.

#### THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

**ACTION OF THE BOARD** - Laid over to August 17, 2004, at 1:30 P.M., for decision, hearing closed.

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PREMISES AFFECTED - 1288 East 19<sup>th</sup> Street, between Avenues "L and M", Block 6738, Lots 36, 38, 137 and part of 136, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

#### APPEARANCES -

For Applicant: Richard Lobel.

For Opposition: Marc Esrig.

**ACTION OF THE BOARD** - Laid over to September 14, 2004, at 1:30 P.M., for continued hearing.

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## 19-04-BZ

APPLICANT - Sheldon Lobel, P.C., for Motiva Enterprises, LLC, owner.

SUBJECT - Application February 6, 2004 - under Z.R. §11-412 to permit the reestablishment of an expired variance previously granted under Cal. No. 423-54-BZ, for a gasoline service station in a C2-1 within an R-4 zoning district, also the legalization of the conversion of a portion of the gas station to an accessory retail convenience store, is contrary to Z.R. §22-10 and §32-10.

PREMISES AFFECTED - 1217 East 233<sup>rd</sup> Street, a/k/a 3923 Baychester Avenue, Block 4954, Lot 68, Borough of The Bronx.

### COMMUNITY BOARD #12BX

#### APPEARANCES -

For Applicant: Janice Cahalane.

**ACTION OF THE BOARD** - Laid over to August 10, 2004, at 1:30 P.M., for continued hearing.

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## 39-04-BZ

APPLICANT - Eric Palatnik, P.C., for Mordechai Bistrizky, owner.

SUBJECT - Application February 13, 2004 - under Z.R. §73-622 to permit the proposed enlargement of a single family residence, Use

## 390-03-BZ

APPLICANT - Sheldon Lobel, P.C., for Dobbins Street, LLC, owner.

SUBJECT - Application December 18, 2003 - under Z.R. §72-21 to permit the legalization of residential use on the second floor, of a two story mixed use building, located in an M1-1 zoning district, is contrary to Z.R. §42-00.

PREMISES AFFECTED - 95 Dobbins Street, between Norman and Messerole Avenues, Block 2616, Lot 18, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

#### APPEARANCES -

For Applicant: Harold Weinberg, Gregory Fic, David Weissman, Wolf Braler, Andy Aronson, Michael Zeh and Moshe Liberman.

**ACTION OF THE BOARD** - Laid over to September 14, 2004, at 1:30 P.M., for continued hearing.

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## 391-03-BZ

APPLICANT - Sheldon Lobel, P.C., for Midwood Realty LLC, owner.

SUBJECT - Application December 22, 2003 - under Z.R. §72-21 to permit the proposed construction of an eight-story plus basement residential building, Use Group 2, located in an R6 zoning district, which does not comply with the zoning requirements for maximum building height and floor area, is contrary to Z.R. §23-633 and §23-145.

Group 1, located in an R2 zoning district, which does not comply with the zoning requirements for floor area, open space and rear yard, is contrary to Z.R. §23-141, §23-461 and §23-47.

PREMISES AFFECTED - 1418 East 29<sup>th</sup> Street, between Avenue "N" and Kings Highway, Block 7682, Lot 57, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

#### APPEARANCES -

For Applicant: Moshe Friedman.

#### THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5

Negative:.....0

**ACTION OF THE BOARD** - Laid over to August 10, 2004, at 1:30 P.M., for decision, hearing closed.

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*Pasquale Pacifico, Executive Director.*

Adjourned: 7:00 P.M.

**SPECIAL CALENDAR**  
**WEDNESDAY MORNING, JULY 14, 2004**  
**10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.

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# MINUTES

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**140-04-A**

APPLICANT - Stuart A. Klein, Esq.

SUBJECT - Application March 25, 2004 - Appeal of Department of Buildings refusal to revoke approval and underlying permit for the subject premises which is occupied contrary to the existing Certificate of Occupancy and the Zoning Resolution.

BUSINESS ADDRESS of PREMISES OWNER - S.H.A.W.C HOUSING DEVELOPMENT FUND CORP. -39 BOWERY STREET, Borough of Manhattan

APPEARANCES -

For Applicant: Stuart A. Klein.

For Opposition: Eric Palatnik.

THE VOTE TO HAVE A CLOSED HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, Commissioner Caliendo and Commissioner Chin.....5

Negative:.....0

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Miele, Commissioner Caliendo and Commissioner Chin.....5

Negative:.....0

**ACTION OF THE BOARD** - Laid over to September 14, 2004, at 10:00 A.M., for decision, hearing closed.

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*Pasquale Pacifico, Executive Director.*