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# BULLETIN

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

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Volume 89, Nos. 51-52

December 23, 2004

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### DIRECTORY

**MEENAKSHI SRINIVASAN, *Chair***

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|------------------------|--|
| <b>OFFICE -</b>        | <b>40 Rector Street, 9th Floor, New York, N.Y. 10006</b>   |
| <b>HEARINGS HELD -</b> | <b>40 Rector Street, 6th Floor, New York, N.Y. 10006</b>   |
| <b>BSA WEBPAGE @</b>   | <b><a href="http://www.nyc.gov/html/bsa/home.html">http://www.nyc.gov/html/bsa/home.html</a></b> |

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# DOCKETS

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New Case Filed Up to December 14, 2004

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**378-04-BZ** B.BK. 94 Kingsland Avenue, northeast corner of Richardson Street, Block 2849, Lot 1, Borough of Brooklyn. Applic. #301803680. Proposed four-story residential building, with two units per floor, for a total of eight units, with a four-car garage, located in an M1-1 zoning district, is contrary to Z.R. §42-00.

**COMMUNITY BOARD #1BK**

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**379-04-BZ** B.BK. 107 Debevoise Avenue, (aka 20 Division Place), southwest corner, Block 2849, Lot 15, Borough of Brooklyn. Applic. #301803699. Proposed four-story residential building, with two units per floor, for a total of eight units, with a four-car garage, located in an M1-1 zoning district, is contrary to Z.R. §42-00.

**COMMUNITY BOARD #1BK**

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**380-04-BZ** B.Q. 32-12 23<sup>rd</sup> Street, bounded by 33<sup>rd</sup> Avenue and Broadway, Block 555, Lot 36, Borough of Queens. N.B.#401515017. The legalization of the conversion of one dwelling unit, in a new building, approved exclusively for residential use, to a community facility use, in an R5 zoning district, without two side yards, is contrary to Z.R. §24-35.

**COMMUNITY BOARD #1Q**

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**381-04-BZ** B.BK. 83 Bushwick Place, aka 225/27 Boerum Street, northeast corner, Block 3073, Lot 97, Borough of Brooklyn. Applic. #301866032. Proposed construction of a five-story residential building, containing 25 units, with 22 parking spaces, located in an M1-1 zoning district, is contrary to Z.R. §42-00.

**COMMUNITY BOARD #1BK**

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**382-04-BZ** B.BK. 2026 Avenue "T", corner of Avenue "T" and East 21<sup>st</sup> Street, Block 7325, Lot 8, Borough of Brooklyn. Applic. #301861466. Proposed enlargement of an existing single family dwelling, located in an R4 zoning district, which does not comply with the zoning requirements for floor area, lot coverage, open space and side yards, is contrary to Z.R. §23-141(b) and §23-461(a).

**COMMUNITY BOARD #15BK**

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**383-04-BZ** B.Q. 46-21 Greenpoint Avenue, a/k/a 46-12/20 Queens Boulevard, northwest corner, Block 152, Lot 1, Borough of Queens. Applic. #400946410. The legalization of an existing physical culture establishment, previously granted by the Board under Cal. No. 685-87-BZ, located in the basement, in a two story commercial building, within a C4-2 zoning district, requires a special permit from the Board as per Z.R. §73-36.

**COMMUNITY BOARD #2Q**

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**384-04-A** B.Q. 37 Jamaica Walk, east side, 75.61' north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens. Alt.1 #401947756. Proposed reconstruction and enlargement of an existing single family residence, not fronting on a legally mapped street, also the proposed upgrading of the private disposal system in the bed of the service road, is contrary to Section 36, Article 3 of the General City Law and Department of Buildings Policy.

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**385-04-A** B.Q. 2 Deauville Walk, in the bed of Beach 214<sup>th</sup> Street, at the intersection of Palmer Drive, Block 16350, Lot 300, Borough of Queens. Alt.1 #402002266. Proposed reconstruction and enlargement of an existing single family dwelling, also the proposed upgrading of an existing private disposal system, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law and Department of Buildings Policy.

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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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**FEBRUARY 1, 2005, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, February 1, 2005, 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**

### **102-95-BZ**

APPLICANT - The Law Office of Fredrick A. Becker, for The Argo Corp., as agent for 50 West 17 Realty Co.; Renegades Assoc. dba Splash Bar, lessee.

SUBJECT - Application March 23, 2004 - Extension of Term for an eating & drinking establishment with dancing. Amendment for interior modifications in portions of the cellar and first floor. Located in M1-6M zoning district.

PREMISES AFFECTED - 50 west 17th Street, south side of West 17th Street, between 5th Avenue and 6th Avenue, Block 818, Lot 78, Borough of Manhattan.

**COMMUNITY BOARD #5M**

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### **144-03-BZ**

APPLICANT - H. Irving Sigman, for Ching Kuo Chiang, owner.  
SUBJECT - Application September 29, 2004 - Pursuant to Z.R. Sections 72-01 and 72-22 to reopen an amend a previously granted variance to allow modifications of a mixed use building (U.G. 2 & 6) with accessory storage and parking in an R3-2 district.

PREMISES AFFECTED - 188-16 Northern Boulevard, southwest corner of 189th Street, Block 5510, Lot 38, Borough of Queens.

**COMMUNITY BOARD #11Q**

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## **APPEALS CALENDAR**

### **277-04-A**

APPLICANT - Joseph A. Sherry, for Breezy Pt. Cooperative Inc., owner; John & Anne Egan, lessees.

SUBJECT - Application August 10, 2004 - Proposed enlargement of an existing one family dwelling, not fronting on a legally mapped street, located partially within the bed of a mapped street and has a private disposal system in the bed of a mapped street, is contrary to Sections 35 and 36, of the General City Law and Department of Buildings Policy

PREMISES AFFECTED - 155 Reid Avenue, east side, 493.42' north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens.

**COMMUNITY BOARD #14Q**

PREMISES AFFECTED - 3213 Edson Avenue, bounded on the north by East 222nd Street, south by Burke Avenue and west by Grace Avenue, Block 4758, Lot 25, Borough of The Bronx.

**COMMUNITY BOARD #12**

**FEBRUARY 1, 2005, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, *Tuesday afternoon*, February 1, 2005, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **349-03-BZ**

APPLICANT - The Agusta Group, for Cyril Pereira, owner.  
SUBJECT - Application November 14, 2003 - under Z.R. §72-21 to permit the legalization of the conversion of a two family dwelling, into a three family dwelling, is contrary to Z.R. §22-12, which only permits two family dwelling in R3-1 zoning districts.

PREMISES AFFECTED - 85-14 63RD Drive, east side, between Fitchett Street and Woodhaven Boulevard, Block 3115, Lot 21, Borough of Queens.

**COMMUNITY BOARD #6Q**

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### **350-03-BZ**

APPLICANT - The Agusta Group, for Cyril Pereira, owner.  
SUBJECT - Application November 14, 2003 - under Z.R. §72-21 to permit the legalization of the conversion of a two family dwelling, into a three family dwelling, is contrary to Z.R. §22-12, which only permits two family dwelling in R3-1 zoning districts.

PREMISES AFFECTED - 85-16 63RD Drive, east side, between Fitchett Street and Woodhaven Boulevard, Block 3115, Lot 22, Borough of Queens.

**COMMUNITY BOARD #6Q**

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### **152-04-BZ**

APPLICANT - James M. Plotkin, Esq., for Frank T. Porco, owner.

SUBJECT - Application April 9, 2004 - under Z.R. §72-21 to permit in an R5 district, on a site consisting of 11,970SF, the construction of a four one-story warehouses (UG 16). Currently, the site is improved with four buildings: one concrete block building, and three sheds. The proposed warehouse is contrary to residential district use regulations.

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### **266-04-BZ**

APPLICANT - Fredrick A. Becker, Esq. for TSI Cobble Hill d/b/a/New York Sports Club-Lessee.

SUBJECT - Application July 28, 2004 - under Z.R. §73-36 to

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allow the operation of a physical cultural establishment on the first and second floor of a two story commercial building located within a C2-3 zoning district .

PREMISES AFFECTED - 96 Boreum Place - southwest corner of Boreum Place and Pacific Street, Block 279, Lot 37, Borough of Brooklyn.

**COMMUNITY BOARD #2BK**

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**270-04-BZ**

APPLICANT - Sheldon Lobel, P.C., for Benjamin Gross, owner.  
SUBJECT - Application November 18, 2004 - under Z.R. §73-622 to permit the enlargement of a single family residence. Varying the requirements for floor area & open space pursuant to §23-141, side yard pursuant to §23-461 and rear yard is less than required pursuant to §23-47. Located in an R-2 zoning district.

PREMISES AFFECTED - 1239 East 22nd Street, east side of East 22nd Street, between Avenue K and Avenue L, Block 7622, Lot 15, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**350-04-BZ**

APPLICANT - Greenberg & Traurig by Deirdre A. Carson, Esq., LLP, for Montefiore Hospital Housing Section II, Inc, owner; Fordham University, lessee.

SUBJECT - Application October 29, 2004 - under Z.R. § Z.R.73-30 in an R7-2/C1-3 (partial) district, permission sought to erect a non-accessory radio tower on the roof of an existing 28-story residential structure. The radio tower will be operated by Fordham University (WFUV 90.7 FM), and will have total height of 161 feet, including a mechanical equipment room that will be contained inside an existing masonry enclosure originally built to house an HVAC cooling tower. The elevation of the tower will be 621 feet, including the height of the existing structure.

PREMISES AFFECTED - 3450 Wayne Avenue, Wayne Avenue, between Gun Hill Road and East 210th Street (roof), Block 3343, Lot 245, Borough of The Bronx.

**COMMUNITY BOARD #7BX**

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*Pasquale Pacifico, Executive Director*

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, DECEMBER 14, 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, October 19, 2004, were approved as printed in the Bulletin of October 28, 2004, Volume 89, No. 42-43.

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## SPECIAL ORDER CALENDAR

### 40-80-BZ

APPLICANT - Sheldon Lobel, P.C., for 35 West 23rd Street Corp., owner; Patrick Montgomery, lessee.

SUBJECT - Application February 9, 2004 - reopening for an amendment to the resolution.

PREMISES AFFECTED - 35-37 West 23<sup>rd</sup> Street, between Fifth Avenue and Avenue of the Americas, Block 825, Lot 7501, Borough of Manhattan.

### COMMUNITY BOARD #5M

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

Negative:.....0

Adopted by the Board of Standards and Appeals, December 14, 2004.

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### 239-02-BZ

APPLICANT - Deidre A. Carson, Esq., for Babbo Realty, LLC, owner.

SUBJECT - Application September 16, 2004 - reopening for an amendment to the resolution for an existing variance for the enlargement of a restaurant cellar to house a wine cellar-UG6A.

PREMISES AFFECTED - 110 Waverly Place, 132' west of intersection of Waverly Place and Washington Square West, Block 552, Lot 53, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES -

For Applicant: Deirdre A. Carson.

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

*Therefore it is Resolved* that the Board of Standards and Appeals reopens and amends the resolution, so that as amended this portion of the resolution shall read: "to permit the construction of a new cellar to be used as a wine storage area for the existing restaurant; *on condition* that all work shall substantially conform to drawings as filed with this application, marked 'Received September 16, 2004' - (1) sheet, and 'Received November 30, 2004' - (2) sheets; and

### 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, this is an application, made pursuant to Z.R. §§ 72-01 and 72-22, for a re-opening and an amendment to the resolution; and

WHEREAS, a public hearing was held on this application on November 15, 2004, after due notice by publication in the *City Record*, with a continued hearing on December 14, 2004, on which date the application was closed and granted; and

WHEREAS, Community Board No. 2 in Manhattan recommended conditional approval of the subject application; and

WHEREAS, Chair Srinivasan conducted a site inspection of the subject premises; and

WHEREAS, on December 17, 2002, under the subject calendar number, the Board granted an application under Z.R. § 72-21, to permit the re-establishment of a Use Group 6A eating and drinking establishment, without music or entertainment, located at the cellar level, ground floor, and second floor of the subject premises, and to permit the continuation of a non-conforming accessory business sign; and

WHEREAS, the applicant now seeks an amendment to the resolution to permit the enlargement of the cellar for use as a wine storage area for the existing restaurant; and

WHEREAS, a neighbor occupying the building adjacent to the rear of the subject premises appeared at hearing, and expressed concerns regarding the potential for property damage as a result of the excavation of the cellar; and

WHEREAS, the Board notes that construction safety issues are within the jurisdiction of the Department of Buildings; and

WHEREAS, the applicant states that the enlarged cellar will measure approximately 41 ft. by 17 ft.; and

WHEREAS, the applicant further states that the proposed enlargement will not result in any increase in floor area and that there will be no visual impact, as the enlargement is at the cellar level; and

WHEREAS, the Board has determined that the evidence in the record supports a grant of the requested amendment to the prior resolution.

*on further condition;*

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning

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Resolution, the 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 Permit No. 102702522)

Adopted by the Board of Standards and Appeals, December 14, 2004.

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## 100-71-BZ

APPLICANT - The Agusta Group, for Maurice Cohen/1065 Eagle, LLC, owner.

SUBJECT - Application July 21, 2004 - request for a waiver of the Rules of Practice and Procedure and reopening for an extension of term of variance to permit the use of an open area for the sale of used cars (U.G. 16) and accessory parking on a lot containing an existing automobile repair shop, located in an R5 zoning district.

PREMISES AFFECTED - 61-03 Northern Boulevard, northeast corner of Northern Boulevard, and 61<sup>st</sup> Street, Block 1162, lot 53, Borough of Queens.

### COMMUNITY BOARD #1Q

APPEARANCES -

For Applicant: Nelly Minella.

**ACTION OF THE BOARD** - Laid over to January 25, 2005, at 10 A.M., for continued hearing.

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## 283-82-A

APPLICANT - Francis R. Angelino, Esq. For Jewish Child Care Association, owner.

SUBJECT - Application July 20, 2004 - request for a waiver of the Rules of Practice and Procedure and reopening for an extension of term of variance to permit use of the first and second floor as a Day Care Center.

PREMISES AFFECTED - 108-58 68<sup>th</sup> Road, 108<sup>th</sup> Street, Block 2179, Lot 1, Borough of Queens.

### COMMUNITY BOARD #6Q

APPEARANCES -

For Applicant: Francis Angelino and Stephen H. Katz.

**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 January 25, 2005, at 10 A.M., for decision, hearing closed.

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## 283-90-BZ

APPLICANT - Rothkrug Rothkrug Weinberg & Spector, LLP, for OPM Holdings, LLC, owner.

SUBJECT - Application January 7, 2004 - reopening for an **253-04-A**

APPLICANT - Joseph P. Morsellino, Esq., for P & D Builders Inc., owners.

SUBJECT - Application July 15, 2004 - Proposed one family dwelling, not fronting on a legally mapped street, is contrary to Section 36, Article 3 fo the General City Law.

PREMISES AFFECTED - 102-35 Williams Court, west of Ocean

amendment to the resolution.

PREMISES AFFECTED - 1400 Clove Road, a/k/a Oswego Street, southwest corner of Clove Road and Oswego Street, Block 658, Lot 1, Borough of Staten Island.

### COMMUNITY BOARD #1SI

APPEARANCES -

For Applicant: Adam W. Rothkrug.

For Opposition: Mary Ann McGowan and Ali Alsuede.

**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 January 11, 2005, at 10 A.M., for decision, hearing closed.

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## 200-01-BZ

APPLICANT - Davidoff Malito & Hutcher LLP by Howard S. Weiss, Esq., for Hillside Manor Rehabilitation/Browne Associates; Hillside Manor Rehabilitation and Extended Care Center LLC; lessee

SUBJECT - Application July 29, 2004 - request for a waiver of the Rules of Practice and Procedure and Extension of Time to obtain a Certificate of Occupancy for a variance granted for the enlargement of the twelfth floor of an existing 11 (plus partial 12) story community facility building and the addition of three elevators.

PREMISES AFFECTED - 182-15 Hillside Avenue, northern corner of Hillside Avenue and Avon Street, Block 9950, Lot 1, Borough of Queens.

### COMMUNITY BOARD #8Q

APPEARANCES -

For Applicant: Juan Reyes.

**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 January 25, 2005, at 10 A.M., for decision, hearing closed.

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Avenue, Block 14239, Lot 1184, Borough of Queens.

### COMMUNITY BOARD #10Q

APPEARANCES -

For Applicant: Joseph Morsellino and Eric Palatnik.

**THE VOTE TO CLOSE HEARING -**

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

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Commissioner Chin.....5  
Negative:.....0  
**ACTION OF THE BOARD** - Laid over to January 11, 2005,  
at 10 A.M., for decision, hearing closed.

**254-04-A**

APPLICANT - Joseph P. Morsellino, Esq., for P & D Builders Inc.,  
owners.

SUBJECT - Application July 15, 2004 - Proposed one family  
dwelling, not fronting on a legally mapped street, is contrary to  
Section 36, Article 3 of the General City Law.

PREMISES AFFECTED - 102-29 Williams Court, west of Ocean  
Avenue, Block 14239, Lot 1186, Borough of Queens.

**COMMUNITY BOARD #10Q**

APPEARANCES -

For Applicant: Joseph Morsellino and Eric Palantik.

**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 January 11, 2005,  
at 10 A.M., for decision, hearing closed.

**271-04-A**

APPLICANT Pier 63 Maritime, Inc. , by Michele A. Luzio.

SUBJECT - Application August 3, 2004 - An appeal challenging the  
Department of Buildings jurisdiction to issue summons to subject  
property, on the grounds that the NYC Department of Business  
Services has exclusive jurisdiction over The "Barge".

PREMISES AFFECTED - One Pier 63, at 23rd Street and The  
Hudson River, (The Barge), Block 662, Lot 2, Borough of  
Manhattan.

APPEARANCES -

For Applicant: Michele A. Luzio and John R. Krevey.

For Administration: Felicia Miller, Department of Buildings.

**ACTION OF THE BOARD** - Laid over to January 25, 2005,  
at 10 A.M., for decision, hearing closed.

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*Pasquale Pacifico, Executive Director.*

Adjourned: 11:30 A.M.

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  
May 11, 2004, June 22, 2004, August 10, 2004, September  
14, 2004, and October 26, 2004, and then to decision on  
December 7, 2004, on which date the decision was deferred  
to December 14, 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, this is an application under Z.R. § 72-21, to

**REGULAR MEETING**  
**TUESDAY AFTERNOON, NOVEMBER 23, 2004**  
**2:00 P.M.**

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

**ZONING CALENDAR**

**194-03-BZ**

**CEQR #03-BSA-208K**

APPLICANT - Sheldon Lobel, P.C., for B'nos Menachem Inc.,  
owner.

SUBJECT - Application June 13, 2003 - under Z.R. §72-21 to  
permit the proposed catering establishment, Use Group 9, in the  
cellar of an existing one story, basement and cellar building (school  
for girls), located in an R6 zoning district, which is contrary to Z.R.  
§22-00.

PREMISES AFFECTED - 739 East New York Avenue, between  
Troy and Albany Avenues, Block 1428, Lot 47, Borough of  
Brooklyn.

**COMMUNITY BOARD #9BK**

APPEARANCES -

For Applicant: Richard Lobel.

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

**THE VOTE TO CLOSE HEARING -**

Affirmative: Chair Srinivasan, Vice-Chair Babbar,  
Commissioner 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 May 27, 2003, acting on Department  
of Buildings Application No. 300988377, reads:

“Proposed catering establishment (use group 9) is  
not permitted in the cellar in this R6 zoning district  
as per section 22-00 of the zoning resolution.”; and

permit, within an R6 zoning district, a proposed catering  
establishment (Use Group 9) in the cellar of an existing one  
story, basement and cellar building currently used as a  
religious girls school, contrary to Z.R. § 22-00; and

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

WHEREAS, State Senator Andrews and Council  
Member Boyland also supported the application; and

WHEREAS, the subject site is located on East New  
York Avenue between Troy and Albany Avenues, has a total  
lot area of 17,385 sq. ft., and is currently improved upon with  
a one-story plus basement and cellar building with a total

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floor area of 33,646 sq. ft.; and

WHEREAS, the premises is currently owned and occupied by a religious girls school, Bnos Menachem, which is a not-for-profit entity; and

WHEREAS, the existing building was designed for industrial use and was previously occupied by a publishing company, which used the first floor for printing, collating and binding, and the basement level as the storage and shipping facility, as well as for office space; and

WHEREAS, the current certificate of occupancy lists the following uses: on the cellar level "Ordinary Storage; Mechanical Equipment"; on the basement level "Garage; Office; Supply Room; Laundry Room and Office; Building Maintenance; Toilet Room"; and on the first floor "Garage; Office; Conference Room; Lumber Room; Janitor Closet"; and

WHEREAS, the applicant represents that when the girls school purchased the building, a catering facility could have been placed as-of-right on the first floor or the basement, along with a school cafeteria; and

WHEREAS, however, the applicant notes the first floor and basement were needed by the school for classrooms; and

WHEREAS, the proposal before the Board contemplates the use of the cellar as a Use Group 9 catering facility, to be use only after school hours; and

WHEREAS, the applicant represents that approximately 60 percent of the proposed catered events will be for students or employees, or families thereof, and the remainder will be events drawn from the broader community; and

WHEREAS, the applicant agrees that the 60 percent requirement shall be calculated as follows: for any one year period (starting from the date of this grant), school-related functions (related to students, staff, employees, or families thereof) shall comprise at least 60 percent of the total number of events that the catering facility hosts; and

WHEREAS, in the most recent revised statement of facts and findings, the applicant states that the following is a unique physical condition, which creates practical difficulties and unnecessary hardship in developing the subject lot in conformity with underlying district regulations: the size and layout of the building is not feasible for residential use, in that no rear yard exists and requirements for light and ventilation

WHEREAS, the applicant represents that the proposed variance will not affect the character of the neighborhood and that use of the site for commercial catering purposes is compatible with the uses in the surrounding area; and

WHEREAS, in support of this claim, the applicant has submitted a Community Character Assessment, prepared by the applicant's planning and development consultants; and WHEREAS, the Assessment analyzed a six block area within a 400-foot radius of the subject site, and surveyed nine blocks for land use composition; and

WHEREAS, the Assessment notes that most of the lots near the site are in residential use, but that the broader study area as a whole consists of a wide range of land uses, with some mixed residential and commercial uses located at key intersections and side streets; and

can not be met; and

WHEREAS, the Board agrees that the building can not be feasibly be converted to conforming residential use; specifically, the Board notes that it was designed as a manufacturing building and was configured to accommodate the previous occupant, a publishing company; and WHEREAS, accordingly, the Board finds that the aforementioned unique physical condition creates unnecessary hardship and practical difficulties in developing the site in conformity with the current zoning; and

WHEREAS, initially, the subject application was filed as a not-for-profit application, whereby no financial feasibility finding would be required; and

WHEREAS, however, the Board determined that such an exemption was not indicated, as the proposed Use Group 9 commercial catering use was a profit-making venture that did not have a sufficient nexus to the religious nature of the school, given that a Use Group 9 designation would allow any type of commercial catering for any type of clientele or event (notwithstanding representations by the applicant that the catering would primarily be used by members of the neighboring religious community); and

WHEREAS, after accepting guidance from the Board as to this issue, the applicant agreed to treat this application as a for-profit application, and submitted a feasibility study purporting to show that a conforming residential scenario would not yield a reasonable return; and

WHEREAS, in response to Board concerns, the applicant made subsequent submissions, clarifying and expanding upon the original feasibility study; and

WHEREAS, in particular, the Board notes that, in response to a Board request, the applicant analyzed both a residential and community facility scenario entailing the full-build out of the available floor area through a vertical enlargement of the existing building, but determined in both instances that neither was feasible given the cost-prohibitive nature of such enlargements; and

WHEREAS, based upon its review of the study and the subsequent submissions, the Board has determined that because of the subject lot's unique physical condition, there is no reasonable possibility that development in strict conformity with zoning will provide a reasonable return; and

WHEREAS, the assessment also notes that there are two vacant industrial uses nearby, including a refrigerator factory on East New York Avenue; and

WHEREAS, the Assessment concludes that the proposed catering establishment will be in concert with the existing commercial retail character, since it will be in the cellar of the building, will not be visible from the street, and will not change the scale of the surrounding area; and

WHEREAS, the Assessment also concludes that the proposed catering establishment will not create any negative economic impacts, as there is no similar type of catering business in the neighborhood; and

WHEREAS, the Board agrees that due to the limited use of the catering facility and the scale of the building, impact on the adjoining residential uses and the character of

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the neighborhood will be minimal; and

WHEREAS, the applicant represents that the parking and traffic impacts of the proposed catering establishment will be minimal; and

WHEREAS, in support of this claim, the applicant has submitted a parking study prepared by its parking consultant; and

WHEREAS, this parking study surveyed streets surrounding the subject site, and estimated that there were a total of 241 on-street parking spaces within a 400 foot radius; and

WHEREAS, the study assumed that the catering facility would require a total of approximately 50 spaces for the weekday peak period, and a total of approximately 60 spaces for the weekend peak period; and

WHEREAS, the study showed that the facility's parking needs could be accommodated with available on-street parking; and

WHEREAS, however, in response to Board concerns, the applicant has also made arrangements to lease parking spaces in nearby lots; specifically, the applicant has entered into long-term lease arrangements for parking spaces located at 840 East New York Avenue (30 spaces, valet parking) and 779 East New York Avenue (45 spaces, valet parking); and

WHEREAS, the applicant has submitted copies of the leases for these parking spaces, and has agreed to a variance term which corresponds to the term of the leases (10 years); and

WHEREAS, the Board also requested a detailed operations plan; and

WHEREAS, the operations plan states that a separate, for-profit company, Razag Inc., has been formed to operate the catering facility, though all profits accruing from the facility will flow through to and be received by the girls school; and

WHEREAS, the applicant represents that the only operator of the catering facility shall be Razag, Inc., and that Razag, Inc. shall not operate any other business at any other location;

WHEREAS, the plan also states that the proposed

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

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

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

Therefore it is Resolved that the Board of Standards

hours of the catering facility will be from 5 pm to 1 am, Sunday through Thursday; that the maximum number of guests for a catered event (exclusive of staff) shall be 550; and that refuse collection will take place three times a week, on Monday, Wednesday and Saturday, between 10:30 am and 11:30 am; and

WHEREAS, the applicant has explained that a 550 guest occupancy limit is necessary in order to host the type of events that would financially sustain the catering facility; and

WHEREAS, the applicant agrees that during all hours outside of those set forth above, the cellar is to be used only as a cafeteria or event room for the girls school; and

WHEREAS, the applicant consents to the incorporation of certain of the features of the operations plan into this resolution as conditions; and

WHEREAS, the Board has conducted a site and neighborhood evaluation, and agrees that the proposed catering facility will not negatively impact the character of the immediate area, provided that the applicant complies with certain conditions, as set forth below; 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 project is classified as an Unlisted action pursuant to 6NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 03-BSA-208K dated June 13, 2003; and

and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. § 72-21 and grants a variance to permit, within an R6 zoning district, a proposed catering establishment (Use Group 9), in the cellar of an existing one story, basement and cellar building, currently used as a religious girls school, contrary to Z.R. § 22-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 8, 2004" - (1) sheet; and *on further condition*:

THAT the term of this grant shall be limited to August 6, 2014, at which time an extension of term application must be made, which shall include a financial feasibility study;

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THAT the catering facility shall operate only during the following hours: 5 pm to 1 am, Sunday through Thursday; no catering activity, including preparations, may take place outside of these hours;

THAT the maximum number of guests (exclusive of staff) at the catering facility shall be 550 at any given time during its business hours;

THAT refuse collection will take place three times a week, on Monday, Wednesday and Saturday, between 10:30 am and 11:30 am;

THAT off-street parking for the catering facility shall be provided at 840 East New York Avenue (30 spaces, valet parking) and 779 East New York Avenue (45 spaces, valet parking), and in accordance with the lease agreements entered into the BSA record, and any change to these lease agreements requires the prior approval of the BSA;

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

THAT notwithstanding any notation on the BSA-approved plan, DOB shall review and approve required travel distances;

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

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

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

Adopted by the Board of Standards and Appeals, December 14, 2004.

## 214-03-BZ

### CEQR #03-BSA-216M

APPLICANT - The Agusta Group, for 388 Broadway Owners LLD, owner; Sunny Cheuck, lessee.

WHEREAS, this is an application under Z.R. § 73-36, to permit the legalization of a physical culture establishment ("PCE") on the first floor of an existing five-story commercial building in an M1-5 zoning district, contrary to Z.R. § 42-31; and

WHEREAS, the premises is a through-lot, located between White and Walker Streets with frontages on both Broadway and Cortland Alley, and is currently improved upon with a five-story commercial building; and

WHEREAS, the applicant represents that floors two through five currently being occupied by residential loft units, classified as interim multiple dwellings by the City of New York Loft Board; and

WHEREAS the applicant represents that the PCE commenced operation on July 8, 2003 and has facilities for the practice of massage by New York State licensed masseurs or masseuses; and

WHEREAS, the applicant further states that additional services offered by the PCE include nail services, esthetics and cosmetology; and

SUBJECT - Application December 23, 2003 - under Z.R. §73-36 to permit the legalization of an existing physical culture establishment, located on the first floor of a five story loft building, in an M1-5 zoning district, which requires a special permit.

PREMISES AFFECTED - 388 Broadway, east side, between White and Walker Streets, Block 195, Lot 3, Borough of Manhattan.

### COMMUNITY BOARD #1M

APPEARANCES - None.

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

### THE VOTE TO GRANT -

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

Negative:.....0

### THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner dated May 27, 2003, acting on Department of Buildings Application No. 103444916, reads;

"Proposed legalization of a Physical Culture Establishment on the first floor of an existing 5 story commercial building in an M1-5 zone must be referred to the Board of Standards and Appeals for a Special Permit under section 73-36 of the Zoning Resolution"; and

WHEREAS, a public hearing was held on this application on September 28, 2004 after due notice by publication in *The City Record*, with a continued hearing on November 23, 2004, and then to December 14, 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 1, Manhattan recommends approval of this application; and

WHEREAS, the PCE is located within an M1-1 manufacturing district along Broadway, which is a major commercial thoroughfare, and the surrounding area is comprised largely of commercial and industrial uses; and

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

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

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazards or disadvantages to the community at large due to the proposed special permit use are outweighed by the advantages to be derived by the

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community; and

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

WHEREAS, the project is classified as a Type 1 action pursuant to 6 NYCRR Part 617. 4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 03-BSA- 216M dated September 9, 2004; and

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

WHEREAS, per the NYC Landmarks Preservation Commissions comments of March 18, 2004, as the site is located in the Tribeca East Historic District, a permit from LPC is required for all work prior to construction , and should be appended to the EAS; and

*Therefore it is Resolved* that the Board of Standards and Appeals issues a TYPE 1 Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6NYCRR Part 617.4 and 6-07(b) of the Rules of Procedure for the City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 to permit the legalization of a physical culture establishment on the first floor of an existing five-story commercial building in an M1-5 zoning district, which is contrary to Z.R. § 42-31; **on 258-03-BZ**

## **CEQR #04-BSA-025K**

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 -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 -

*condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked “Received November 30, 2004” - (1) sheet; and *on further condition*;

THAT this Special Permit shall be limited to a term of ten years from July 8, 2003, expiring July 8, 2013;

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

THAT all massages will be performed only by New York State licensed massage therapists;

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

THAT an interior fire alarm system shall be installed and maintained, including area smoke detectors throughout the premises, manual pull stations at each required exit, local audible and visual alarms, and connection of the such system and existing sprinkler system to a NYC Fire Department-approved central station, as shown on the BSA-approved plans;

THAT the DOB shall ensure compliance with all exiting requirements and Local Law 58/87;

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

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

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

Adopted by the Board of Standards and Appeals, December 14, 2004.

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 30, 2003, acting on DOB Application No. 301619336 reads:

“Proposed residential dwellings in an M1-1 district are contrary to section 42-00 of the Zoning Resolution and require a variance from the Board of Standards and Appeals.”; and

WHEREAS, 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 13, 2004, June 15, 2004, July 13, 2004, August 17, 2004, and

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October 26, 2004, and then to decision on December 7, 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, Commissioner Caliendo, Commissioner Miele and Commissioner Chin; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, in an M1-1 zoning district, the legalization of 14 dwelling units on the third and fourth floors of a four-story manufacturing building, contrary to Z.R. § 42-00; and

WHEREAS, the original version of this application contemplated the legalization of 30 residential units on the first through fourth floors, with a portion of the first floor retained for conforming artist/retail uses; and

WHEREAS, in response to concerns expressed by the Board that the relief requested in the original version was not justified by the degree of hardship present at the site and therefore did not reflect the minimum variance; the applicant eventually modified the original proposal to the current proposal; and

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

WHEREAS, the subject zoning lot is located on Thames Street between Morgan and Knickerbocker Avenues in the East Williamsburg section of Brooklyn, and has a total lot area of approximately 11,500 square feet; and

WHEREAS, the site is improved upon with a four-story building, with a total floor area of 34,530 sq. ft.; and

WHEREAS, the applicant represents that the building is currently occupied by three conforming uses and three residential units on the first floor, and 20 residential units on the second through fourth floors; and

WHEREAS, based upon its review of the submitted survey of the buildings in the area, which revealed that the conforming uses within the study area were almost all housed in one-to-two-story buildings, the Board concludes that the subject building is in fact one of the few multi-story manufacturing buildings in the area; and

WHEREAS, specifically, the submitted survey shows that there were only four other buildings in a 400 ft. radius with more than two stories, and that two of these buildings had larger floor plates, better suited for conforming uses; and

WHEREAS, after reviewing the various submissions made in response to its queries, the Board determined that though there was an insufficient nexus between the actual degree of hardship present at the site and the originally requested relief, some unnecessary hardship existed on the site, primarily related to the multi-story status of the building and the lack of internal access for bulk transfer of goods within the building; and

WHEREAS, based upon the above, the Board finds that the conditions cited by the applicant, when considered in the aggregate, create unnecessary hardship and practical difficulties in strictly conforming with the applicable provision of the Zoning Resolution, but only as to the third and fourth floors of the existing building; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with underlying zoning regulations: the building is obsolete for modern manufacturing concerns, in that it has only one passenger size elevator, limited street access through three pedestrian size doors, low ceiling heights of eight to nine feet, 18 support columns spaced throughout the floor plate, and no loading docks; and

WHEREAS, the applicant also states that there is no access to the upper floors or even the ground floor for bulk shipments, due to lack of access and ramps; and

WHEREAS, the applicant concludes that these features combine to create unnecessary hardship and practical difficulties in using the building for conforming use; and

WHEREAS, the Board questioned the degree of hardship created by the cited building conditions, and asked the applicant to explore retrofitting the building in order to address them; and

WHEREAS, in particular, the Board suggested that the applicant investigate the viability of sloping a loading dock below the ground floor level, in order to gain sufficient clearance for trucks; and

WHEREAS, the applicant responded by stating that such a retrofit would be cost prohibitive, but the Board continued to suggest alternative, viable schemes for creation of a loading dock, including an option to create a non-compliant but usable dock; and

WHEREAS, the Board also asked the applicant to establish that the cited building conditions were in fact unique, by submitting a survey of neighboring buildings, showing whether such buildings had complying loading docks and what their floor to floor heights were; and

WHEREAS, the applicant initially submitted a feasibility study which purported to demonstrate that developing the premises on all four floors in conformance with applicable district use regulations would not yield the owner a reasonable return; and

WHEREAS, additionally, the applicant submitted evidence of failed marketing attempts for conforming uses; and

WHEREAS, based upon this study, the Board agrees that there is no reasonable possibility that development in strict conformance on all four floors of the building with zoning regulations will provide a reasonable return; and

WHEREAS, however, as noted above, the Board determined that any unnecessary hardship really afflicted only the top two floors of the building, and that lesser variance scenarios (discussed below) needed to be analyzed; and

WHEREAS, the applicant represents that the proposed variance will not affect the character of the neighborhood, and that residential use of the existing building is compatible with the uses in the surrounding neighborhood; and

WHEREAS, in support of this representation, the applicant submitted a copy of the Department of City Planning's April 2001 land use application for a zoning text change to permit the as-of-right conversion of industrial

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buildings within certain delineated loft districts in Brooklyn, including the district in which the subject building is located, which was based upon a study by a task force of various City agencies (the "Task Force"); and

WHEREAS, the applicant states that the Task Force determined that the existing building was part of a group of other Brooklyn buildings with illegal residential occupancy, and recommended that the existing buildings be considered appropriate for residential use; and

WHEREAS, the Board finds that the applicant's reliance on the Task Force recommendation is misplaced, because the Task Force did not evaluate whether the Proposed Building would negatively impact the essential character of the neighborhood or nearby conforming use or development in the same manner and with the same degree of scrutiny as required of the Board in its review of a site-specific application for a variance; and

WHEREAS, rather, the Board understands that the Task Force made recommendations as to a variety of buildings largely in response to the perceived pervasive problem of illegal conversions in Brooklyn, and these recommendations were based on a concern that wide-spread evictions of such tenants would cause a hardship given the City's housing shortage; and

WHEREAS, therefore, the Board finds that the finding set forth at Z.R. § 72-21(c) can not be made merely by citing to the Task Force recommendation; and

WHEREAS, the Board thus requested that the applicant engage in a more traditional analysis of the finding set forth at Z.R. § 72-21(c); and

WHEREAS, in response, the applicant conducted a

WHEREAS, instead, the applicant proposed a mixed-use Joint Living-Work Quarters for Artists ("JWLQA") and residential scenario, with residential on the third and fourth floors, and JWLQA in place of the existing residential units on the first and second floors, as well as retention of the commercial units on a portion of the first floor; and

WHEREAS, the Board notes that the provisions in the Zoning Resolution that created the JWLQA mechanism were enacted by the City Council in response to area-specific problems in Manhattan, and that the JWLQA designation requires that certain pre-requisites as to the building be met; and

WHEREAS, accordingly, the Board declines to extend JLWQA status to other buildings in non-designated areas through the variance process; and

WHEREAS, moreover, the Board notes that the applicant submitted no evidence that the building meets all the parameters for JWLQA status as set forth in the Zoning Resolution; and

WHEREAS, thus, the Board disagreed that a conventional mixed-use alternative was not feasible, and, in response, the applicant modified the proposal to the current version of the application; and

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

WHEREAS, the Board has determined that the evidence in the record supports the findings required to be

survey of the surrounding area and submitted a revised land use map, showing that thirty of the lots within the studied area contained legal residential units, and that 31 lots were vacant; and

WHEREAS, the Board agrees that there is some legal residential use in the immediate area, but also notes that the area still has some active conforming uses; and

WHEREAS, however, the Board observes that the introduction of 14 residential units in this area, as opposed to the 30 units initially proposed by the applicant, will not impact the essential character of the neighborhood or impact conforming uses; and

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

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

WHEREAS, in response to the request of the Board to examine a lesser variance, the applicant has submitted additional studies of the following scenarios: (1) a retrofit of the building that would bring it up to modern industrial standards by providing legal loading docks and sufficient elevator capacity; (2) a renovation of the building for conforming office use; and (3) utilization of the lower two floors for conforming warehouse purposes, with residential use on the upper two floors; and

WHEREAS, the applicant's financial consultant opined that none of these scenarios would result in a reasonable return; and

made under Z.R. § 72-21; and

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR 04-BSA-025K dated November 10, 2003; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State

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Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. § 72-21 and grants a variance to permit, in an M1-1 zoning district, the legalization of 14 dwelling units on the third and fourth floors of a four-story manufacturing building, contrary to ZR § 42-00; *on condition* that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received August 12, 2004 – (2) sheets and "Received December 10, 2004 – (3) sheets; *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 the above conditions shall be listed on the certificate of occupancy; and

THAT a new certificate of occupancy shall be obtained within two years from the date of this grant;

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

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

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

## 71-04-BZ

### CEQR #04-BSA-138K

APPLICANT - Rudolf Gedeon, for Joseph Duton St. Jour, owner.

SUBJECT - Application March 5, 2004 - under Z.R. §72-21 to permit the proposed construction of a three family residence, Use Group 2, located in an R5 zoning district, which does not comply with the zoning requirements for floor area ratio and side yard, is contrary to Z.R. §23-141(b) and §23-462(a).

PREMISES AFFECTED - 720 East 86th Street, between Glenwood Road and Flatlands Avenue, Block 8006, Lot 47, Borough of Brooklyn.

### COMMUNITY BOARD #18BK

APPEARANCES - None.

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

**THE VOTE TO GRANT** -

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

Negative:.....0

**THE RESOLUTION** -

WHEREAS, the decision of the Borough Commissioner, dated November 30, 2004, acting on Department of Buildings Application No. 301498216 reads, in pertinent part:

"1. Proposed side yard is contrary to ZR 23-461(a)."; and

WHEREAS, a public hearing was held on this application on September 28, 2004, after due notice by

laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, December 14, 2004.

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## 287-03-BZ

### CEQR #04-BSA-040K

APPLICANT - Stuart A. Klein, Esq., for First Step Realty, LLC, owner.

SUBJECT - Application August 28, 2003 - under Z.R. §72-21 to permit the proposed construction of a six-story residential building, located in an M1-1 zoning district, is contrary to Z.R. §42-00.

PREMISES AFFECTED - 430 Keap Street, southeast corner of Hope Street, Block 2387, Lot 2, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

APPEARANCES - None.

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

**THE VOTE TO WITHDRAW** -

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

Negative:.....0

Adopted by the Board of Standards and Appeals, December 14, 2004.

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publication in *The City Record*, with a continued hearing on November 9, 2004, and then to decision on December 14, 2004; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, this is an application under Z.R. § 72-21, to permit the proposed construction of a three-story, two-family dwelling (Use Group 1) located in an R5 zoning district, which does not comply with the zoning requirements for side yards, contrary to Z.R. § 23-461(a); and

WHEREAS, at the request of the Board, the applicant modified the original proposal, which contemplated the construction of a three-story, three-family house, with a Floor Area Ratio ("FAR") of 1.62, which did not comply with the zoning requirements for floor area as well as side yard; and

WHEREAS, the record indicates that the subject premises is located on the south side of East 86<sup>th</sup> Street, between Glenwood Road and Flatlands Avenue, has a total lot area of 2,000 sq. ft., and is currently improved upon with a one-story garage containing 108 sq. ft. of floor area; and

WHEREAS, the subject proposal contemplates the demolition of the existing garage and the construction of a three-story and cellar, two-family dwelling with a complying FAR of 1.25, which would not provide the required 8'-0" side yard; and

WHEREAS, the proposal contemplates a garage located at the cellar level;

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties

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in developing the subject lot in compliance with underlying district regulations: the underdeveloped site is uniquely small and narrow; and

WHEREAS, the applicant represents that the lot has a width of 20'-0" and the provision of the required side yard, as required by ZR § 23-461, would result in a house with a 12 foot depth, which the applicant represents is neither practical nor marketable; and

WHEREAS, at the request of the Board, the applicant conducted a survey of lots in a 200 ft. radius of the subject lot, and established that the subject lot's physical conditions were not so prevailing in the area that the lot could not be considered uniquely afflicted; and

WHEREAS, the Board also notes that the majority of similarly sized lots in the area were developed prior to implementation of the 1961 zoning; and

WHEREAS, the Board finds that the aforementioned unique physical condition, namely the narrowness of the subject lot, when viewed in conjunction with the applicable side yard requirement, creates a practical difficulty in developing the site in compliance with the applicable zoning provision; and

WHEREAS, the Board has determined that because of the subject lot's unique physical condition, there is no

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.13 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. § 72-21, to permit the proposed construction of a three-story, two-family dwelling (Use Group 1) located in an R5 zoning district, which does not comply with the zoning requirements for side yards, contrary to Z.R. § 23-461(a); *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 30, 2004"-(8) sheets and "Received December 9, 2004"-(1) sheet; and *on further condition*;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

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

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

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

Adopted by the Board of Standards and Appeals, December 14, 2004.

**128-04-BZ**  
**CEQR #04-BSA-143M**

APPLICANT - Marvin B. Mitzner, Fischbein Badillo Wagner Harding for Sam and Esther Minskoff Cultural Center, Park

reasonable possibility that development in strict compliance with the zoning requirements for side yard will result in a residential development that would be habitable; and

WHEREAS, the applicant states that the bulk of the proposed building is consistent with the surrounding residential uses; and

WHEREAS, the applicant has conducted a survey of similar narrow lots within a 400 foot radius which indicates that of the 33 narrow lots surveyed, 60% of the structures are built without side yards, while 33% of the structures are built with one side yard measuring less than 5'-0"; 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.

East Day School, Inc., owner.

SUBJECT - Application March 11, 2004- under Z.R. §72-21 to permit the enlargement of an existing school (Use Group 3) in an R8B zoning district, which is contrary to Z.R. §23-633, §24-11, §24-33 and §24-552.

PREMISES AFFECTED - 162-168 East 68<sup>th</sup> Street, southside of East 68<sup>th</sup> Street, 100 feet west of Third Avenue, Block 1402, Lots 41 and 42 (tent. 42), Borough of Manhattan.

**COMMUNITY BOARD #8M**

APPEARANCES - None.

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

THE VOTE TO GRANT:

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin:.....5  
Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated March 9, 2004, acting on DOB Application No. 103412807 reads:

- “1. The proposed enlargement to the existing school does not comply with height and setback requirements. This is contrary to ZR 23-633.
2. The maximum floor area and lot coverage exceeds the allowable. This is contrary to ZR 24-11.
3. The proposed community facility space, in excess of 23 feet in height above curb level, is not a permitted obstruction in a required rear yard. This is contrary to ZR 24-33.
4. The proposed enlargement to the existing school does not comply with the required rear

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yard setback. This is contrary to ZR 24-552.;"

WHEREAS, a public hearing was held on this application on August 17, 2004 after due notice by publication in *The City Record* with continued hearings on September 28, 2004 and November 9, 2004, and then to December 14, 2004 for decision; and

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

WHEREAS, this is an application under Z.R. § 72-21 to permit, on a site previously before the Board, the proposed enlargement of an existing school, Use Group 3, located in an R8B zoning district, which does not comply with the zoning requirements for height and setback, floor area, lot coverage and rear yard setback, contrary to Z.R. §§ 23-633, 24-11, 24-33 and 24-552; and

WHEREAS, this application was brought on behalf of the Sam and Esther Minkoff Cultural Center, Park East Day School, Inc., a not-for-profit religious school (the "School"); and

WHEREAS, Community Board 8, Manhattan, took no position as to the subject application; and

WHEREAS, individual neighbors, as well as certain

WHEREAS, the 1973 Grant allowed waivers of lot coverage, rear yard, and sky exposure plane requirements of the then applicable C1-8(R8) zoning district regulations; the site has since been rezoned to R8B; and

WHEREAS, the record indicates that the existing School building is built to the full coverage on the first and second floors, but is only 67 feet deep on floors three through eight (the eighth floor of the building is mechanical space, and technically is classified as a mezzanine), leaving a rear yard of 33 feet at these levels; and

WHEREAS, the instant proposal seeks to construct an enlargement of the School building on Lot 41, which the applicant states would generally mirror the existing School building by lining up to its existing floor levels; and

WHEREAS, the applicant represents that matching up the floors of the enlarged portion with those of the existing building is the only feasible way to construct the enlargement in a way which furthers the goal of providing usable educational space for the School; and

WHEREAS, once enlarged, the new School building on Tentative Lot 42 will possess the following non-compliances: (1) a Floor Area Ratio ("FAR") of 5.17; the maximum permitted FAR is 5.1; (2) 100% lot coverage; the maximum permitted is 70%; (3) a base and building height of 103.5 feet; the district maximums are 60 feet for the base and 75 feet for the total building height; and (4) no front setback and a 20 foot setback at the eighth floor; a 15 foot front setback and 10 foot rear setback are required; and

WHEREAS, at the request of the Board and in response to community concerns, the applicant has reduced the size of the caretaker's apartment at the top floor, from 1,350 sq. ft. to 940 sq. ft., which results in a 20 foot rear setback at this level; and

WHEREAS, this reduction in the size of the apartment also reduces the amount of the FAR waiver; and

cooperative buildings neighboring the subject premises, appeared in opposition, primarily to that component of the application that provides for a caretaker's apartment in the enlarged portion of the building; and

WHEREAS, opposition also contended that due notice of the application was not given to the appropriate parties; however, the Board has reviewed the evidence in the record and finds that notice was properly served in accordance with the Board's Rules of Practice and Procedure; and

WHEREAS, the subject site is located on the south side of East 68<sup>th</sup> Street, with a frontage of approximately 95 feet and a depth of 100 feet, and is comprised of two tax lots (Lots 41 and 42); and

WHEREAS, Lot 41, comprising the easternmost 20 feet of the site, formerly was developed with a recently demolished three-story structure that had been used for storage and as the dwelling for the School caretaker; and

WHEREAS, Lot 42, directly to the west of Lot 41, is improved upon with an existing eight-story building, constructed pursuant to a variance granted by the Board on February 20, 1973 under Calendar No. 658-72-BZ (the "1973 Grant"); and

WHEREAS, the applicant has also reduced the ceiling height of the apartment from 15 ft. to 9 ft., which results in a reduction of the total building height waiver by 6 feet; and

WHEREAS, the applicant represents that in the past 30 years, since the original variance, the educational needs and standards of the School have changed; the current class rooms are undersized for the intended grade level and are without appropriate locker facilities; specialty classrooms such as science and computer rooms are undersized; there are currently no areas for one-on-one instruction or tutoring; and there is no indoor play space for the younger students; and

WHEREAS, the applicant represents that the proposed enlargement would provide ten additional classrooms, a media center, an early childhood playroom, a first aid room, an enhanced library, science and computer rooms, additional resource/conference rooms, and a caretaker's apartment (which was formerly located in the demolished three-story building on Lot 41), all of which would further the School's goal of implementing an international program with video-conferencing with schools in other countries; and

WHEREAS, the applicant states that the strict application of the underlying R8B regulations would conflict with the existing School building as well as the programmatic needs of the School – the rear yard and lot coverage restrictions would require the elimination of the proposed computer room, while the base height, building height and setback regulations would require the elimination of four classrooms, accessory offices and the caretaker's unit; and

WHEREAS, in response to the Board's inquiry regarding the elimination of the proposed 8<sup>th</sup> floor and the relocation of the caretaker's apartment to an off-site location, the applicant has provided adequate documentation showing that such relocation is cost-

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prohibitive, including evidence of both market apartment rents in the area and the increased security expenditures that would be necessitated by the relocation; and

WHEREAS, the applicant further states that a 24-hour on-site caretaker is required to oversee the security of the building, care for the maintenance and operation of the school and synagogue, and to be on-call for building emergencies; and

WHEREAS, the applicant has represented that there is no possibility of providing a similar space anywhere else within the existing building without affecting existing rooms or required facilities; and

WHEREAS, the applicant represents that the practical difficulties and unnecessary hardship arise from the impact of the applicable zoning restrictions on the subject site; and

WHEREAS, the applicant also represents that the ability to provide the proposed additional classrooms and school space in the proposed arrangement will enhance the ability of the School to operate effectively; and

WHEREAS, the Board agrees that, based upon the submitted evidence, the enlargement is necessary in order

WHEREAS, specifically, there is an 18-story school building, occupied by Hunter College, to the west, a 19-story multiple dwelling to the east, and a 28-story multiple dwelling to the north, across 68<sup>th</sup> Street; and

WHEREAS, the Board has reviewed the record and has conducted a site visit, and agrees with the applicant that the new School building, once enlarged, will still be considerably smaller than many of the other buildings on the street; and

WHEREAS, in response to the concerns of neighbors about potential noise impacts from additional mechanical equipment (an emergency generator and a cooler) to be placed on the roof of the enlarged portion of the new School building, the applicant states that the equipment will operate at all relevant requirements for noise under the Noise Code and will be installed with additional sound attenuation baffling; and

WHEREAS, the applicant has agreed to a condition that the emergency generator will be tested no more than two times a month and that such test will only occur between the hours of 9:00 A.M. and 5:00 P.M., Monday through Friday; and

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

WHEREAS, the 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 to meet the programmatic needs of the School; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental

to meet the programmatic needs of the School; and

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

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

WHEREAS, the applicant represents that the proposed enlargement will not have any impact on any adjacent property, and will not alter the essential character of the neighborhood; and

WHEREAS, the applicant notes that the R8B zoning is a contextual district, but that the area is characterized by development that does not comply with the zoning; and

WHEREAS, the applicant states that the area is also characterized by other educational institutions; and

Assessment Statement (EAS) CEQR No. 04-BSA-143M dated April 30, 2004; and

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

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

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. §72-21, and *grants* a variation in the application of the Zoning Resolution, limited to the objections cited, to permit, on a site previously before the Board, the proposed enlargement of an existing school, Use Group 3, located in an R8B zoning district, which does not comply with the zoning requirements for height and setback, floor area, lot coverage and rear yard setback, contrary to Z.R. §§ 23-633, 24-11, 24-33 and 24-552; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received March 11, 2004" - (4) sheets, "Received May 20, 2004" - (1) sheet, "Received September 14, 2004" - (5)

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sheets and "Received December 10, 2004" - (1) sheet; and on further condition;

THAT the emergency generator will be tested no more than two times a month and that such test will only occur between the hours of 9:00 A.M. and 5:00 P.M., Monday through Friday;

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

THAT the enlarged building shall not exceed a total FAR of 5.17;

THAT a rear setback of 20 feet shall be provided at the eighth floor on that portion of the enlarged building on Lot 41;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; no approval has been given by the Board as to the use and layout of the cellar;

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

THAT the Department of Buildings must ensure

**159-04-BZ**

**CEQR #04-BSA-166X**

APPLICANT - Sheldon Lobel, P.C., for Civic Builders, Inc., owner.

SUBJECT - Application April 19, 2004 - under Z.R. §72-21 to permit the proposed construction of a charter school, Use Group 3, located within an M2-1 zoning district, is contrary to Z.R. §42-00.

PREMISES AFFECTED - 950/60 Longfellow Avenue, east side, between Bruckner Boulevard and Garrison Avenue, Block 2755, Lots 125 and 127, Borough of The Bronx.

**COMMUNITY BOARD #2BX**

APPEARANCES -

For Applicant: Richard Lobel.

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

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 June 21, 2004, acting on Application No. 200772930, reads;

"In an M2-1 zoning district, proposed change of use from factory to school (Use Group 3) is contrary to Section 42-00 of [the] Zoning Resolution."; and

WHEREAS, a public hearing was held on this application on November 9, 2004, after due notice by publication in *The City Record*, and then to decision on December 14, 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, this is an application under Z.R. § 72-21, to permit, in an M2-1 zoning district, the operation of an existing school (Use Group 3), contrary to Z.R. § 42-00; and

WHEREAS, Community Board 2, Bronx, recommended approval of this application; and

WHEREAS, this application also has the support of

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

Adopted by the Board of Standards and Appeals, December 14, 2004.

Council Member Serrano and State Senator Diaz; and

WHEREAS, the subject premises is located on the east side of Longfellow Avenue between Bruckner Boulevard and Garrison Avenue, has a total lot area of 18,450 sq. ft., and is currently improved upon with a one-story plus cellar building; and

WHEREAS, the site is located on a dead end street, opposite railroad tracks that are situated below the Bruckner Expressway; and

WHEREAS, the building was formerly used for metal fabricating, printing, truck storage, and meat packing; and

WHEREAS, the building is owned by Civic Builders, Inc., a not-for-profit corporation that provides real estate assistance to educational and community organizations (hereinafter, the "applicant"); and

WHEREAS, the applicant states that the physical layout of the building is well-suited to the programmatic needs of the School; and

WHEREAS, specifically, the applicant states that the large size of the building allows for both the clustering of classrooms around flexible, multi-use spaces and a gallery in which students can show their work; and

WHEREAS, the applicant further states that: (1) the single-story configuration of the building allows the School to have its program on one floor, so that stairs or elevators are not needed; and (2) the large span structure of the building allows large classrooms that maximize the utilization of space, which decreases construction costs; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the site in strict conformance with the applicable zoning regulation: (1) the building was designed for manufacturing purposes, was vacant, and was in poor condition; and (2) there is limited access to the site, as it is on a dead end street; and

WHEREAS, the Board notes that the existing building was used by various uses over time, as noted above, and that the building has been unable recently to sustain a conforming use; and

WHEREAS, the applicant also represents that the

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programmatic needs of the School, discussed above, are an important factor when considering the uniqueness of the premises; and

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

WHEREAS, the applicant need not address Z.R. § 72-21(b) since the applicant is a not-for-profit organization and the development on this site is in furtherance of its not-for-profit purposes; and

WHEREAS, the applicant represents that the use of the site by the School will not impact the essential character of

WHEREAS, the Board notes that appropriate traffic markings, signage and painted crosswalks have been installed by the New York City Department of Transportation ("DOT"), as evidenced by photographs submitted by the applicant and a letter from DOT (discussed in more detail below); and

WHEREAS, in addition, the Board notes that sound attenuation insulation will be provided in all partition walls, and all windows will be double glazed in order to achieve a noise level of 45DBA; and

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

WHEREAS, the 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 to meet the programmatic needs of the School; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 04-BSA-166X dated April 16, 2004; and

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

WHEREAS, the New York City Department of Environmental Protection specifically examined the proposed action for potential hazardous materials, air

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

WHEREAS, the applicant states that the School will not conflict with the existing manufacturing uses located on the same block; and

WHEREAS, as noted above, a committee of the Board has conducted a site and neighborhood inspection, and agrees that the School will have negligible impact on both the nearby conforming uses and on the character of the community; and

WHEREAS, the record indicates that while most of the students are bused to the School, some will arrive by walking or other means of transportation; and

quality, and noise impacts and determined that there would not be any impacts based on the following measure being implemented: sealing of all floor drains currently located in the cellar of the building within four weeks from the date of this grant; and

WHEREAS, DOT's Division of School Safety Engineering states in its November 5, 2004 letter to the Board that it has surveyed the area surrounding the School for child safety concerns and has ordered and installed pavement markings and signs at eight intersections near the School; and WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

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

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. § 72-21, and *grants* a variation in the application of the Zoning Resolution, limited to the objections cited, to permit, in an M2-1 zoning district, the operation of an existing school (Use Group 3), contrary to Z.R. § 42-00, *on condition* that all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received December 10, 2004"- (3) sheets; and *on further condition*;

THAT all floor drains currently located in the cellar of the subject building shall be sealed within four weeks from the date of this grant;

THAT all fire protection and sound attenuation measures as noted on the BSA-approved plans and in the letter from Claire Weisz, R.A., dated June 30, 2004 (which is part of the BSA record) shall be installed and maintained;

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

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

THAT the approved plans shall be considered

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approved only for the portions related to the specific relief granted; and

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

Adopted by the Board of Standards and Appeals, December 14, 2004.

## 193-04-BZ

### CEQR #04-BSA-197K

APPLICANT - Harold Weinberg, P.E., for Cherie & Don Lang,

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 May 7, 2004, acting on Department of Buildings Application No. 301768763, reads, in pertinent part:

“The proposed enlargement to an existing one family house in an R4 zoning district is contrary to the Zoning Resolution (ZR) in that:

1. The proposed rear yard is less than 30’ and is contrary to Section 23-47 of the ZR;
2. The Floor Area Ratio exceeds the permitted and is contrary to Section 23-141 of the ZR;
3. The side yards are less than required and are contrary to Sections 23-48 & 54-31;
4. The lot coverage ratio is larger than permitted and is contrary to Sections 23-141 & 54-31.”; and

WHEREAS a public hearing was held on this application on November 16, 2004 after due notice by publication in *The City Record*, and then to December 14, 2004 for decision; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

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

WHEREAS, this is an application under Z.R. §§ 73-622 and 73-03, to permit the proposed enlargement of an existing single family residence (Use Group 1), located in an R4 zoning district, which does not comply with the zoning requirements for floor area, lot coverage and side and rear

owners.

SUBJECT - Application May 10, 2004- under Z.R. §73-622 to permit the proposed one story enlargement over the existing first floor of a one family residential dwelling, which does not comply with the zoning requirements for rear yard, floor area ratio, side yards and lot coverage, is contrary to Z.R. §54-31, §23-141, §23-48 and §23-47.

PREMISES AFFECTED - 92 Gotham Avenue, south side, 366'-0" east of Fane Court, Block 8923, Lot 936, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

#### APPEARANCES -

For Applicant: Harold Weinberg.

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

#### THE VOTE TO REOPEN HEARING -

yard, contrary to Z.R. §§ 23-141, 23-47, 23-48 and 54-31; and

WHEREAS, the subject lot is located on the south side of Gotham Avenue between Gerritsen Avenue and Fane Court South, and has a total lot area of approximately 1,680 sq. ft.; and

WHEREAS, the applicant states that the subject premises is improved upon with an existing one-story and cellar residential structure, with existing non-complying side yards of 2'-6" and 3'-2"; and

WHEREAS, the applicant also represents that the subject premises has an existing non-complying lot coverage of 790.3 sq. ft. (47%) – the maximum permitted is 756 sq. ft. (45%); and

WHEREAS, the applicant seeks to enlarge the existing structure through the construction of a one-story enlargement over the first floor; and

WHEREAS, the applicant further represents that the premises has a non-complying rear yard of 16'-7 ¾"; and

WHEREAS, at the request of the Board and in order to satisfy the requirements of Z.R. § 73-622, the applicant has modified the proposal so that the one-story enlargement over the first floor shall not be located within 20 feet of the rear lot line; and

WHEREAS, the applicant seeks an increase in the floor area from 790 sq. ft. (0.47 Floor Area Ratio or "FAR") to 1,518 sq. ft. (0.90 FAR) – the maximum floor area permitted is 1,260 sq. ft. (0.75 FAR); and

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

WHEREAS, the enlargement into the side yard does not result in a decrease in the existing minimum width of open area between the building and the side lot line; and

WHEREAS, the enlargement of the building into the rear yard is not located within 20 feet of the rear lot line; and

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

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

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use

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is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03.

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.13 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. §§ 73-622 and 73-03, to permit the proposed enlargement of

THAT the above condition shall be set forth on the certificate of occupancy;

THAT the one-story enlargement over the first floor shall not be located within 20 feet of the rear lot line;

THAT the use and layout of the cellar 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; no approval has been given by the Board as to the use and layout of the cellar;

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

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

Adopted by the Board of Standards and Appeals, December 14, 2004.

## 250-04-BZ

### CEQR #05-BSA-005K

APPLICANT - Sheldon Lobel, P.C., for Avrohom & Chava Dusowitz, owners.

SUBJECT - Application July 14, 2004 - under Z.R. §73-622 to permit the proposed enlargement of an existing one family dwelling, which does not comply with the zoning requirements for side and rear yards, floor area and open space ratio, is contrary to Z.R. §23-461, §23-47 and §23-141.

PREMISES AFFECTED - 1220 East 27th Street, between Avenues "L" and "M", Block 7644, Lot 54, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

#### APPEARANCES -

For Applicant: Richard Lobel.

**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

an existing single family residence (Use Group 1), located in an R4 zoning district, which does not comply with the zoning requirements for floor area, lot coverage and side and rear yard, contrary to Z.R. §§ 23-141, 23-47, 23-48 and 54-31; on condition that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked "Received December 8, 2004" - (2) sheets, "Received December 10, 2004" - (2) sheets, and "Received December 13, 2004" - (1) sheet; and on further condition;

THAT there shall be no habitable room in the cellar;

#### 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 June 23, 2004, acting on Department of Buildings Application No. 301741444, reads, in pertinent part:

1. Proposed plans are contrary to Z.R. 23-141 Z.R. in that the proposed straight line enlargement of the existing non-complying side yards of 2 ½' - 11 ½" and 4' - 11" are less than the minimum required side yards of 5' - 0".
2. Proposed plans are contrary to Z.R. 23-47 Z.R. in that the proposed rear yard of 20 ft. is less than the minimum required rear yard of 30 ft.
3. Proposed increase in floor area is contrary to Section 23-141 in that the proposed building exceeds the maximum permitted floor area ratio of 0.50.
4. Proposed plans are contrary to Section 23-141 Z.R. in that the proposed open space ratio is less than the minimum required open space ratio of 1.50."; and

WHEREAS a public hearing was held on this application on November 16, 2004 after due notice by publication in *The City Record*, and then to December 14, 2004 for decision; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 14, Brooklyn recommended approval of this application; and

WHEREAS, this is an application under Z.R. § 73-622 to permit, in an R2 zoning district, the proposed enlargement of an existing single family residence (Use Group 1), which does not comply with the zoning requirements for floor area, open space ratio and side and rear yards, contrary to Z.R. §§ 23-141 and 23-47; and

WHEREAS, the subject lot is located on the west side of East 27<sup>th</sup> Street, between Avenues L and M, and has a total lot area of approximately 2,500 sq. ft.; and

WHEREAS, the applicant states that the subject premises is currently improved upon with a two-story

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residential structure with existing non-complying side yards of 2 ½'-11 ½" and 4'-11", and a non-complying front yard of 10'-1"; and

WHEREAS, the applicant seeks an increase in the floor area from 1,709 sq. ft. (0.68 Floor Area Ratio or "FAR") to 2,561 sq. ft. (1.02 FAR) – the maximum floor area permitted is 1,250 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will reduce the Open Space Ratio ("OSR") from 90.6% to 54.3% – the WHEREAS, the Board finds that the proposed enlargement will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

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

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

WHEREAS, therefore the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.13 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of an existing single family residence (Use Group 1), which does not comply with the zoning requirements for floor area, open space ratio and side and rear yards, contrary to Z.R. §§ 23-141 and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked "Received November 29, 2004" – (4) sheets and "Received December 9, 2004" – (1) sheet; and *on further condition*;

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth on the certificate of occupancy;

THAT the use and layout of the cellar 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; no approval has been given by the Board as to the use and layout of the cellar;

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

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

Adopted by the Board of Standards and Appeals, December 14, 2004.

minimum open space required is 150%; and

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

WHEREAS, the enlargement into the side yard does not result in a decrease in the existing minimum width of open area between the building and the side lot line; and

WHEREAS, the enlargement of the building into the rear yard is not located within 20 feet of the rear lot line; and

## 268-04-BZ

### CEQR #05-BSA-020K

APPLICANT - The Law Office of Fredrick A. Becker, for Paula Saff, owner.

SUBJECT - Application July 30, 2004 - under Z.R. §73-622 to permit the proposed enlargement of a single family residence in an R-2 zoning district, which does not comply with the zoning requirements for floor area ratio, open space ratio and side and rear yards, is contrary to Z.R. §23-461, §23-141 and §23-47.

PREMISES AFFECTED - 1246 East 22<sup>nd</sup> Street, between Avenues "K" and "L", Block 7621, Lot 78, Borough of Brooklyn.

### COMMUNITY BOARD #14BK

APPEARANCES -

For Applicant: Lyra Altman.

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

THE VOTE TO GRANT -

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

Negative:.....0

THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated July 9, 2004, acting on Department of Buildings Application No. 301784790, reads, in pertinent part:

1. Proposed enlargement increases the degree of non-compliance of an existing building with respect to floor area ratio, which is contrary to ZR Section 23-141(a).
2. Proposed enlargement increases the degree of non-compliance of an existing building with respect to open space ratio, which is contrary to ZR Section 23-141(a).
3. Proposed enlargement results in one side yard of less than 5 feet contrary to ZR Section 23-461(a)
4. Proposed enlargement results in a rear yard of less than 30 feet, which is contrary to ZR Section 23-47."; and

WHEREAS a public hearing was held on this application on November 23, 2004, after due notice by

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publication in *The City Record*, and then to December 14, 2004 for decision; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by a committee of the Board; and

WHEREAS, Community Board 14, Brooklyn

WHEREAS, this is an application under Z.R. § 73-622 to permit, in an R2 zoning district, the proposed enlargement of an existing single family residence (Use Group 1), which does not comply with the zoning requirements for floor area, open space ratio and side and rear yards, contrary to Z.R. §§ 23-141(a), 23-461(a) and 23-47; and

WHEREAS, the subject lot is located on the west side of East 22<sup>nd</sup> Street, between Avenues K and L, and has a total lot area of approximately 3,500 sq. ft.; and

WHEREAS, the applicant states that the subject premises is currently improved upon with a two-story, single-family house, with an existing non-complying side yard of 3' - 4"; and

WHEREAS, the applicant seeks an increase in the floor area from 2,434 sq. ft. (0.695 Floor Area Ratio or "FAR") to 3,219 sq. ft. (0.92 FAR) – the maximum floor area permitted is 1,750 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will reduce the Open Space Ratio ("OSR") from 94% to 65% – the minimum open space required is 150%; and

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

WHEREAS, the enlargement into the side yard does not result in a decrease in the existing minimum width of open area between the building and the side lot line; and

WHEREAS, the enlargement of the building into the rear yard is not located within 20 feet of the rear lot line; and

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

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

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

WHEREAS, therefore the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§ 73-622 and 73-03.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.13 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. §§ 73-622 and 73-03, to permit, in an R2 zoning district, the proposed enlargement of an existing single family residence (Use Group 1), which does not comply with the zoning requirements for floor area, open space ratio and side and rear yards, contrary to Z.R. §§ 23-141(a), 23-461(a) and 23-47; *on condition* that all work shall substantially conform to

recommended approval of this application; and

drawings as they apply to the objection above-noted, filed with this application and marked "Received November 30, 2004" – (8) sheets and "Received December 10, 2004" – (2) sheets; and *on further condition*;

THAT there shall be no habitable room in the cellar;

THAT the above condition shall be set forth on the certificate of occupancy;

THAT the use and layout of the cellar 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; no approval has been given by the Board as to the use and layout of the cellar;

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

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

Adopted by the Board of Standards and Appeals, December 14, 2004.

## 285-04-BZ

### CEQR #05-BSA-028K

APPLICANT - Slater & Beckerman, LLP, for Augustana Lutheran Home, owners.

SUBJECT - Application August 16, 2004 - under Z.R. §73-49 to permit parking on the roof of an existing four-story accessory parking garage contrary to Z.R. §36-11, located in a C1-3/R6 zoning district.

PREMISES AFFECTED - 5435 First Avenue aka 5424/5434 Second Avenue, west side, between 54th and 56th Streets, Block 820, Lot 36, Borough of Brooklyn.

### COMMUNITY BOARD #7BK

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 July 28, 2004, acting on Department of Buildings Application No. 301744600, reads, in pertinent part:

"1. Proposed accessory rooftop parking is not

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permitted under ZR 36-11. Special permit from B.S.A. is required pursuant to ZR 73-49.”; and

WHEREAS a public hearing was held on this 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 7, Brooklyn recommended approval of this application, with conditions to which the applicant has consented; and

WHEREAS, this is an application under Z.R. § 73-49, for a special permit to allow, in a C1-3(R6) zoning district, accessory parking (47 spaces) on the roof of an existing four-story accessory parking garage, contrary to Z.R. § 36-11; and

WHEREAS, the subject lot is located on the north side of a demapped section of 55<sup>th</sup> Street, between First and Second Avenues, and is currently improved upon with a seven-story 240-bed nursing home (the “Nursing Home”) and a four-story 160-space accessory parking garage (the “Garage”); and

WHEREAS, the applicant represents that the Nursing Home is an affiliate of the Lutheran Medical Center, a four-story hospital (the “Hospital”), located directly to the south, across 55<sup>th</sup> Street, and connected to the Nursing Home by a pedestrian bridge over land purchased by the Hospital following a demapping of a section of 55<sup>th</sup> Street; and

WHEREAS, the applicant further represents that the Garage provides accessory parking to the Nursing Home and the Hospital, which is allowed for two adjacent zoning lots within the same commercial zoning district, pursuant to Z.R. §§ 36-43 and 36-44; and

WHEREAS, pursuant to Z.R. § 73-49, the Board may permit accessory off-street parking spaces on the roof of a building in the subject zoning district, as long as such roof parking is located so as not to impair the essential character or the future use or development of adjacent areas; and

WHEREAS, the Board notes that the number of allowed parking spaces is calculated as of right, assuming the Board grants the special permit; and

WHEREAS, the applicant states that the properties immediately abutting the Garage will not be negatively affected by the proposed roof parking, as the lots directly to the north and west of the Garage are improved with industrial uses, while the Hospital and Nursing Home served by the Garage are located to the south and east, respectively; and

WHEREAS, the applicant further states that there are no residential windows within sight of the roof of the Garage, and that the nearest residential uses are located in a mixed-use three-story multiple dwelling located on the east side of Second Avenue between 54<sup>th</sup> and 55<sup>th</sup> Streets; and

WHEREAS, the applicant asserts that the existing 160 spaces in the Garage are insufficient to meet the parking demand generated by the employees, visitors and physicians of the Nursing Home and Hospital, and that the 47 spaces generated as a result of this application will alleviate the parking deficiency; and

WHEREAS, in response to the traffic-based concerns of the Community Board, the applicant has agreed to paint a

application on November 9, 2004 after due notice by publication in *The City Record*, and then to December 14, 2004 for decision; and

traffic line bisecting Former 55<sup>th</sup> Street from First to Second Avenues, and also to post a sign on the corner of First Avenue and Former 55<sup>th</sup> Street indicating that there is no outlet; and

WHEREAS, the applicant has also agreed to the Community Board’s condition to enforce a no parking regulation on the sidewalks of 55<sup>th</sup> Street; and

WHEREAS, in addition, the applicant will place and direct all lighting on the roof of the Garage in such a way as to minimize impact upon surrounding uses; and

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

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

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

WHEREAS, therefore the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§ 73-49 and 73-03.

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.13 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. § 73-49, for a special permit to allow, in a C1-3(R6) zoning district, accessory parking on the roof of an existing four-story accessory parking garage, contrary to Z.R. § 36-11; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked “Received August 16, 2004” – (2) sheets and “Received December 1, 2004” – (3) sheets; and *on further condition*;

THAT the parking layout, including the total number of permitted spaces, shall be as reviewed and approved by the Department of Buildings;

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

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

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

Adopted by the Board of Standards and Appeals, December 14, 2004.

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**361-02-BZ**

APPLICANT - Marianne Russo, for 214 25<sup>th</sup> Street Corporation, owner.

SUBJECT - Application December 13, 2002 and updated January 5, 2004 - under Z.R. §72-21 to permit the proposed renovation and conversion of an existing factory building, to create 15 unit loft type apartments, with five parking spaces in the mews, a garden courtyard, and the addition of floor area to the center of the front structure, located in an M1-1D district, which does not meet the zoning requirements for rear lot line, parking, height and setback, is contrary to Z.R. §42-00, §43-61(d), §43-61(c) and §44-27.

PREMISES AFFECTED - 214 25<sup>th</sup> Street, between Fourth and Fifth Avenues, Block 655, Lot 13, Borough of Brooklyn.

**COMMUNITY BOARD #7BK**

APPEARANCES -

For Applicant: Peter Hirshman and Marianne Russo.

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 March 15, 2005, at 1:30 P.M., for decision, hearing closed.

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**357-03-BZ**

APPLICANT - Agusta & Ross, for ECROB, LLC., owner.

SUBJECT - Application November 19, 2003 - under Z.R. §72-21 to permit the proposed four-story and penthouse multiple dwelling in an M1-2 district contrary to Z.R. §42-10.

PREMISES AFFECTED - 33 Berry Street, aka 144 North 12th Street, southwest corner of North 12th Street and Berry Street, Block 2290, Lot 5, Borough of Brooklyn.

**COMMUNITY BOARD #1BK**

APPEARANCES -

For Applicant: Mitchell Ross.

**ACTION OF THE BOARD** - Laid over to February 8, 2004, at 1:30 P.M., for continued hearing

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**381-03-BZ**

APPLICANT - Moshe M. Friedman, P.E., for Hamilton G.S. Realty, owner.

SUBJECT - Application December 8, 2003 - under Z.R. §72-21 to permit the proposed expansion of existing social security offices, and the addition of school by adding a second floor, to an existing one story building, located in an M1-1 zoning district, which does not comply with the zoning requirements for Use Group and floor area, and is contrary to Z.R. §42-00, §43-12 and §43-122.

PREMISES AFFECTED - 6023 Fort Hamilton Parkway, a/k/a 6013/23 Fort Hamilton Parkway, a/k/a 6012/24 Tenth Avenue, and a/k/a 973/83 61st Street, northeast corner, Block 5715, Lot 55, Borough of Brooklyn.

**COMMUNITY BOARD #12BK****168-04-BZ**

APPEARANCES -

For Applicant: Moshe M. Friedman.

**ACTION OF THE BOARD** - Laid over to February 15, 2005, at 1:30 P.M., for continued hearing.

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**9-04-BZ**

APPLICANT - Marvin B. Mitzner, Esq., Fischbein Badillo Wagner Harding for Walworth Condominium, Inc., owner.

SUBJECT - Application January 12, 2004 - under Z.R. §72-21 to permit the proposed multiple dwelling, which will contain forty-seven dwelling units, located in an M1-1 zoning district, is contrary to Z.R. §§42-00 and 43-00.

PREMISES AFFECTED - 114 Walworth Street, northwest corner of Myrtle Avenue, Block 1735, Lot 24, Borough of Brooklyn.

**COMMUNITY BOARD #3BK**

APPEARANCES -

For Applicant: Marvin Mitzner, Peter Geis, Jack Freeman, Felipe Pedrazza.

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 February 15, 2005, at 1:30 P.M., for decision, hearing closed.

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**136-04-BZ**

APPLICANT - Sheldon Lobel, P.C., for Exxon Mobil Oil Corporation, owner.

SUBJECT - Application March 22, 2004 - under Z.R. §73-21 to permit the proposed redevelopment of gasoline service station, with an accessory convenience store, located in an C2-3 within an R-5 zoning district, is contrary to Z.R. §32-00.

PREMISES AFFECTED - 3132 Fort Hamilton Parkway, between McDonald Avenue and East Second Street, Block 5315, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #12BK**

APPEARANCES -

For Applicant: Janice Cahalane and Sean Mulrayav.

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 January 25, 2005, at 1:30 P.M., for decision, hearing closed.

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APPLICANT - Jay A. Segal, Esq., Greenberg Traurig LLP, for

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Greenwich Triangle 1, LLC, owner.

SUBJECT - Application April 23, 2004 - under Z.R.§72-21 to permit

the proposed construction of an eight story building, with residential use on its upper seven floors, in an M1-5 zoning district, within the Special Tribeca Mixed Use District, is contrary to Z.R. §111-02.

PREMISES AFFECTED - 500 Canal Street, (a/k/a 471 Greenwich Street), triangle bounded by Canal, Watts and Greenwich Streets, Block 594, Lots 1 and 3, Borough of Manhattan.

## COMMUNITY BOARD #1M

APPEARANCES -

For Applicant: Jay Segal, Carole DeSaram, and Faber Fredbanda.

**ACTION OF THE BOARD** - Laid over to January 25, 2005, at 1:30 P.M., for continued hearing.

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## 190-04-BZ

APPLICANT - Agusta & Ross, for Ira and Larry Weinstein, LLC, owner.

SUBJECT - Application May 7, 2004 - under Z.R. §72-21 to permit the proposed conversion of a former lead factory, into a multiple dwelling (45 families), with a ground floor waterfront restaurant, and doctor's office, is contrary to Z.R. §22-12, which states that "residential uses" shall be limited to single, two family or semi-detached residences in an R3-1 zoning district.

PREMISES AFFECTED - 2184 Mill Avenue, a/k/a 6001 Strickland Avenue, southwest corner, Block 8470, Lot 1090, Part of Lot 1091, Borough of Brooklyn.

## COMMUNITY BOARD #18BK

APPEARANCES -

For Applicant: Mitchell Ross, Mark Fertig, Miriam Steinberg, Dorothy Turano, Brenda Torres, H.R. Clarke, Francisce Hall, Gary Leg, Emerald Hannays, Gary Silver, and other.

For Opposition: Senator Carl Kruger, Bryan Lee, Councilman Fidler's Office, Saul Needle, Roberta Sherman and Mel Levy.

**ACTION OF THE BOARD** - Laid over to February 1, 2005, at 1:30 P.M., for continued hearing.

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## 228-04-BZ

APPLICANT - Louis Ari Schwartz, for Louis Ari Schwartz, owner.

SUBJECT - Application September 2, 2004 - under Z.R. §73-622 to permit the proposed enlargement of an existing one family dwelling, which does not comply with the zoning requirements for floor area ratio, open space ratio and rear yard, is contrary to Z.R. §23-141(a) and §23-47.

PREMISES AFFECTED - 1400 East 22nd Street, west side, 300' south of Avenue "M", Block 7657, Lot 62, Borough of Brooklyn.

## COMMUNITY BOARD #14

APPEARANCES -

**ACTION OF THE BOARD** - Laid over to January 11, 2005, at 1:30 P.M., for decision, hearing closed.

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## 264-04-BZ

APPLICANT - Eric Palatnik, P.C., for Glak Operating Corp., owner.

For Applicant: Lewis Garfinkel.

THE VOTE TO REOPEN HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Miele and Commissioner Chin.....5  
Negative:.....0

**ACTION OF THE BOARD** - Laid over to January 25, 2005, at 10 A.M., for continued hearing.

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## 238-04-BZ

APPLICANT - Agusta & Ross, for C - Squarewood, LLC, owner; New York Health & Racquet Club, lessee.

SUBJECT - Application June 23, 2004 - under Z.R. §73-36 to permit the proposed physical culture establishment, to be located in the cellar, also on the first and mezzanine floors, of an existing twelve story mixed-use building, located in an M1-5B zoning district.

PREMISES AFFECTED - 62 Cooper Square, west side, 159.05' south of Astor Place, Block 544, Lot 7501 (condo), Zoning Lots 32, 33 and 34, Borough of Manhattan.

## COMMUNITY BOARD #2M

APPEARANCES -

For Applicant: Mitchell Ross.

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 January 25, 2005, at 1:30 P.M., for decision, hearing closed.

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## 259-04-BZ

APPLICANT - Sheldon Lobel, P.C., for Richard Senior, owner.

SUBJECT - Application July 20, 2004- under Z.R. §73-622 to permit the proposed enlargement of a single family residence in an R-2 zoning district, which does not comply with the zoning requirements for floor area, open space, side and rear yards, is contrary to Z.R. §23-461 and §23-47.

PREMISES AFFECTED -1181 East 22nd Street, between Avenues "K" and "L", Block 7622, Lot 40, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

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

SUBJECT - Application July 27, 2004- under Z.R. §§11-412 and 11-413 to permit the legalization of the change in use from motor vehicle repair shop and gasoline service station, Use Group 16, to retail use, Use Group 6, also proposed alterations to the site to effectuate the desired change in use, which requires a special permit.  
PREMISES AFFECTED - 977 Victory Boulevard, northeast corner of Cheshire Place, Block 240, 26, Borough of Staten Island.

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**COMMUNITY BOARD #1SI**

APPEARANCES -

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** - Laid over to January 25, 2005,  
at 1:30 P.M., for continued hearing.

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*Pasquale Pacifico, Executive Director.*

Adjourned: 6:10 P.M.