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# BULLETIN

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

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Volume 89, No. 44

November 4, 2004

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### DIRECTORY

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### CONTENTS

DOCKET .....	775
<b>CALENDAR</b> of December 7, 2004	
Morning .....	776
Afternoon .....	777
<b>CALENDAR</b> of December 8, 2004	
Morning .....	777

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# CONTENTS

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**MINUTES of Regular Meetings,  
Tuesday, October 26, 2004**

Morning Calendar .....778

**Affecting Calendar Numbers:**

739-76-BZ 212-95 26<sup>th</sup> Avenue, Queens  
198-66-BZ 300 East 74<sup>th</sup> Street, Manhattan  
135-46-BZ 3802 Avenue U, Brooklyn  
813-63-BZ 699/711 West End Avenue, Manhattan  
1046-63-BZ 540 Park Avenue, Manhattan  
211-94-BZ 34-38 38<sup>th</sup> Street, Queens  
44-04-A 1491 Richmond Road, Staten Island  
68-04-A 96 Driggs Street, Staten Island  
69-04-A 23 Lillian Place, Staten Island  
243-04-A 11 Essex Street, Manhattan

Afternoon Calendar.....784

**Affecting Calendar Numbers:**

40-04-BZ 2252 Linden Boulevard, Brooklyn  
70-04-BZ 69-91 75<sup>th</sup> Street, Queens  
158-04-BZ 1035 Ocean Parkway, Brooklyn  
166-04-BZ 1765 East 23<sup>rd</sup> Street, Brooklyn  
183-04-BZ 206 West 23<sup>rd</sup> Street, Manhattan  
191-04-BZ 1376 East 24<sup>th</sup> Street, Brooklyn  
284-04-BZ 2064/2128 Atlantic Avenue, Brooklyn  
153-04-BZ 2948 Voorhies Avenue, Brooklyn  
168-04-BZ 500 Canal Street, Manhattan  
194-03-BZ 739 East New York Avenue, Brooklyn  
200-04-BZ 703 West 171<sup>st</sup> Street, Manhattan  
228-04-BZ 1400 East 22<sup>nd</sup> Street, Brooklyn  
258-03-BZ 47 Thames Street, Brooklyn  
364-03-BZ 34-11 Far Rockaway Boulevard, Queens  
134-04-BZ 184 Kent Avenue, Brooklyn  
147-04-BZ 459 Carroll Street, Brooklyn

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# DOCKETS

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New Case Filed Up to October 5, 2004

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**341-04-A** B.Q. 115 Beach 215th Street, east side, 280' south of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens. Alt.1#401946034. Proposed alteration and enlargement of an existing single family dwelling, not fronting on a legally mapped street, is contrary to Section 36, Article 3 of the General City Law.

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**342-04-A** B.Q. 124 Reid Avenue, west side, 230' south of Rockaway Point Boulevard, Block 16350, Lot 400, Borough of Queens. Alt.1#401946025. Proposed reconstruction and enlargement of an existing single family dwelling, not fronting on a legally mapped street, is contrary to Section 36, Article 3 of the General City Law.

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**343-04-A** B.Q. 35 Beach 220th Street, east side, 260.92' north of Breezy Point Boulevard, Block 16350, Lot 400, Borough of Queens. Alt.1#401990976. Proposed alteration and enlargement of an existing single family dwelling, not fronting on a legally mapped street, is contrary to Section 36, Article 3 of the General City Law.

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**344-04-BZ** B.Q. 202-01 Northern Boulevard, northeast corner of 202nd Street, Block 6263, Lot 29, Borough of Queens. Alt.1#401624444. Proposed use of an open lot for the sale of new and used automobiles, located in a C2-2 within and R3-2 zoning district, is contrary to Z.R.§32-25.  
**COMMUNITY BOARD #11Q**

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**345-04-BZ** B.BK. 1036/44 Ocean Parkway, west side, between Avenues "J and "L", Block 5495, Lots 911 and 914, Borough of Brooklyn. N.B.#301759372.

Proposed construction of a new synagogue, Use Group 4, located in an R5 (SOPD) zoning district, which does not comply with the zoning requirements for open space, lot coverage, side yards, rear yard, front yard, perimeter wall height, sky exposure plane, landscaping and parking, is contrary to Z.R. §23-141, §23-464, §23-47, §113-12, §23-631(d), §113-30, §25-28 and §25-31.

**COMMUNITY BOARD #12BK**

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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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**DECEMBER 7, 2004, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, December 7, 2004, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

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## SPECIAL ORDER CALENDAR

### **208-78-BZ**

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

SUBJECT - Application May 18, 2004 - request for a waiver of the Rules of Practice and Procedure and reopening for an extension of term of variance to permit a funeral establishment (Use Group 7), located in an R3-2 zoning district.

PREMISES AFFECTED - 2145 Richmond Avenue, east side of Richmond Avenue, 11.74' south of Rockland Avenue, Block 2360, Lot 54, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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### **218-96-BZ**

APPLICANT - The Agusta Group for The Armenian Apostolic Church, owners.

SUBJECT - Application August 10, 2004 - request for a waiver of the Rules of Practice and Procedure and reopening for an extension of time to complete construction of an enlargement to an existing community facility.

PREMISES AFFECTED - 138 East 39th Street, south side 123.4' east of Lexington Avenue, Block 894, Lot 60, Borough of Manhattan.

**COMMUNITY BOARD #6M**

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**DECEMBER 7, 2004, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, *Tuesday afternoon*, December 7, 2004, 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

### **385-03-BZ**

APPLICANT - Joseph P. Morsellino, for Fabian Organization II, LLC, owner.

SUBJECT - Application December 12, 2003 - under Z.R. §72-21  
PREMISES AFFECTED - 2822 Avenue "L", southwest corner of East 29th Street, Block 7646, Lot 51, Borough of Brooklyn.

**COMMUNITY BOARD #14**

to permit the proposed erection of a six-story multiple dwelling with 46 Units, located in an R6 zoning district, which does not comply with the zoning requirements for floor area ratio, lot coverage, dwelling units, and height and setback, is contrary to Z.R. §23-141(c), §23-22 and §23-631(b).

PREMISES AFFECTED - 85-15 & 85-17 120th Street, southeast corner of 85th Avenue, Block 9266, Lots 48 and 53, Borough of Queens.

**COMMUNITY BOARD #9Q**

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### **135-04-BZ**

APPLICANT - Joseph P. Morsellino, for Manuel Minino, owner.  
SUBJECT - Application March 19, 2004 - under Z.R. §72-21 to permit the proposed erection and maintenance of an automobile showroom with offices, Use Group 6, located in an R2 and C2-2(R5) zoning district, is contrary to Z.R. §22-00.

PREMISES AFFECTED - 91-22 188th Street, northeast corner of Jamaica Avenue, Block 9910, Tentative Lot 43 (part of lot 1), Borough of Queens

**COMMUNITY BOARD #12Q**

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### **207-04-BZ**

APPLICANT - The Law Office of Fredrick A. Becker, for David Spira and Gayle Malka Spira, owners.

SUBJECT - Application May 19, 2004 - under Z.R. §72-21 to permit the proposed enlargement of the cellar, first and second floors, also the attic, on the northerly side of a single family dwelling, Use Group 1, located in an R2 zoning district, which does not comply with the zoning requirements for floor area ratio, open space ratio, also side and front yards, is contrary to Z.R. §23-141, §23-461 and §23-45.

PREMISES AFFECTED - 2721 Avenue "N", northwest corner of East 28th Street, Block 7663, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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### **208-04-BZ**

APPLICANT - The Law Office of Fredrick A. Becker, for Brian Gross and Chedva Gross, owners.

SUBJECT - Application May 21, 2004 - under Z.R. §72-21 to permit the proposed enlargement of the cellar, first floor and second floor, on the southerly side of single family dwelling, Use Group 1, located in an R2 zoning district, which does not comply with the zoning requirements for floor area ratio, open space ratio, side and front yards, also the front setback, is contrary to Z.R. §23-141, §23-461, §23-45 and §23-631.

### **227-04-BZ**

APPLICANT - Eric Palatnik, P.C., for Moshe Katz, owner.

SUBJECT - Application June 15, 2004 - under Z.R. §73-622 to permit the proposed enlargement of an existing single family residence, Use Group 2, located in an R5 zoning district, which does not comply with the zoning requirements for open space ratio,

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# CALENDAR

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floor area ratio, and side and rear yards, is contrary to Z.R. §23-141(a), §23-47 and §23-48.

PREMISES AFFECTED -1335 East 22nd Street, between Avenues "L and M", Block 7640, Lot 18, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**263-04-BZ**

APPLICANT - The Law Office of Fredrick A. Becker, for Jack Zarif and Randy Zarif, owners.

SUBJECT - Application July 22, 2004 - under Z.R. §73-622 to permit the proposed enlargement of a single family residence in an R3-1 zoning district, which exceeds the allowable floor area, causes an increase in lot coverage, has a non-complying rear yard, and a perimeter wall that exceeds the maximum permitted, is contrary to §23-141, §23-631, and §23-47.

PREMISES AFFECTED - 150 Girard Street, between Hampton Avenue and Oriental Boulevard, 360' south of Hampton Avenue, Block 8749, Lot 262, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

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area ratio, accessory off-street parking, off-street loading berths and building height, is contrary to Z.R. §32-423, §33-122, §35-31, §36-20, §36-62, §61-00 and §61-40.

PREMISES AFFECTED - 136-20 38TH Avenue,( aka 38-21 Main Street, 136-17 39th Avenue, 38-10 138th Street and 38-25 Main Street), north side of the intersection of Main Street and 39th Avenue, Block 4978, Lot 101, Borough of Queens.

**COMMUNITY BOARD #7Q**

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*Pasquale Pacifico, Executive Director*

**DECEMBER 8, 2004, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, *Wednesday morning*, December 8, 2004, at 10:00 A.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**

**233-04-BZ**

APPLICANT - Kevin McGrath, Esq. C/o Phillips Nizer, for F& T International, owner.

SUBJECT - Application June 18, 2004 - under Z.R. §72-21 to permit the proposed development of a twelve story building, which will contain a mix of retail uses, office space, community facility space and two levels of underground parking, located in a C4-3 zoning district, which does not comply with the zoning requirements for floor

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# MINUTES

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**REGULAR MEETING  
TUESDAY MORNING, OCTOBER 26, 2004  
10:00 A.M.**

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

Absent: Commissioner Miele and Commissioner Chin.

The minutes of the regular meetings of the Board held on Tuesday morning and afternoon, August 17, 2004, were approved as printed in the Bulletin of August 26, 2004, Volume 89, No. 35.

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## SPECIAL ORDER CALENDAR

### 739-76-BZ

APPLICANT - Joseph P. Morsellino, Esq., for Cord Meyer Development Corp., owner; Peter Pan Games of Bayside, lessee. SUBJECT - Application June 22, 2004 - request for a waiver of the Rules of Practice and Procedure, reopening for an extension of term of variance which expired April 10, 2004.

PREMISES AFFECTED - 212-95 26th Avenue, 26th Avenue and Bell Boulevard, Block 5900, Lot 2, Borough of Queens.

### COMMUNITY BOARD #7Q

APPEARANCES -

For Applicant: Joseph Morsellino

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

THE VOTE TO GRANT -

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

Negative:.....0

Absent: Commissioner Miele and Commissioner Chin.....2

THE RESOLUTION:

WHEREAS, a public hearing was held on this application on September 28, 2004, after due notice by publication in The City Record, and then to October 26, 2004 for decision; and

WHEREAS, Community Board No. 7, Queens, recommended approval of this application; and

WHEREAS, the applicant requests a waiver of the Rules of Practice and Procedure, a re-opening, and an extension of the term of the special permit which expired on April 10, 2004; and

WHEREAS, on February 8, 1977, the Board granted an application permitting, in an existing shopping center, the conversion of a retail store to an amusement arcade for a term of one (1) year, on condition that the hours of operation be limited to 11:00 a.m. to 9:30 p.m. Monday through Saturday and 11:00 a.m. to 6:00 p.m. on Sunday; the Board has granted subsequent extensions of the special permit for a term of one (1) year each.

Therefore it is Resolved that the Board of Standards and Appeals, waives the Rules of Practice and Procedure, reopens and

PREMISES AFFECTED - 3802 Avenue U, southeast corner of East 38th Street, between Ryder Avenue and East 38th Street, Block 8755, Lot 37, Borough of Brooklyn.

### COMMUNITY BOARD #18

amends the resolution, pursuant to § 73-03(f), said resolution having been adopted on February 8, 1977 as amended through April 10, 2004, so that as amended this portion of the resolution shall read: "to permit the extension of the term of the special permit for an additional (1) year from April 10, 2004 to expire on April 10, 2005, on 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 appear on the certificate of occupancy;

THAT the subject premises shall comply with the previously approved Board plans, and all conditions from prior resolutions not specifically waived by the Board remain in effect;

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

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

(DOB Application #401710430)

Adopted by the Board of Standards and Appeals, October 26, 2004.

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### 198-66-BZ

APPLICANT - Eric Palatnik, P.C., for 300 East 74 Owners Corp., owner.

SUBJECT - Application December 16, 2003 - reopening for an amendment to the resolution.

PREMISES AFFECTED - 300 East 74<sup>th</sup> Street, southeast corner of 2<sup>nd</sup> Avenue and East 74<sup>th</sup> Street, Block 1448, Lot 3, Borough of Manhattan.

### COMMUNITY BOARD #8M

APPEARANCES -

For Applicant: Eric Palatnik.

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

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### 135-46-BZ

APPLICANT - Harold Weinberg, P.E., for Leon Rubinfeld, owner.

SUBJECT - Application January 7, 2004 - request for a waiver of the Rules of Practice and Procedure and reopening for an extension of term of variance which expired January 29, 2002.

APPEARANCES -

For Applicant: Harold Weinberg, P.E..

**ACTION OF THE BOARD** - Laid over to December 7, 2004, at 10 A.M., for continued hearing.

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# MINUTES

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## 813-63-BZ

APPLICANT - Howard A. Zipser/Stadtmauer Bailkin, LLP, for Selma R. Miller, owner; Central Parking Corporation, lessee.

SUBJECT - Application March 16, 2004 - reopening for an amendment to reflect the existence of 97 parking spaces in accordance with Consumer Affairs License 0914278.

PREMISES AFFECTED - 699/711 West End Avenue, west side of West End Avenue between West 94th and 95th Streets, Block 1253, Lot 21, Borough of Manhattan.

### COMMUNITY BOARD #7

APPEARANCES -

For Applicant: Steve Sinacori.

THE VOTE TO CLOSE HEARING -

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

Negative:.....0

Absent: Commissioner Miele and Commissioner Chin.....2

**ACTION OF THE BOARD** - Laid over to December 7, 2004, at 10 A.M., for decision, hearing closed.

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## 1046-63-BZ

APPLICANT - Kramer Levin Naftalis & Frankel, LLP, for 61st Street and Park Avenue Corp., d/b/a The Regency Hotel, 540 Park Avenue, owners; Distinctive Parking, LLC, lessee.

SUBJECT - Application August 30, 2004 - reopening for an amendment to the resolution to permit the use of surplus parking spaces for transient parking.

PREMISES AFFECTED - 540 Park Avenue, 35-39 East 61st Street, southeast corner, block bounded by Park and Madison Avenues, East 61st and East 62nd Streets, Block 1376, Lot 36, Borough of Manhattan.

### COMMUNITY BOARD #8

APPEARANCES -

For Applicant: James P. Power and Gary R. Tarnoff.

THE VOTE TO CLOSE HEARING -

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

Negative:.....0

Absent: Commissioner Miele and Commissioner Chin.....2

**ACTION OF THE BOARD** - Laid over to November 23, 2004, at 10 A.M., for decision, hearing closed.

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## 211-94-BZ

APPLICANT - The Agusta Group, for Steve Poliseno, Astoria Ice,

WHEREAS, a public hearing was held on this application on May 5, 2004, after due notice by publication in the City Record, with continued hearings on July 13, 2004, August 17, 2004, and October 5, 2004, and then to decision on October 26, 2004; and

WHEREAS, the Department of Buildings ("DOB") seeks to modify Certificate of Occupancy Number 500353422 (the "Current

Inc., owner.

SUBJECT - Application July 26, 2004 - reopening for an extension of term of variance which expired October 24, 2003 and for an amendment to relocate the PCE from the third floor and mezzanine to the 4 story portion of the building to the mezzanine of the one story portion of the building. In addition, a new PCE is proposed at the second floor level which is currently the roof the one story portion of the building.

PREMISES AFFECTED - 34-38 38th Street, thru block between 37th & 38th Streets 115' north of 35th Avenue, Block 645, Lot 10, Borough of Queens.

### COMMUNITY BOARD #1

APPEARANCES -

For Applicant: Sol Korman.

For Opposition: John Paskalis, Steve Poliseno and Matthew Cocca.

**ACTION OF THE BOARD** - Laid over to without date.

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## 44-04-A

APPLICANT - NYC Department of Buildings.

OWNER OF RECORD: Martin Suss

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

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

### COMMUNITY BOARD #2SI

APPEARANCES - None.

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

THE VOTE TO GRANT -

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

Negative:.....0

Absent: Commissioner Miele and Commissioner Chin.....2

THE RESOLUTION:

WHEREAS, the application brought by the Commissioner of the Department of Buildings, dated March 12, 2004, reads:

"Application to revoke or modify Certificate of Occupancy (CO) No. 500353422 pursuant to Section 52-61 of the Zoning Resolution, because of a non-conforming use which was discontinued for more than two years. The CO was issued with the mistaken understanding that the non-conforming use was continuous, thus improperly allowing a retail store in a residential zoning district."; and

CO"), issued to 1491 Richmond Road in Staten Island, on the basis that the lawful non-conforming commercial use on the first floor of a previously existing building located at the premises was discontinued for a continuous period of greater than two years; and

WHEREAS, Staten Island Borough President James P. Molinaro submitted testimony in opposition to the instant application, stating revocation or modification of the Current CO would cause

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# MINUTES

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hardship to the current owners and that DOB had made previous determinations, at the Borough Office level, that the uses proposed to be listed on the Current CO were permitted; and

WHEREAS, the subject premises is located in an R2 zoning district, and is currently improved upon with a two-story plus cellar building, completed in 1999; and

WHEREAS, the record indicates that the Current CO, issued on February 28, 2000, permits: (1) "Community Facility (Medical)", Use Group 4, in the cellar; (2) "Retail Store", Use Group 6, on the first floor; and (3) "One family dwelling w/home occupancy", Use Group 2, on the second floor; and

WHEREAS, DOB states that its records indicate that the Use Group 6 use for the first floor originated when the prior certificate of occupancy for the premises was issued in 1954 (Certificate of Occupancy No. 11407, hereinafter, the "1954 CO"); and

WHEREAS, in 1961, subsequent to issuance of the 1954 CO, the premises was rezoned to an R2 zoning district; and

WHEREAS, DOB states that before the building currently existing at the premises was built, the project architect building first sought from DOB a "reconsideration prior to filing" concerning the uses that would be permitted at the premises; the reconsideration request as presented by the project architect indicated that the first floor could be used for a store or commercial use as per the 1954 CO; and

WHEREAS, the record indicates that the project architect represented at DOB that the proposed DOB permit filing would be for an alteration of an existing building; and

WHEREAS, DOB states that based upon the 1954 certificate of occupancy and the architect's representation that a building existed at the site and that commercial use on the first floor of the alleged building was an existing legal non-conforming use, DOB accepted the pre-filing reconsideration request; and

WHEREAS, DOB further states that a building permit application was subsequently filed in May of 1999 for vertical alteration of the allegedly existing one story structure; said alteration proposed the addition of a second story, and a redesign of interior partitions in the cellar and first floor; and

WHEREAS, upon completion of the job, DOB issued the Current CO; and

WHEREAS, DOB now concludes that there was no existing building to be altered, alleging instead that the current building was built from the ground up; and

WHEREAS, as noted above, the record indicates that the commercial use on the first floor began in 1954 as a lawful use, and

WHEREAS, DOB notes that the Comments Section of the inspection report, as shown on the BIS printout, describes the property as follows: "Building removed to first tier. Not occupied. Occupancy impossible."; and

WHEREAS, DOB further notes that the photo submitted by the Civic Association shows that there was no structure on the premises in 1998, and that the sign in the photo specifically advertises a site for sale, not a building; and

WHEREAS, in addition, the record contains City Planning Commission Report No. C940532PPR, for the disposition of city-owned property, and identifies 1491 Richmond Road as a vacant lot; and

became non-conforming in 1961 when the area was zoned R2; and

WHEREAS, Z.R. § 52-61 provides, in pertinent part, "If, for a continuous period of two years . . . the active operation of substantially all of the non-conforming uses in any building . . . is discontinued, such . . . building . . . shall thereafter be used only for a conforming use."; and

WHEREAS, DOB states that there was discontinuance of the non-conforming commercial use of the first floor level of the previously existing building at the premises for a period in excess of two years; and

WHEREAS, DOB states that from 1993 to 1999, the City of New York ("the City"), held title to the subject premises and it existed as vacant land; and

WHEREAS, in support of this statement, DOB submitted property records of the City of New York Department of General Services ("DGS"), Division of Real Estate Services, which DOB claims show that the City was the owner of the subject premises, and that the property was classified as vacant land since June 14, 1993; and

WHEREAS, DOB also submitted a memorandum dated April 4, 1996 from DGS, to the Department of City Planning, which contained a revised fact sheet prepared in connection with a 1996 Uniform Land Use Review Procedure ("ULURP") application that also listed the property as vacant land; and

WHEREAS, DOB asserts that since the property was "vacant land," there could not have been an existing, occupied building and therefore there could not have been any continuous commercial use at the property; and

WHEREAS, DOB states that any further use of the first floor premises for commercial purposes would be invalid as a matter of law, and that this floor must only be occupied for uses that are permitted in an R2 zoning district; and

WHEREAS, at the August 17, 2004 public hearing, the Board requested that DOB submit supplemental evidence of discontinuance if such was available; and

WHEREAS, in response, DOB submitted: (1) a printout of a DOB inspection report (the inspection was conducted on September 19, 1991) from the DOB Building Information System that indicates that active operation of any commercial use at the premises was possibly discontinued as early as 1991; and (2) a photograph and letter submitted by the Dongan Hills United Civic Association, Inc. (the "Civic Association"), which indicates that there was no existing one-story structure at the premises when the project architect filed the afore-mentioned alteration application; and

WHEREAS, opposition to this application challenged DOB's submitted evidence, stating: (1) that the various City records (the BIS printout, the DRES records, and the CPC report) can not be treated as reliable; and (2) that the submitted photos have not been authenticated; and

WHEREAS, as to the City records, opposition states that the BIS printout reflects an inspection report conducted in response to a complaint about work without a permit, which opposition alleges is contradictory to the supposed vacant status of the land; and

WHEREAS, opposition also cites to other work without a permit violations issued to the premises by DOB after 1991 (attached as Exhibit D to the opposition submission dated

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# MINUTES

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September 21, 2004); and

WHEREAS, however, the Board disagrees that such violations prove that there was continuous commercial use of the first floor of the premises; and

WHEREAS, the Board notes that even assuming some part of a building remained on the site and work was being performed on it, there is no evidence of actual continuous use on the first floor that contradicts the evidence proffered by DOB in support of its claim of discontinuance; and

WHEREAS, Z.R. § 52-61 only references continued active operation of the non-conforming use, not preservation of some portion of the structure that once housed such use; and

WHEREAS, thus, evidence as to the structure is irrelevant in the absence of any evidence - such as utility bills, invoices, COLES directory listings, phone book advertisements, or business licenses - that there was a commercial use actively and continuously operating on the first floor of the structure; and

WHEREAS, the Board asked opposition on numerous occasions to present such evidence of continuous commercial occupancy, but no evidence of such was submitted; and

WHEREAS, in fact, opposition did not even explain to the Board why such evidence could not be obtained and submitted; and

WHEREAS, opposition also claims that the ULURP report and DGS records do not establish that there was a discontinuance of the non-conforming commercial use even though they list the land as vacant; and

WHEREAS, however, the Board notes again that even assuming there was some structural elements of a building left on the site, no evidence that a commercial use was in existence at the site was submitted by opposition; and

WHEREAS, as to the photo submitted by the Civic Association via DOB, opposition notes that the photographer, date and location were not authenticated; and

WHEREAS, the Board agrees that no actual authentication the photo aside from the Civic Association's letter was submitted; and

WHEREAS, nevertheless, the Board finds the letter credible, and views the photo as contributory evidence in support of DOB's claim of discontinuance; and

WHEREAS, the Board notes, though, that even without the photo in the record, it would reach the same final conclusion in the instant application; and

Therefore it is Resolved, that the application brought by the Commissioner of the Department of Buildings, dated March 12, 2004, seeking modification of Certificate of Occupancy No. 500353422, is hereby granted, and that this Certificate of Occupancy shall be modified consistent with the instant resolution.

Adopted by the Board of Standards and Appeals, October 26, 2004.

WHEREAS, opposition makes other arguments in its various submissions; specifically, opposition claims that the current owners of the premises, who purchased it from the afore-mentioned architect, have acquired a vested right to use the premises pursuant to the CO; and

WHEREAS, the Board notes that no authority for such a claim was presented by opposition, except for two old BSA cases that did not address discontinuance; and

WHEREAS, the Board finds opposition's reliance on these two BSA cases unpersuasive; neither of the resolutions for the cases state that operation of Z.R. § 52-61 is precluded by any equitable consideration, as claimed; and

WHEREAS, opposition also contends that DOB acted contrary to Section 27-197 of the Administrative Code of the City of New York, which provides that DOB may revoke an issued permit given certain circumstances; and

WHEREAS, however, opposition fails to explain how such an allegation, even if properly before the Board and borne out by evidence, would impact the operation of Z.R. § 52-61; and

WHEREAS, in sum, the Board has reviewed the evidence submitted by DOB in support of its claim of discontinuance and finds it sufficient and credible; and

WHEREAS, the Board has likewise reviewed the claims made by opposition as to the evidence submitted by DOB and does not find them persuasive; and

WHEREAS, the Board notes that were there actual continuance of the non-conforming use of the first floor of the previously existing building, evidence of such should not have been difficult for opposition to obtain; and

WHEREAS, accordingly, the Board finds that for a period of at least two years, the active operation of the lawful non-conforming use of the first floor of the subject premises as a Use Group 6 use had been discontinued; and

WHEREAS, therefore, the Board concludes that the reference on the CO to UG6 retail use on the first floor is without legal effect; and

WHEREAS, the Board also concludes that the first floor of the premises must hereafter be used only for conforming uses currently permitted in the underlying R2 zoning district, notwithstanding the existence of any prior certificate of occupancy issued to the subject premises.

two family dwelling, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED - 96 Driggs Street, Block 5275, Tentative Lot 10, Borough of Staten Island.

## COMMUNITY BOARD #3

### APPEARANCES -

For Applicant: Steven Barshov

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

### THE VOTE TO GRANT -

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

Negative:.....0

Absent: Commissioner Miele and Commissioner Chin.....2

### THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough

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## 68-04-A

APPLICANT - Steven Barshov/Sive, Paget & Riesel, for Lawrence M. Garten, owner.

SUBJECT - Application March 2, 2004 - Proposed erection of a

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# MINUTES

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Commissioner, dated February 2, 2004 acting on Department of Buildings Application No. 500664453 reads in pertinent part:

"Proposed Building is in the bed of a mapped street contrary to Article 3, Section 35 of the General City Law. Therefore, approval from the Board of Standards and Appeals is required."; and

WHEREAS, a public hearing was held on this application on September 14, 2004 after due notice by publication in the City Record, laid over for continued hearing to October 5, 2004 and then to decision on October 26, 2004; and

WHEREAS, by letter dated May 25, 2004, the Fire Department states that it has reviewed the above project and has no objections provided that 23 Lillian Place be fully sprinklered in compliance with Local Law 10 of 1999 as well as Reference Standard 17-2B of the NYC Building Code; and

WHEREAS, by letter dated April 28, 2004, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

WHEREAS, by letter dated July 13, 2004, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, in response to a request from the adjacent property owner at 20 Lillian Place, the applicant has agreed to seek from the Department of Transportation, a "No Parking" designation for the curb in front of 23 Lillian Place; and

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

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, February 2, 2004 acting on Department of Buildings Application Nos. 500664453 & 500664444 is modified under the power vested in the Board by Sections 35 of the General City Law, and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the drawing filed with the application marked "Received October 14, 2004"-(1) sheet; that the proposal comply with all applicable zoning district requirements; and that all applicable laws, rules, and regulations shall be complied with; and on further condition;

## THE RESOLUTION:

WHEREAS, the decision of the Staten Island Borough Commissioner, dated February 2, 2004 acting on Department of Buildings Application No. 500664444 reads in pertinent part:

"Proposed Building is in the bed of a mapped street contrary to Article 3, Section 35 of the General City Law. Therefore, approval from the Board of Standards and Appeals is required."; and

WHEREAS, a public hearing was held on this application on September 14, 2004 after due notice by publication in the City Record, laid over for continued hearing to October 5, 2004 and then to decision on October 26, 2004; and

WHEREAS, by letter dated May 25, 2004, the Fire Department states that it has reviewed the above project and has no objections provided that 23 Lillian Place be fully sprinklered in compliance with Local Law 10 of 1999 as well as Reference Standard 17-2B of the NYC Building Code; and

WHEREAS, by letter dated April 28, 2004, the Department of Environmental Protection states that it has reviewed the above project and has no objections; and

THAT a "No Parking" sign shall be installed to prevent parking along the new curb that will be constructed in front of 23 Lillian Place;

THAT evidence that such sign has been obtained shall be submitted to the Board within 6 months from the date of this grant;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the 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, October 26, 2004.

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## 69-04-A

APPLICANT - Steven Barshov/Sive, Paget & Riesel, for Lawrence M. Garten, owner.

SUBJECT - Application March 2, 2004 -Proposed erection of a two family dwelling, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED - 23 Lillian Place, Block 5275, Tentative Lot 11, Borough of Staten Island.

## COMMUNITY BOARD #3

APPEARANCES -

For Applicant: Steven Barshov

## ACTION OF THE BOARD -

THE VOTE TO GRANT -

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

Negative:.....0

Absent: Commissioner Miele and Commissioner Chin.....2

WHEREAS, by letter dated July 13, 2004, the Department of Transportation states that it has reviewed the above project and has no objections; and

WHEREAS, in response to a request from the adjacent property owner at 20 Lillian Place, the applicant has agreed to seek from the Department of Transportation, a "No Parking" designation for the curb in front of 23 Lillian Place; and

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

Therefore it is Resolved that the decision of the Staten Island Borough Commissioner, February 2, 2004 acting on Department of Buildings Application Nos. 500664453 & 500664444 is modified under the power vested in the Board by Sections 35 of the General City Law, and that this appeal is granted, limited to the decision noted above, on condition that construction shall substantially conform to the drawing filed with the application marked "Received October 14, 2004"-(1) sheet; that the proposal comply with all applicable zoning district requirements; and that all applicable laws, rules, and regulations shall be complied with; and on further

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# MINUTES

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condition;

THAT a "No Parking" sign shall be installed to prevent parking along the new curb that will be constructed in front of 23 Lillian Place;

THAT evidence that such sign has been obtained shall be submitted to the Board within 6 months from the date of this grant;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the 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, October 26, 2004.

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## 243-04-A

APPLICANT - Sion Misrahi, for Sion Misrahi, President, owner.  
SUBJECT - Application June 30, 2004 - An appeal challenging the Department of Buildings' decision dated June 7, 2004, in which the department refused to issue a vacate order regarding subject premises, to facilitate needed repairs without endangering the occupants thereof.

PREMISES AFFECTED - 11 Essex Street, between Canal and Hester Streets, Block 297, Lot 24, Borough of Manhattan.

### COMMUNITY BOARD #3

APPEARANCES -

For Applicant: Irving E. Minkin, Sion Misrahi and Bill Eberight.

#### REGULAR MEETING

**TUESDAY AFTERNOON, OCTOBER 26, 2004**

**2:00 P.M.**

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

**Absent:** Commissioner Miele and Commissioner Chin.

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### ZONING CALENDAR

## 40-04-BZ

APPLICANT - Agusta & Ross, for Steven Witriol, owner.  
SUBJECT - Application February 13, 2004 - under Z.R. §72-21 to permit the proposed change of use from an automobile repair and used vehicles sales (Use Group 16), previously approved by the Board under Cal. No. 56-95-BZ, to a retail store (Use Group 6), located in an R5 zoning district, which is contrary to Z.R. §22-00.  
PREMISES AFFECTED - 2252 Linden Boulevard, southeast corner of Cleveland Street, Block 4360, Lot 1, Borough of Brooklyn.

## THE VOTE TO CLOSE HEARING -

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

Negative:.....0

Absent: Commissioner Miele and Commissioner Chin.....2

**ACTION OF THE BOARD** - Laid over to December 7, 2004, at 10 A.M., for decision, hearing closed.

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*Pasquale Pacifico, Executive Director.*

Adjourned: 12:00 P.M.

## COMMUNITY BOARD #5BK

APPEARANCES - None.

For Applicant: Mitchell Ross.

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

## THE VOTE TO GRANT -

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

Negative:.....0

Absent: Commissioner Miele and Commissioner Chin.....2

## THE RESOLUTION:

WHEREAS, the decision of the Borough Commissioner dated January 15, 2004, acting on Department of Buildings Application No. 301574053, reads:

"Comply with Section 22.00 ZR. U.G.6 is not permitted in R5 Zone."; and

WHEREAS, a public hearing was held on this application on May 18, 2004 after due publication in The City Record, with a continued hearing on June 8, 2004; the case was adjourned to June 22, 2004 and then to August 10, 2004; a continued hearing was then held on October 5, 2004, and then to decision on October 26, 2004; and

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

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# MINUTES

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of Chair Srinivasan and Vice-Chair Babbar; and

WHEREAS, this is an application under Z.R. § 72-21, to permit a one-story retail store (Use Group 6) on a site previously before the Board and permitted to be used as Auto Repair with Open Vehicle Sales (Use Group 16), in an R5 zoning district, contrary to Z.R. § 22-00; and

WHEREAS, Community Board No. 5, Brooklyn recommended approval of this application; and

WHEREAS, the subject lot: (1) is located on the southeast corner of the intersection of Cleveland Street and Linden Boulevard; (2) is 160' by 85'; and (3) has a total lot area of approximately 13,600 sq. ft.; and

WHEREAS, the lot is currently improved upon with a one-story, 20' high building with 1,740 sq. ft. of total floor area; and

WHEREAS, the lot has been the subject of two prior Board cases: (1) a variance case under BSA Cal. No. 277-56-BZ, which permitted use as an Automotive Service Station; and (2) a variance case under BSA Cal. No. 56-95-BZ, which allowed reinstatement of the auto repair use (which had lapsed since the previous variance grant); and

WHEREAS, the applicant represents that the lot has been used for automotive repairs and used car sales since 1995 until 2001, when business diminished to the point that the owner proceeded to attempt to sell the property (due to increased and costly environmental regulation of gas sales); and

WHEREAS, after failing to sell the property for the uses allowed per the BSA grants, the owner was approached by a dollar store chain that was interested in purchasing the site for a retail outlet; and

WHEREAS, the proposal is to demolish the existing building

WHEREAS, the applicant represents that the proposed variance will not affect the character of the neighborhood, and that the use is compatible with other commercial uses in the immediate area; and

WHEREAS, the Board notes that through its prior grants, it permitted a Use Group 16 use on the lot; and

WHEREAS, the applicant represents that the proposed use is a Use Group 6 use, and would impact on the character of the neighborhood to a lesser degree than the existing use, because all retail activity will be enclosed and the number of existing curb cuts will be reduced, simplifying the site's circulation; and

WHEREAS, the Board agrees that the proposed use would be more compatible with the surrounding residential uses than the current use; and

WHEREAS, a parking study was conducted, which revealed that adequate on-site and street parking would exist to accommodate the parking needs generated by the proposed use; and

WHEREAS, the applicant represents that the adjacent residential uses will be buffered from the subject site by planting areas; and

WHEREAS, the applicant also represents that impact on adjacent residential uses will be minimized because such uses are at a lower grade than the subject site, and are further separated from the site by a retaining wall and an alleyway; and

WHEREAS, the applicant also states that the area character is

and erect a one-story retail building with approximately 8,000 sq. ft. of floor area and accessory off-street parking for 19 cars; and

WHEREAS, the applicant represents that the development as proposed complies with a typical C1-1 zoning district except for the parking (such district would require 53 spaces, whereas the proposal contemplates 19); and

WHEREAS, the applicant states that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in strict conformity with underlying district regulations: (1) the historic use of the site for automotive uses; (2) the remnants of such uses in and on the site; and (3) the fact that the site is surrounded by commercial districts; and

WHEREAS, the Board notes that it has twice found the subject site unique, as noted in the resolutions for the above-mentioned prior Board actions; and

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

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

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

dominated by Linden Boulevard, which is a multi-lane commercial thoroughfare with some commercial uses near the subject lot; and

WHEREAS, the Board has conducted its own site visit and has reviewed the submitted land use map; and

WHEREAS, based upon the representations of the applicant, its review of the land use map and its site visit, 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 6 NYCRR, Part 617; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in an Environmental Assessment Statement (EAS) CEQR No. 04-BSA-133K, dated April 28, 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

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# MINUTES

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Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. § 72-21 and grants a variance to permit a one-story retail store (Use Group 6) on a site previously before the Board and permitted to be used as Auto Repair with Open Vehicle Sales (Use Group 16), in an R5 zoning district, 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 February 13, 2004"-(3) sheets and "Received October 14, 2004"-(1) sheet; and on further

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the 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, October 26, 2004.

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## 70-04-BZ

APPLICANT - Rothkrug Rothkrug Weinberg & Spector, for Rudolph Semar, owner; Coliseum Gym & Fitness Center, lessee. SUBJECT - Application March 2, 2004 - under Z.R. §73-36 to permit the legalization of a change in occupancy from a "factory and storage" building, to a physical culture establishment, located in an M1-1 zoning district.

PREMISES AFFECTED - 69-91 75th Street, a/k/a 75-13 71st Avenue, northeast corner, Block 3794, Lot 77, Borough of Queens.

### COMMUNITY BOARD #5Q

#### APPEARANCES -

For Applicant: Adam W. Rothkrug.

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

#### THE VOTE TO GRANT -

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

Negative:.....0

Absent: Commissioner Miele and Commissioner Chin.....2

#### THE RESOLUTION:

WHEREAS, the decision of the Borough Commissioner dated February 3, 2004, acting on Department of Buildings Application

condition;

THAT all landscaping and fencing as shown on the BSA-approved plans shall be installed and maintained;

THAT all fencing adjacent to residential uses shall be 100 percent opaque; the remaining screening shall be 50 percent opaque;

THAT all lighting at the site shall be directed down and away from adjacent residential uses;

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 noted in the Certificate of Occupancy;

THAT one existing curb cut near Cleveland Street shall be removed, and, on Linden Boulevard, one existing curb cut shall be relocated and shortened, as shown on BSA-approved plans;

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

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

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

No. 401719556, reads;

"Proposed Physical Culture Establishment, in an M1-1 District requires a special permit from the Board of Standards and Appeals (Section 73-36 ZR)"; and

WHEREAS, a public hearing was held on this application on October 5, 2004 after due notice by publication in The City Record, and then to October 26, 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 5, Queens, recommends approval of this application; and

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

WHEREAS, this is an application under Z.R. §§ 73-36 and 73-03, to permit the legalization of an existing physical culture establishment ("PCE") use in a building which is located within a M1-1 zoning district, contrary to Z.R. § 32-10; and

WHEREAS, the subject premises is improved upon with a one-story building designed and previously used for manufacturing purposes and is located on the northeast corner of 75th Street and 71st Avenue; and

WHEREAS, the applicant represents that the PCE occupies the entire building and has a total area of 12,176 square feet; and

WHEREAS the applicant represents that the proposed PCE will include full men's and women's locker rooms, a juice bar, café, and retail area, as well as a variety of strength and fitness equipment, an aerobic room and a children's playroom; and

WHEREAS, the PCE is located within an M1-1 manufacturing district directly south of Long Island Railroad tracks, and a majority of the surrounding area is used by existing manufacturing and automobile related uses; and

WHEREAS, therefore, the Board finds that this action will not

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# MINUTES

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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 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 an Unlisted action pursuant to 6NYCRR, Part 617; and

Therefore it is Resolved that the Board of Standards and Appeals issues Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6NYCRR Part 617 and the Rules of Procedures for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under Z.R. §§ 73-36 and 73-03 and permits the legalization of an existing PCE use in a building which is located within an M1-1 zoning district, contrary to Z.R. § 32-10; on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received April 28, 2004"-(2) sheets and "Received October 14, 2004" -(1) sheet; and on further condition;

THAT this Special Permit shall be limited to a term of ten years from June 1, 2003, expiring June 1, 2013;

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

THAT the hours of operation shall be limited to: Monday through Friday 5:00 AM to 12:00 AM, Saturday and Sunday 7:00AM to 10:00PM;

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

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the 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, October 26, 2004.

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-137Q, dated March 2, 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 ; Archaeological 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.

## 158-04-BZ

APPLICANT - Sheldon Lobel, P.C., for Albert Cohen, owner.

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

PREMISES AFFECTED - 1035 Ocean Parkway, between Avenues "I" and "K", Block 6527, Lot 76, Borough of Brooklyn.

## COMMUNITY BOARD #12BK

APPEARANCES -

For Applicant: Irving Minkin.

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

**THE VOTE TO GRANT** -

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

Negative:.....0

Absent: Commissioner Miele and Commissioner Chin.....2

**THE RESOLUTION:**

WHEREAS, the decision of the Borough Commissioner, dated March 23, 2004, acting on Department of Buildings Application No. 301817256, reads, in pertinent part:

"1. Proposed horizontal enlargement of building with existing non-complying side yards in an R5 zoning district increases the degree of non-compliance contrary to section 23-48 and 54-31, Zoning Resolution."; and

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 21, 2004 and then to decision on October 26, 2004; and

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

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# MINUTES

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WHEREAS, Community Board No. 12, Brooklyn, recommended approval of this application; and

WHEREAS, this is an application under Z.R. § 72-21, to permit the proposed enlargement of a one-family dwelling located in an R5 (OP) Special Zoning District, which does not comply with the zoning requirements for side yards, contrary to Z.R. §§ 23-48 and 54-31; and

WHEREAS, the record indicates that the subject site is an interior zoning lot, with a frontage of 23'-6" on the eastern side of Ocean Parkway between Avenues J and K, a depth of 150'-0", and a total lot area of 3535 sq. ft.; and

WHEREAS, the record indicates that the subject premises is currently improved upon with a two and a half-story, one-family dwelling, with existing non-complying side yards of 1'-3 1/4" and 4'-1 1/2"; and

WHEREAS, the subject application seeks an enlargement at

WHEREAS, the applicant states that the maps shows that almost all of the lots in the radius are wider than the subject lot: of the approximately 75 residential buildings surveyed, only one is located on a lot as narrow as the subject site; and

WHEREAS, the Board notes that the majority of the lots are 40 feet in width, and only five lots are less than 30 feet; and

WHEREAS, the applicant concludes that the subject lot is uniquely afflicted due to its atypical narrowness; and

WHEREAS, the applicant states that while the existing building is 18 feet wide, a complying enlargement at the rear would only be permitted to be 13 feet wide; and

WHEREAS, the Board finds that the aforementioned unique physical condition creates practical difficulties in developing the site in strict compliance with the applicable zoning provisions; and

WHEREAS, no financial feasibility study is required for this single-family dwelling development proposal; and

WHEREAS, however, the Board finds that because of the hardship inherent to the lot, strict compliance with the applicable zoning provisions would result in a residential enlargement that would not be habitable, which necessitates the requested waivers; and

WHEREAS, the record indicates that the bulk of the subject proposal is consistent with the surrounding residential buildings; and

WHEREAS, at the request of the Board, the applicant reduced the proposed depth of the enlargement in order to retain a complying 30 foot rear yard; and

WHEREAS, the adjacent neighbor, who shares a driveway easement with the owner of the subject property, appeared in opposition to the subject application, and submitted a letter dated October 18, 2004, which, among other things, claimed that the proposed enlargement would impact his ability to access his garage; and

WHEREAS, the applicant, in a letter dated October 21, 2004, stated that the neighbor's access would, in fact, not be impacted at all; and

WHEREAS, the Board has reviewed the plans submitted with the instant application and concludes that the applicant is correct in stating that the neighbor's access would not be impacted; 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

the rear of the house, which will increase the degree of non-compliance with respect to the side yards; and

WHEREAS, the applicant states that the following is a unique physical condition, which creates practical difficulties in developing the subject lot in compliance with underlying district regulations: the site is uniquely narrow, with a width of only 23'-6"; and

WHEREAS, the applicant represents that the subject lot meets the definition of an Existing Narrow Zoning Lot under Z.R. § 23-48, and that, pursuant to Z.R. § 23-32, a one-family dwelling would not be able to be constructed on a zoning lot with a width of less than 40 feet or with a lot area of less than 3,800 sq. ft.; and

WHEREAS, at the request of the Board, the applicant has provided copies of Sanborn Maps detailing the lots in a 400' radius of the subject lot, in order to establish that the subject lot's physical condition is not so prevailing in the area that the lot could not be considered uniquely afflicted; and 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.

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 enlargement of a one-family dwelling located in an R5 zoning district, which does not comply with the zoning requirements for side yards, contrary to Z.R. §§ 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 marked "Received October 12, 2004" - (6) sheets and on further condition;

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

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the 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, October 26, 2004.

## 166-04-BZ

APPLICANT - Sheldon Lobel, P.C., for Rhonda Schwerd, owner.  
SUBJECT - Application April 22, 2004 - under Z.R. §73-622 to permit the proposed enlargement of an existing one family dwelling, Use Group 1, located in an R3-2 zoning district, which does not comply with the zoning requirements for floor area, lot coverage, side yard, rear yard and perimeter wall height, is contrary to

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# MINUTES

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Z.R. §23-141, §23-461A, §23-47 and §23-631.

PREMISES AFFECTED - 1765 East 23rd Street, east side, between Quentin Road and Avenue "R", Block 6806, Lot 6, Borough of Brooklyn.

## COMMUNITY BOARD #15

APPEARANCES -

For Applicant: Richard Lobel.

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

**THE VOTE TO GRANT** -

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

(2) Causes an increase in the lot coverage exceeding the allowable lot coverage allowed by section 23-141 of the Zoning Resolution;

(3) Proposed side yard is contrary to ZR 23-461a of the Zoning Resolution;

(4) Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than the 30'-0" that is required of the Zoning Resolution;

(5) Proposed perimeter wall height is contrary to ZR 23-631 of the Zoning Resolution.; and

WHEREAS a public hearing was held on this application on October 5, 2004 after due notice by publication in The City Record, and then to October 26, 2004 for decision; 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. § 73-622 to permit the proposed enlargement of an existing single family residence (Use Group 1), located in an R3-2 zoning district, which does not comply with the zoning requirements for floor area, lot coverage, side yard, rear yards and perimeter wall height, contrary to Z.R. §§ 23-141, 23-461(a), 23-47 and 23-631; and

WHEREAS, the subject lot is located on the east side of East 23rd Street, Brooklyn, between Quentin Road and Avenue R, and has a total lot area of approximately 4,000 sq. ft.; and

WHEREAS, the applicant states that the subject premises is improved upon with an existing two-story residential structure, with a cellar and attic; and

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

WHEREAS, the applicant seeks a proposed floor area ratio of 0.93 (the maximum floor area ratio permitted by the Z.R. is 0.5); floor area of 3,726 sq. ft. (the maximum floor area permitted is 2000 sq. ft.); lot coverage of 1,676 sq. ft. (the maximum floor area permitted is 1,400 sq. ft.); a perimeter wall height of 22'-0" (the maximum perimeter wall height permitted is 21'-0"); a minimum total side yard of 3'-4" (the minimum total side yard permitted is 13'-0"); a front yard of 10'-2" (the minimum front yard permitted is 15'-0"); and a rear yard of 20' (the minimum rear yard permitted is 30'); 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 enlargement within the side yards is limited to an enlargement within an existing non-complying side yard, and no decrease in the minimum width of open area between the building and the side lot line results; and

Negative:.....0  
Absent: Commissioner Miele and Commissioner Chin.....2  
THE RESOLUTION:

WHEREAS, the decision of the Borough Commissioner, dated July 28, 2004, acting on Department of Buildings Application No. 301686067, reads, in pertinent part:

"The proposed enlargement of the existing one family residence in an R3-2 zoning district:

(1) Causes an increase in the floor area exceeding the allowable floor area ratio and is contrary to the allowable floor area ratio allowed by section 23-141 of the Zoning Resolution;

WHEREAS, the applicant has submitted sufficient proof that the increased height of the perimeter wall of the subject building post-enlargement is equal to or less than the height of the adjacent building's non-complying perimeter wall facing the street; 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 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 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 an existing single family residence (Use Group 1), located in an R3-2 zoning district, which does not comply with the zoning requirements for floor area, lot coverage, side yard, rear yards and perimeter wall height, contrary to Z.R. §§23-141, 23-461(a), 23-47 and 23-631; 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 April 22, 2004"-(7) sheets; marked "Received August 13, 2004"-(1) sheet; and marked "Received October 12, 2004"-(1) sheet; and on further condition;

THAT there shall be no habitable room in the cellar;

THAT the above conditions 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 the Department of Buildings shall review and confirm the total proposed floor area, including any floor area in the attic;

THAT the proposed shed in the rear yard will be approved by the DOB; the Board is not granting an approval of such shed;

THAT all rooms to be occupied must comply with all legal requirements as to habitability, as determined by the Department of Buildings;

THAT this approval is limited to the relief granted by the Board

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# MINUTES

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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 **183-04-BZ**

APPLICANT - Sheldon Lobel, P.C., for Dynasty 23rd Street Realty, Inc., owner; MOA, lessee.

SUBJECT - Application April 30, 2004 - under Z.R. §73-36 to permit the proposed physical culture establishment on the second floor of a five story commercial building, located in a C6-3X zoning district, which requires a special permit as per Z.R. §32-10.

PREMISES AFFECTED - 206 West 23rd Street, south side, between Seventh and Eighth Avenues, Block 772, Lot 52, Borough of Manhattan.

## COMMUNITY BOARD #4M

APPEARANCES -

For Applicant: Richard Lobel.

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

**THE VOTE TO GRANT** -

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

Negative:.....0

Absent: Commissioner Miele and Commissioner Chin.....2

**THE RESOLUTION:**

WHEREAS, the decision of the Borough Commissioner, dated April 22, 2004, acting on Department of Buildings Application No. 103536023, reads:

"Proposed Physical Culture Establishment is not permitted as of right in a C6-3X district as per 32-10 of the Z.R."; and

WHEREAS, a public hearing was held on this application on October 5, 2004 after due notice by publication in The City Record, and then to decision on October 26, 2004; and

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

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

WHEREAS, this is an application under Z.R. §§ 73-36 and 73-03, to permit a proposed physical culture establishment ("PCE") use on the second floor of a building which is located within a C6-3X zoning district, contrary to Z.R. § 32-10; and

WHEREAS, the subject building is located on the south side of West 23rd Street between Seventh and Eighth Avenues; and

WHEREAS, the applicant represents that the proposed PCE has a total area of 1,880 square feet; and

WHEREAS the applicant represents that the proposed PCE will include the following services: massage, manicure, pedicure, waxing and a hair salon; and

WHEREAS, the applicant further states the PCE will contain a reception area, three rooms for massage performed by New York

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

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, October 26, 2004.

State licensed masseurs or masseuse, a nail and hair salon, a waxing room, a shower room, an employee break room, an office, laundry facilities for use of the PCE only and a coat room; and

WHEREAS, the applicant represents that the subject premises is occupied by a restaurant on the first floor and offices on floors three through five, and that such uses are compatible with the PCE; 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 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 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-188M, dated August 18, 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; Archaeological Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

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

and 6 NYCRR Part 617.4 and §6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977 , as amended and makes each and every one of the

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# MINUTES

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required findings under Z.R. §§ 73-36 and 73-03, to permit a proposed physical culture establishment use on the second floor of a building which is located within a C6-3X zoning district, contrary to Z.R. § 32-10; on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received October 7, 2004"- (3) sheets; and on further condition;

THAT this Special Permit shall be limited to a term of ten years from October 26, 2004, expiring on October 26, 2014;

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

THAT the applicant must submit massage licenses for the Boards review and approval prior to the issuance of a temporary or permanent Certificate of Occupancy;

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

THAT the hours of operation shall be limited to: Monday through Friday 10:00 AM to 10:00 PM;

THAT sound attenuation measures shall be installed and maintained as reflected on the BSA-approved plans;

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

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

THAT all open violations affecting the subject space will be removed prior to DOB's issuance of a temporary Certificate of Occupancy;

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

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

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

Adopted by the Board of Standards and Appeals, October 26, 2004.

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## 191-04-BZ

APPLICANT - Eric Palatnik, P.C., for Jeffrey Knobel, owner.

SUBJECT - Application May 7, 2004 - under Z.R. §73-622 to permit the proposed enlargement of an existing single family residence, Use Group 2, located in R5 zoning district, which does not comply with the zoning requirements for floor area, open space

WHEREAS, the enlargement within the side yards is limited to an enlargement within an existing non-complying side yard, and no decrease in the minimum width of open area between the building and the side lot line results; and

WHEREAS, the Board finds that the proposed enlargement

and rear yard, is contrary to Z.R. §23-141(a) and §23-47.

PREMISES AFFECTED - 1376 East 24th Street, between Avenues "N and "M", Block 7659, Lot 79, Borough of Brooklyn.

## COMMUNITY BOARD #14

APPEARANCES -

For Applicant: Eric Palatnik.

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

**THE VOTE TO GRANT** -

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

Negative:.....0

Absent: Commissioner Miele and Commissioner Chin.....2

**THE RESOLUTION:**

WHEREAS, the decision of the Borough Commissioner, dated September 14, 2004, acting on Department of Buildings Application No. 301797893, reads:

"Proposed enlargement to existing home is contrary to ZR sections 23-141(a) (Floor Area), 23-131(a) (open space), 23-47 (rear yard), and 23-46 (side yards) and therefore requires a special permit pursuant to ZR section 73-622."; and

WHEREAS a public hearing was held on this application on October 5, 2004 after due notice by publication in The City Record, and then to October 26, 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 and 73-03 to permit the proposed enlargement of an existing single family residence (Use Group 1), located in an R5 zoning district, which does not comply with the zoning requirements for floor area, open space, side yard and rear yards, contrary to Z.R. §§ 23-141(a), 23-131(a), 23-46, and 23-47; and

WHEREAS, the subject lot is located on East 24th Street between Avenues M and N, and has a total lot area of approximately 4,000 sq. ft.; and

WHEREAS, the applicant states that the subject lot is improved upon with an existing two-story residential structure; and

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

WHEREAS, the applicant seeks to increase the floor area ratio ("FAR") from 0.623 to 0.953 (the maximum FAR permitted by the ZR is 0.5); increase the total floor area from 2490.73 to 3,814.18 sq. ft. (the maximum floor area permitted is 2000 sq. ft.); reduce the open space from 2859.85 to 2,414.39 sq. ft. (the minimum open space permitted is 3,000 sq. ft.); and legalize both an existing side yard of 3'10 \_" (the minimum side yard permitted is 5') and a rear yard of 20' (the minimum rear yard permitted is 30'); and

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

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

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# MINUTES

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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 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 an existing single family residence (Use Group 1), located in an R5 zoning district, which does not comply with the zoning requirements for floor area, open space, side yard and rear yards, contrary to Z.R. §§ 23-141(a), 23-131(a), 23-46, 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 marked "Received October 12, 2004" - (8) sheets; and on further condition;

THAT there shall be no habitable room in the cellar;

THAT the above conditions 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 the Department of Buildings shall review and confirm the total proposed floor area, including any floor area in the attic;

THAT the proposed shed in the rear yard will be approved by the DOB; the Board is not granting an approval of such shed;

THAT all rooms to be occupied must comply with all legal requirements as to habitability, as determined 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, October 26, 2004.

WHEREAS, this is an application for a under Z.R. §§ 73-50 and 73-03, to permit on a lot divided by M1-1 and R6/C2-3 district boundaries, the proposed construction of one-story warehouse building, which will encroach within the 30' open area required along district boundaries coincident with rear lot lines of two adjoining zoning lots, contrary to Z.R. § 42-302; and

WHEREAS, the subject site is a 70,000 square foot "L" shaped site, situated primarily on the northern half of the block

## 284-04-BZ

APPLICANT - Raymond Levin, Wachtel & Masyr, LLP, for ERMA Realty LLC, owner.

SUBJECT - Application August 11, 2004 - under Z.R. §§73-03 and 73-50 to permit the proposed construction of a one story warehouse building, located in an M1-1 and R6/C2-3C zoning district, that will encroach within the 30-foot open area along district boundaries coincident with rear lot lines of two adjoining zoning lots, is contrary to Z.R.§43-302.

PREMISES AFFECTED - 2064/2128 Atlantic Avenue and 268/80 Saratoga Avenue, between Howard and Saratoga Avenues, Block 1432, Lots 5-19, 22,25, 28, 30-33 and 35, Borough of Brooklyn.

### COMMUNITY BOARD #16

APPEARANCES -None.

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

#### THE VOTE TO REOPEN HEARING -

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

Negative:.....0

Absent: Commissioner Miele and Commissioner Chin.....2

#### THE VOTE TO CLOSE HEARING -

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

Negative:.....0

Absent: Commissioner Miele and Commissioner Chin.....2

#### THE VOTE TO GRANT -

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

Negative:.....0

Absent: Commissioner Miele and Commissioner Chin.....2

#### THE RESOLUTION:

WHEREAS, the decision of the Borough Commissioner, dated August 6, 2004, acting on Department of Buildings Application No. 301781409 reads:

"The proposed building to be located within the M1-1 zoning district is contrary to section 43-302 of the Zoning Resolution. Section 43-302 requires that an open area not higher than the curb level and at least 30 feet in depth be provided along the rear lot line of the zoning lot in an adjoining residential district."; and

WHEREAS a public hearing was held on this application on October 5, 2004 after due notice by publication in The City Record, and then to October 26, 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 16, Brooklyn recommended approval of this application; and

bounded by Atlantic Avenue, Howard Avenue, Pacific Street, and Saratoga Avenue, and is currently comprised of 23 tax lots; and

WHEREAS, the proposed development will contain two buildings: a two-story and cellar retail/office structure with approximately 14,162 square feet per floor, to be located along Saratoga Avenue between Atlantic Avenue and Pacific Street, which will be developed as-of right; and a one-story warehouse structure with approximately 32,000 sq. ft. of floor area, which will occupy

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# MINUTES

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the required 30' open area adjacent to the residential district boundary, and which is the subject of this application; and

WHEREAS, the subject block is divided along its long dimension by a district boundary with an M1-1 zoning district along Atlantic Avenue, and an R6 zoning district along Pacific Street; a C2-3 overlay district is mapped in the R6 district along the Saratoga Avenue frontage; and

WHEREAS, the applicant notes that the entire block, formerly designated an R6 zoning district, was remapped on May 12, 2004 by the City Planning Commission, at the request of the Economic Development Corporation, to permit the use of the property by the applicant; and

WHEREAS, although the proposed warehouse use is permitted as-of-right in the rezoned M1-1 zoning district, Z.R. § 42-302 requires that an open area not higher than curb level and at least 30 feet in depth be provided on a zoning lot within a manufacturing district that abuts a residential district; this open area may not be used for storage or processing of any kind; and

WHEREAS, under Z.R. § 73-50, the Board may grant a waiver of rear yard requirements set forth in Z.R. § 42-30 in appropriate cases; and

WHEREAS, the applicant represents that the subject special permit is necessary to ensure the viability of the project, meet the space requirements for expansion of operations, and provide the minimum floor space necessary to effectively conduct the proposed contracting operations; and

WHEREAS, the applicant asserts that strict compliance with Z.R. § 42-302 could create a disadvantage for the adjacent residential properties in that the required open area could be used by trucks entering and leaving a complying warehouse, creating noise and particulates; and

WHEREAS, the applicant further contends that enclosing the open area internalizes any adverse consequence of the business operations and insulates the existing residential use from the permitted manufacturing use; and

WHEREAS, the applicant notes that the warehouse structure is lower than the 23 feet height above curb level allowed in the rear yard for a permitted obstruction set forth in Z.R. § 43-23, and as a result of the variation in elevation of the site from Atlantic Avenue to Pacific Street, the height of the warehouse building along the rear lot line will be a maximum height of 16 feet descending to 12 feet; and

WHEREAS, the applicant states that the adjoining residential

THAT all lighting be directed down and away from residential uses;

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

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

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

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

properties will be effectively screened from the proposed development by the rear wall of the warehouse building and to the east of the warehouse by a retaining wall extending eight feet above the rear yard level of the residential zoning lots; and

WHEREAS, the applicant has proposed offsite improvement of the physical condition of the rear yards of adjacent residential properties with landscaping and proper grading, thereby providing the homeowners with an opportunity to enhance their property in concert with the applicant's adjoining development; and

WHEREAS, the Board finds that the rear yard waiver will not have an adverse affect on the surrounding area; and

WHEREAS, therefore the Board has determined that the application meets the requirements of Z.R. § 73-03(a) in that the disadvantages to the community at large are outweighed by the advantages derived from such special permit; and that the adverse effect, if any, will be minimized by appropriate conditions; and

WHEREAS, the proposed project will not interfere with any pending public improvement project and therefore satisfies the requirements of Z.R. §73-03(b); and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the findings required to be made under Z.R. §§73-50 and 73-03.

Therefore it is Resolved that the Board of Standards and Appeals adopts the Negative Declaration issued by the City of New York on December 8, 2003 for CEQR No. 03DME017K and makes the required findings to grant a special permit pursuant to Z.R. §§ 73-50 and 73-03, to permit on a lot divided by M1-1 and R6/C2-3 district boundaries, the proposed construction of one-story warehouse building, which will encroach within the 30' open area required along district boundaries coincident with rear lot lines of two adjoining zoning lots, contrary to Z.R. § 42-302, on condition that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked "Received October 25, 2004" - (3) sheets and on further condition;

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

THAT there shall be no mechanical equipment located within the 30 foot encroachment area;

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

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

Adopted by the Board of Standards and Appeals, October 26, 2004.

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## 153-04-BZ

APPLICANT - Rothkrug Rothkrug Weinberg & Spector, LLP, for Peter Moschovitis, owner.

SUBJECT - Application April 9, 2004 - under Z.R. §72-21 to permit

the proposed two family dwelling, Use Group 2, located in an R3-2 zoning district, which does not comply with the zoning requirements for front yard, lot width, lot area and minimum dwelling size units, in a detached residence, is contrary to Z.R. §23-222, §23-45 and §23-32.

PREMISES AFFECTED - 2948 Voorhies Avenue, a/k/a 2710

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# MINUTES

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Haring Street, southwest corner, Block 8794, Lot 10, Borough of Brooklyn.

**COMMUNITY BOARD #15**

APPEARANCES -

For Applicant: Adam Rothkrug.

For Opposition: Dennis Lombardi.

**ACTION OF THE BOARD** - Laid over to December 7, 2004, at 1:30 P.M., for continued hearing.

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**168-04-BZ**

APPLICANT - Jay A. Segal, Esq., Greenberg Traurig LLP, for 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 #1**

APPEARANCES -

For Applicant: Jay Segal and Jack Freeman.

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

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**194-03-BZ**

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**

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 -

For Applicant: Lewis Garfinkel.

THE VOTE TO CLOSE HEARING -

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

Negative:.....0

Absent: Commissioner Miele and Commissioner Chin.....2

**ACTION OF THE BOARD** - Laid over to November 16, 2004, at 1:30 P.M., for decision, hearing closed.

APPEARANCES -

For Applicant: Richard Lobel.

THE VOTE TO CLOSE HEARING -

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

Negative:.....0

Absent: Commissioner Miele and Commissioner Chin.....2

**ACTION OF THE BOARD** - Laid over to December 7, 2004, at 1:30 P.M., for decision, hearing closed.

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**200-04-BZ**

APPLICANT - David Vandor, for Mr. Frank Renna, President of D'Aprile Development and Leasing, owner.

SUBJECT - Application May 12, 2004 - under Z.R. §72-20 to permit the proposed construction of a nine story residential and community facility building, Use Groups 2 and 4, on a narrow vacant lot, encumbered by a massive rock outcropping, in an R8 zoning district, which does not comply with the zoning requirements for height and setback, is contrary to Z.R. §23-692 and §23-62.

PREMISES AFFECTED - 703 West 171st Street, Fort Washington Avenue on the east and Haven Avenue on the west, Block 2139, Lot 199, Borough of Manhattan.

**COMMUNITY BOARD #12**

APPEARANCES -

For Applicant: David Vandor.

THE VOTE TO CLOSE HEARING -

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

Negative:.....0

Absent: Commissioner Miele and Commissioner Chin.....2

**ACTION OF THE BOARD** - Laid over to November 23, 2004, at 1:30 P.M., for decision, hearing closed.

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**228-04-BZ**

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

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**258-03-BZ**

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

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

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

**COMMUNITY BOARD #1BK**

APPEARANCES -

For Applicant: Chris Wright.

THE VOTE TO CLOSE HEARING -

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# MINUTES

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Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Caliendo.....3  
Negative:.....0  
Absent: Commissioner Miele and Commissioner Chin.....2  
**ACTION OF THE BOARD** - Laid over to December 14, 2004, at 1:30 P.M., for decision, hearing closed.

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### 364-03-BZ

APPLICANT - Rothkrug Rothkrug Weinberg & Spector, for Alprof Realty LLC/VFP Realty LLC, owners.  
SUBJECT - Application November 24, 2003 - under Z.R. §72-21 to permit the proposed construction of an automotive car wash and Lubritorium, Use Group 2, located in a C2-2(R6) zoning district, which is contrary to Z.R. §32-00.

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

### COMMUNITY BOARD #14Q

APPEARANCES -

For Applicant: Adam W. Rothkrug.  
For Opposition: Marlen Waaijer, Cecilia Chapman, Kennard Gopaul and Heather Perkins.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Caliendo.....3  
Negative:.....0  
Absent: Commissioner Miele and Commissioner Chin.....2

**ACTION OF THE BOARD** - Laid over to December 7, 2004, at 1:30 P.M., for decision, hearing closed.

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### 134-04-BZ

APPLICANT - Fischbein Badillo Wagner Harding, for 184 Kent Avenue Associates, owner.

SUBJECT - Application March 19, 2004 - under Z.R. §§72-22 and 1-05(e) to permit the proposed construction of a public esplanade between the building and bulkhead line, also the proposed construction of an additional forty-seven residential units, located in an M3-1 zoning district, is contrary to a previous variance granted under Cal. No. 191-00-BZ.

PREMISES AFFECTED - 184 Kent Avenue, northwest corner of North Third Street, Block 2348, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

APPEARANCES -

For Applicant: Peter Geis.

**ACTION OF THE BOARD** - Laid over to December 7, 2004, at 1:30 P.M., for continued hearing.

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### 147-04-BZ

APPLICANT - Sullivan, Cheser & Gardner, P.C., for Ben Schrank, owner.

SUBJECT - Application April 8, 2004 - under Z.R. §72-21 to permit the proposed conversion of a light manufacturing building, to residential use, Use Group 2, located in an M1-2 zoning district, is

contrary to Z.R. §42-10.

PREMISES AFFECTED - 459 Carroll Street, 175' west of the corner of Carroll Street and Third Avenue, Block 447, Lot 46, Borough of Brooklyn.

### COMMUNITY BOARD #6

APPEARANCES -

For Applicant: Jeffrey Chester.

THE VOTE TO CLOSE HEARING -

Affirmative: Chair Srinivasan, Vice-Chair Babbar and Commissioner Caliendo.....3  
Negative:.....0  
Absent: Commissioner Miele and Commissioner Chin.....2

**ACTION OF THE BOARD** - Laid over to November 23, 2004, at 1:30 P.M., for decision, hearing closed.

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*Pasquale Pacifico, Executive Director.*

Adjourned: 4:45 P.M.

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# MINUTES

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