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# BULLETIN

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

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Volume 89, Nos. 49-50

December 16, 2004

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### DIRECTORY

**MEENAKSHI SRINIVASAN**, *Chair*

**SATISH BABBAR**, *Vice-Chair*

**PETER CALIENDO**

**JOEL A. MIELE, SR.**

**JAMES CHIN**

*Commissioners*

**Pasquale Pacifico**, *Executive Director*

**Roy Starrin**, *Deputy Director*

**John E. Reisinger**, *Counsel*

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# DOCKETS

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New Case Filed Up to December 7, 2004

**365-04-A** B.Q. 85-04 56TH Avenue, south side, 44.16' east of Long Island Railroad right-of-way, Block 2881, Tentative Lot 9, Borough of Queens. Applic.#401971906. Proposed construction, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

**366-04-A** B.Q. 85-02 56TH Avenue, south side, , east of and adjacent to Long Island Railroad right-of-way, Block 2881, Tentative Lot 54, Borough of Queens. Applic.#401992929. Proposed construction, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

**367-04-A** B.Q. 85-01 57TH Avenue, north side, east of and adjacent to Long Island Railroad right-of-way, Block 2881, Tentative Lot 53, Borough of Queens. Applic.#401970523. Proposed construction, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

**368-04-A** B.Q. 85-03 57TH Avenue, north side, 10.62' east of Long Island Railroad right-of-way, Block 2881, Tentative Lot 52, Borough of Queens. Applic.#401970532. Proposed construction, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

**369-04-A** B.Q. 85-03A 57TH Avenue, north side, 30.62' east of Long Island Railroad right-of-way, Block 2881, Tentative Lot 51, Borough of Queens. Applic.#401970523. Proposed construction, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

**370-04-A** B.Q. 1511 Egmont Place, north side, 705.9' east of Mott Avenue, Block 15685. Lot 48, Borough of Queens. Applic.#402010051. Proposed construction of a two story, one family dwelling, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

**371-04-BZ** B.BK. 1271 East 28th Street, between

Avenues "L and M", Block 7646, Lot 16, Borough of Brooklyn. Applic.#301858274. Proposed enlargement of an existing single family residence, located in an R5 zoning district, which does not comply with the zoning requirements for floor area ratio, open space ratio, side and rear yards, is contrary to Z.R. §23-141(a), §23-46 and §23-47.

**COMMUNITY BOARD #14BK**

**372-04-BZ** B.S.I. 8 Lawn Avenue, corner of Nugent Street, Block 2249, Lot 1, Borough of Staten Island. Applic.#500736386. Proposed construction of a single family dwelling on a lot with less than the required lot width, and which was not owned separately and individually from all other adjoining tracts of land on December 1, 1961, also a minor modification to the side yard requirement, is contrary to Z.R. §23-32 and §23-461.

**COMMUNITY BOARD #2SI**

**373-04-BZ** B.Q. 57-69 69th Street, north side, 24' west of 60th Avenue, Block 2830, Lot 33, Borough of Queens. Applic.#401843243. Proposed construction of a two family, two story and attic residential dwelling, on a pre-existing undersized lot, that does not comply with the zoning requirements for floor area, open space, density, lot area, front yard and parking requirements, is contrary to Z.R. §23-141, §23-22, §23-32, §23-45 and §25-00.

**COMMUNITY BOARD #5Q**

**374-04-BZ** B.M. 246 Front Street, aka 267 ½ Water Street, through lot fronting on Front and Water Streets, 126. north of the intersection of Peck Slip and Front Street, and 130' north of the intersection of Peck Slip and Water Street, Block 107, Lot 34, Borough of Manhattan. Applic.#103582785. Proposed construction of a seven story residential building, with ground floor commercial space, on a vacant lot located in a C6-2A/SLMD zoning district, which does not comply with the zoning requirements for lot width, rear yard equivalent, rear yard, lot coverage, building height and minimum distance between buildings, is contrary to Z.R. §23-145, §23-32, §23-533, §23-692, §23-711 and §28-32.

**COMMUNITY BOARD #1M**

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# DOCKETS

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**375-04-BZ** B.BK. 1527, 1529 and 1533 60th Street, north side, between 15th and 16th Avenues, Block 5509, Lots 64, 65 and 68, Borough of Brooklyn. Applic.#301866372. Proposed expansion of an existing jewelry manufacturer and wholesaler establishment, located in an M1-1 zoning district, which does not comply with zoning requirements for floor area ratio, rear yard, street wall height and adequate parking, is contrary to Z.R. §43-12, §43-302, §43-43 and §44-21.

**COMMUNITY BOARD #12BK**

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**376-04-A** B.S.I. 238 Billiou Street, south side, 280.00' west of Arbutus Avenue, Block 6559, Lot 133, Borough of Staten Island. Applic.#500497802. Proposed construction of a one 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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**377-04-A** B.S.I. 240 Billiou Street, south side, 295.00' west of Arbutus Avenue, Block 6559, Lot 130, Borough of Staten Island. Applic.#500497811. Proposed construction of a one 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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**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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**JANUARY 25, 2005, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, January 25, 2005, 10:00 A.M., at 40 Rector Street, 6th Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **803-61-BZ**

APPLICANT - Eric Palatnik, P.C., for Philip and Martin Blessinger, owner; BP Products North America, owner.

SUBJECT - Application to reopen and amend the BSA resolution to extend the time to obtain a Certificate of Occupancy. On December 9, 2003 the Board issued a resolution and required that a new Certificate of Occupancy be obtained within Twelve (12) months from the date of the resolution. The period in which to obtain the C of O expires December 9, 2004.

PREMISES - 1416 Hylan Boulevard, corner of Hylan Boulevard and Reid Street, Block 3350, Lot 30, Borough of Staten Island

**COMMUNITY BOARD #2SI**

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### **785-67-BZ**

APPLICANT - Eric Palatnik, P.C., for Park Circle Realty Associates, owner; BP Products North America, lessee.

SUBJECT - Application - September 13, 2004 - to reopen and amend the BSA resolution to extend the time to obtain a Certificate of Occupancy. On December 9, 2003 the Board issued a resolution and required that a new Certificate of Occupancy be obtained within Twelve (12) months from the date of the resolution. The period in which to obtain the C of O expires December 9, 2004.

PREMISES - 577/89 Marcy Avenue, Southeast corner of Marcy Avenue and Myrtle Avenue, Block 1755, Lot 4, Borough of Brooklyn.

**COMMUNITY BOARD #3SI**

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### **300-73-BZ**

APPLICANT - Rothkrug Rothkrug Weinberg and Spector, LLP, for Vito Santoro, owner.

SUBJECT - Application March 2, 2004 - Reopening for an extension of term for a commercial vehicle storage facility and for an amendment to convert a portion of the facility for minor auto repair UG 16, located in an R-5 zoning district.

PREMISES AFFECTED - 101-08 97th Avenue, 97th Avenue, 50' west of 102nd Street, Block 9403, Lot 3, Borough of Queens.

**COMMUNITY BOARD #9Q**

### **369-03-BZ**

APPLICANT - Sheldon Lobel, Esq. for Queens Boulevard Spa Corp. dba Sky Athletic, lessee.

SUBJECT - Application December 2, 2003 - under Z.R. §72-21 to permit part of the cellar and ground level of an existing two story

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## **APPEALS CALENDAR**

### **45-04-A through 49-04-A**

APPLICANT - Willy C. Yuin, R.A., for Gal Sela, owner.

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

PREMISES AFFECTED - 4 Tompkins Place, 125' east of Court Street, Block 522, Lot 20, Borough of Staten Island.

8 Tompkins Place, 125' east of Court Street, Block 522, Lot 18, Borough of Staten Island.

12 Tompkins Place, 125' east of Court Street, Block 522, Lot 17, Borough of Staten Island.

16 Tompkins Place, 125' east of Court Street, Block 522, Lot 16, Borough of Staten Island.

20 Tompkins Place, 125' east of Court Street, Block 522, Lot 15, Borough of Staten Island.

**COMMUNITY BOARD #1S.I.**

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**JANUARY 25, 2005, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, *Tuesday afternoon*, January 25, 2005, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **ZONING CALENDAR**

### **348-03-BZ**

APPLICANT - The Agusta Group, for Sebastiano Manciameli, owner.

SUBJECT - Application November 14, 2003 - under Z.R. §72-21 to permit the proposed construction of a three story, one family semi-detached dwelling, which does not comply with the minimum eight foot side yard, is contrary to Z.R. §23-461(a).

PREMISES AFFECTED - 66-18 74th Street, west side, 169' south of Juniper Valley Road, Block 3058, Lot 35, Borough of Queens.

**COMMUNITY BOARD #5Q**

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building within an R7-1/C1-2 district to be occupied as physical cultural establishment.

PREMISES AFFECTED - 99-01/23 Queens Boulevard, between 66th Road and 67th Avenue, Block 2118, Lot 1, Borough of Queens.

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# CALENDAR

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## COMMUNITY BOARD #6Q

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### 6-04-BZ

APPLICANT - Sheldon Lobel, Esq. for TSI Bay Ridge, Inc. dba New York Sports Club, lessee.

SUBJECT - Application January 7, 2004 - under Z.R. §72-21 to legalize an existing physical cultural establishment in a three story building within a R-6/C1-3/R-6 zoning district .

PREMISES AFFECTED - 7118-7124 Third Avenue, between 71st street and 72nd Street, Block 5890, Lot 43 ,Borough of Brooklyn.

### COMMUNITY BOARD #10BK

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### 20-04-BZ

APPLICANT - Eric Palatnik, P.C., for Marcia Dachs, owner.

SUBJECT - Application February 9, 2004 - under Z.R. §72-21 to permit the proposed construction of a single family dwelling, Use Group 2, located in an R5 zoning district, which does not comply with the zoning requirements for side yards, floor area ratio, open space ratio and open space, is contrary to Z.R. §23-141(a), §23-45 and §23-461.

PREMISES AFFECTED - 5723 17th Avenue, corner of 58th Street, Block 5498, Lot 1, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

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### 225-04-BZ

APPLICANT - Jay A. Segal, Esq., for 201 Berry Street, LLC, c/o Martin Edward, Management, owner.

SUBJECT - Application September 28, 2004 - under Z.R. §72-21 to permit the construction of three four-story residential buildings in an M1-2 zoning district contrary to Z.R. §42-10.

PREMISES AFFECTED - 201 Berry Street (a/k/a 121-157 North 3rd Street; 248-252 Bedford Avenue; 191-205 Berry Street), North 3rd Street from Bedford Avenue to Berry Street (northern part of block bounded by North 4th Street), Block 2351, Los 1, 28 and 40, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

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### 252-04-BZ

APPLICANT - Jay A. Segal, Esq., Greenberg Traurig, LLP, for MKD Group, LLC, owner.

SUBJECT - Application July 15, 2004 - under Z.R. §72-21 to

**REGULAR MEETING**  
**TUESDAY MORNING, DECEMBER 7, 2004**  
**10:00 A.M.**

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

The minutes of the regular meetings of the Board held on

permit the conversion and enlargement of an existing two-story, vacant industrial building in an M1-2 zoning district contrary to Z.R. §42-10.

PREMISES AFFECTED - 170 North 11th Street. South side of North 11th Street between Bedford Avenue and Driggs Avenue, Block 2298, Lot 9, Borough of Brooklyn.

### COMMUNITY BOARD #1BK

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### 295-04-BZ

APPLICANT - Amato & Associates, P.C., by Alfred L. Amato, for Benevolent and Protective Order of Elks, Staten Island Lodge No. 841, owners.

SUBJECT - Application August 27, 2004 - under Z.R. §§73-30 & 22-21 to permit approval sought from Verizon Wireless to erect a 100 foot monopole in an R3-2 and Special South Richmond Development District. The proposed tower will be located on a portion of a site currently occupied by a community facility. There is also proposed an accessory 360 SF communications shelter. The proposal also requires CPC Special Permit approval pursuant to Section 107-73, which allows the placement of a structure higher than 50 feet in the Special South Richmond Development District.

PREMISES AFFECTED - 3250 Richmond Avenue, corner of Richmond and Wainwright Avenues, Block 5613, Part of Lot 400, Borough of Staten Island.

### COMMUNITY BOARD #3SI

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### 363-04-BZ

APPLICANT - Herrick Feinstein, LLP, for 6002 Fort Hamilton Parkway Partners, owners.

SUBJECT - Application November 18, 2004 - under Z.R. §§72-01(b) & 72-21 to permit in an M1-1 district, approval sought to convert an existing industrial building to residential use. The proposed development will contain 115,244 SF of residential space containing 90 dwelling units, as well as 9,630 SF of retail space. There will be 90 parking spaces. The development is contrary to district use regulations per Section 42-00.

PREMISES AFFECTED - 6002 Fort Hamilton Parkway, a/k/a 949/59 61st Street, a/k/a 940/66 60th Street, south side of 61st Street, east side, of Fort Hamilton Parkway and north side of 60th Street, Block 5715, Lots 21 and 27, Borough of Brooklyn.

### COMMUNITY BOARD #12BK

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*Pasquale Pacifico, Executive Director*

Tuesday morning and afternoon, October 5, 2004, were approved as printed in the Bulletin of October 14, 2004, Volume 89, No. 41.

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### SPECIAL ORDER CALENDAR

### 813-63-BZ

APPLICANT - Howard A. Zipser/Stadtmauer Bailkin, LLP, for

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# MINUTES

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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: Eric Palatnik.

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

**THE VOTE TO GRANT** -

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

Commissioner Chin.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this application is a request for a re-opening and an amendment to the resolution; and

WHEREAS, a public hearing was held on this application on October 26, 2004, after due notice by publication in The City Record, and then to decision on December 7, 2004; and

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

WHEREAS, on January 14, 1964, the Board granted an application under the subject calendar number to permit the use of transient parking for the unused and surplus parking spaces in a multiple dwelling accessory garage, on condition that the transient parking spaces shall not exceed thirty in number, in addition to the number of cars parked by tenants of the building and cars parked on a monthly basis; and

WHEREAS, the term of the variance was extended on January 22, 1980, December 11, 2000 and October 22, 2003 - for periods of ten years; and

WHEREAS, the most recently BSA-approved plans indicated 30 spaces for transient parking, and 24 spaces for monthly parking (including tenants of the building) - for a total of 54 parking spaces; and

WHEREAS, the applicant further states that while the garage has not increased in size since the most recent Board grant, the capacity of the garage has increased; and

WHEREAS, the applicant states that the parking garage has a total area of approximately 19,024 square feet and currently has parking for 125 vehicles; and

WHEREAS, however, the applicant represents that in Adopted by the Board of Standards and Appeals, December 7, 2004.

accordance with Z.R. '25-62, which provides that attended parking facilities must provide a minimum of 200 square feet of unobstructed standing or maneuvering area per space, and with the provision of 10 reservoir spaces, the actual number of parking spaces would only total 87 parking spaces in the subject garage; and

WHEREAS, the applicant has submitted a proposed plan which indicates that the number of tenant parking spaces will be 30; the number of monthly parking spaces will be 40 and the number of daily transient spaces will be 17; and

WHEREAS, therefore the applicant seeks to amend the resolution to reflect the existence of 87 parking spaces, in accordance with Consumer Affairs License No. 0914278.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens and amends the resolution, so that as amended this portion of the resolution shall read: "to permit a modification in the number of total parking spaces from 125 to 87 plus 10 reservoir spaces; on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 22, 2004"- (1) sheet; and on further condition;

THAT the total number of parking spaces, not inclusive of the 10 reservoir spaces, shall be limited to 87 - and that the number of daily transient parking spaces shall be no greater than 30;

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

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

THAT all residential leases shall indicate that the spaces devoted to transient parking can be recaptured by residential tenants on 30 days notice to the owner;

THAT a sign providing the same information about tenant recapture rights be placed in a conspicuous place within the garage;

THAT 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 #103456920)

obtain a certificate of occupancy to permit a one story family residence and for an amendment to the resolution to modify the interior arrangement and also raise the height of the building.

PREMISES AFFECTED - 1253 Oriental Boulevard, northwest corner Norfolk Street, Block 8756, Lot 31, Borough of Brooklyn.

**COMMUNITY BOARD #15BK**

APPEARANCES -

For Applicant: Harold Weinberg.

**THE VOTE TO REOPEN HEARING** -

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

**133-99-BZ**

APPLICANT - Harold Weinberg, P.E., P.C., for Anna Kadar, owner.

SUBJECT - Application February 2, 2004 and June 10, 2004 - reopening for an extension of time to complete construction and

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# MINUTES

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Commissioner Chin.....5  
Negative:.....0  
**THE VOTE TO CLOSE HEARING -**  
Affirmative: Chair Srinivasan, Vice-Chair Babbar,  
Commissioner Caliendo, Commissioner Miele and  
Commissioner Chin.....5  
Negative:.....0  
**ACTION OF THE BOARD -** Laid over to January 11,  
2005, at 10 A.M., for decision, hearing closed.

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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.  
**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**  
**APPEARANCES -**  
For Applicant: Harold Weinberg, P.E..  
**ACTION OF THE BOARD -** Laid over to January 25, 2004,  
at 10 A.M., for continued hearing.

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## 457-56-BZ

**APPLICANT -** Rothkrug Rothkrug Weinberg & Spector, LLP, for  
Beatrice Trachtman, owner.  
**SUBJECT -** Application June 24, 2004 - request for a waiver of the  
Rules of Practice and Procedure and reopening for an extension of  
term of variance which expired February 13, 2004 to permit  
accessory parking of motor vehicles, customer parking, loading and  
unloading in conjunction with adjacent factory building, located in an  
R6 zoning district.  
**PREMISES AFFECTED -** 152/4 India Street, south side of India  
Street 150' east of Manhattan Avenue, Block 2541, Lots 12 & 13,  
Borough of Brooklyn.  
**COMMUNITY BOARD #1BK**  
**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**  
**APPEARANCES -**  
For Applicant: Adam W. Rothkrug.  
**ACTION OF THE BOARD -** Laid over to February 15,  
2005, at 10 A.M., for continued hearing.

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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

**APPEARANCES -**  
For Applicant: Adam Rothkrug.  
**THE VOTE TO CLOSE HEARING -**  
Affirmative: Chair Srinivasan, Vice-Chair Babbar,  
Commissioner Caliendo, Commissioner Miele and  
Commissioner Chin.....5  
Negative:.....0  
**ACTION OF THE BOARD -** Laid over to January 11,  
2005, at 10 A.M., for decision, hearing closed.

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## 410-68-BZ

**APPLICANT -** Sheldon Lobel, P.C., for Alessandro Bartellino,  
owner.  
**SUBJECT -** Application June 29, 2004 - reopening for an  
amendment to the resolution to convert a portion of the existing  
automotive service station to a convenience store and permit the  
construction of a new building to contain two automobile service  
repair bays, service attendant area and customer waiting area.  
**PREMISES AFFECTED -** 85-05 Astoria Boulevard, fronting 85th  
Street and 24th Avenue, Block 1097, Lot 1, Borough of Queens.  
**COMMUNITY BOARD #3Q**  
**APPEARANCES -**  
For Applicant: Janice Cahalane and Chris T.  
**THE VOTE TO CLOSE HEARING -**  
Affirmative: Chair Srinivasan, Vice-Chair Babbar,  
Commissioner Caliendo, Commissioner Miele and  
Commissioner Chin.....5  
Negative:.....0  
**ACTION OF THE BOARD -** Laid over to January 11,  
2005, at 10 A.M., for decision, hearing closed.

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## 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.  
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**  
**APPEARANCES -**  
For Applicant: Sol Korman.  
**THE VOTE TO CLOSE HEARING -**  
Affirmative: Chair Srinivasan, Vice-Chair Babbar,  
Commissioner Caliendo, Commissioner Miele and  
Commissioner Chin.....5  
Negative:.....0  
**ACTION OF THE BOARD -** Laid over to January 11,

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# MINUTES

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2005, at 10 A.M., for decision, hearing closed.

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**173-94-BZ**

APPLICANT - Board of Standards and Appeals

OWNER OF PREMISES: Richard Shelala.

SUBJECT - Application reopening for compliance to the resolution.

PREMISES AFFECTED - 165-10 144<sup>th</sup> Road, Block 13271, Lot 17, Borough of Queens.

**COMMUNITY BOARD #13Q**

APPEARANCES -

For Applicant: Adam W. Rothkrug.

**ACTION OF THE BOARD** - Laid over to March 1, 2005, at 10 A.M., for continued hearing.

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**150-00-BZ**

APPLICANT - Eric Palatnik, P.C., for Yeshiva of Far Rockaway, owner.

SUBJECT - Application May 17, 2004 - reopening for an amendment to the resolution for modification of an existing Yeshiva previously approved by the Board.

PREMISES AFFECTED - 802 Hicksville Road, corner of Beach 9<sup>th</sup> Street, Block 15583, Lot 16, Borough of Queens.

**COMMUNITY BOARD #14Q**

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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**243-04-A**

APPLICANT - Sion Misrahi, for Sion Misrahi, President, owner.

SUBJECT - Application June 30, 2004 - An appeal challenging the

As explained in detail in the attached Department letter dated April 29, 2004, at this time there is no basis for the Department to vacate the premises pursuant to AC § 27-203, AC § 26-243(c) or other applicable law.

This letter sets forth a final determination that may be appealed to the Board of Standards and Appeals pursuant to New York City Charter § 666(6)(a)."; and

WHEREAS, the attached Department letter dated April 29, 2004 reads, in relevant part:

"The Department is in receipt of your correspondence dated January 23, 2004, March 23, 2004 and April 16, 2004 on behalf of 11 Essex Street Corporation, the owner of the referenced premises, in which you request that the Department order the premises to be vacated pursuant to New York City Administrative Code ("AC") Section 27-203 thereby allowing the owner to perform repair work allegedly necessary to cure Environmental Control Board ("ECB") Violation No. 34431380R citing AC § 27-127 for a failure to maintain 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: Janice Cahalane.

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

THE VOTE TO GRANT-

Affirmative:.....0

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

THE RESOLUTION:

WHEREAS, the instant appeal comes before the Board in response to a final determination, dated June 4, 2004, issued by the Manhattan Borough Commissioner of the New York City Department of Buildings ("DOB") to counsel of the owner of the subject premises (11 Essex Street Corporation; hereinafter, the "Appellant"), who had requested that DOB issue a vacate order for the building located at the subject premises; and

WHEREAS, a public hearing was held on this appeal on September 14, 2004, after due publication in The City Record, with a continued hearing on October 26, 2004, and then to decision on December 7, 2004; and

WHEREAS, the DOB determination reads, in relevant part: "The Department is in receipt of your correspondence dated January 23, March 23, April 16, and May 19 of 2004 on behalf of 11 Essex Street Corporation, the owner of the referenced premises, in which you request that the Department order the premises to be vacated pursuant to New York City Administrative Code ("AC") Section 27-203 thereby allowing the owner to perform repair work allegedly necessary to cure Environmental Control Board Violation No. 34431380R citing AC § 27-127 for a failure to maintain the premises.

premise. Your letters enclose reports prepared by Anthony C. Szabo, PE, dated October 6, 2003 and March 19, 2004 stating that construction work on an adjacent lot in 2002 undermined the stability of the premises. Mr. Szabo's reports recommend a Department order to vacate.

At this time there is no basis for the Department to vacate the premises pursuant to AC § 27-203, AC § 26-243(c) or other applicable law.

As a preliminary matter, AC § 27-203 does not authorize the Department to grant the relief you seek. AC § 27-203 is among the provisions appearing in Article 20 "Conditions of Permit." This section provides that building operations carried out pursuant to permitted work must comply with safety requirements, including any order that the building be vacated during the progress of the work. AC § 27-203 merely states that permitted work must conform or yield to the terms of a vacate order if a vacate order is issued. AC § 27-203 does not provide the Department with authorization to issue a vacate

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order upon receipt of a claim that a building subject to a Department vacate order will facilitate repairs.

Instead, AC §§ 26-127, 26-243(c) and 26-245 govern the Department's authority to order occupants to vacate a structure.

In accordance with these provisions, the Department may determine that a vacate order is necessary in the event of a failure to comply with a Department order to correct conditions imminently perilous to life or property; or where there exists actual and immediate danger that a structure or part thereof will fall so as to endanger occupants' life or property, or has fallen and occupants are endangered; or as an emergency measure where defective or illegal work endangers life or property.

A review of Department records of inspections of the premises indicates that no Department inspector or Department engineer has observed that the premises is in actual and immediate danger of collapse. Since the year 2002, the following five complaints were received concerning the building's walls and/or structure:

1. Complaint dated February 12, 2002 claims excavation at 7 Essex Street caused the building at 11 Essex Street to sink. On February 13, 2002 a Department inspector observed cracks in the southeast exterior wall of 11 Essex Street; Violation No. 021202C2AP02 issued to 7 Essex Street for failure to safeguard an adjacent property;
  2. Complaint dated February 26, 2002 claims debris is falling from an exterior wall of 11 Essex Street onto the sidewalk. On February 27, 2002 a Department inspector observed no falling debris;
  3. Complaint dated March 26, 2002 claims construction work in the cellar of 11 Essex Street lowered the cellar wall, thereby making the building at 11 Essex Street unstable. As this complaint was the subject of the recent
- You claim your client cannot cure the ECB violation without a concurrent Department order to vacate the building, however, the Department's March 9th inspection, conducted after issuance of the ECB violation, confirmed that the building was not in immediate danger of collapse and that no vacate order was warranted. Moreover, as stated above, the Department has no statutory authority to vacate a building in the absence of immediate danger of collapse or imminent peril to life or property merely for the purpose of advancing the owner's performance of required repairs. Your letter does not state that conditions at the premises have changed since the date of the Department's last inspection, therefore, no new inspection appears to be warranted at this time."; and

WHEREAS, the subject premises is located on Essex Street, Manhattan, between Canal and Hester Streets, and is improved upon with a five-story plus basement multiple dwelling (hereinafter, the "building"), with ground floor retail, which as this time is only partially residentially occupied; and

WHEREAS, Appellant argues that the building is in imminent danger of collapse, due to damage allegedly caused by construction at the adjacent premises (7 Essex Street), and has submitted a report of a privately retained engineer, who states by letter dated October 6, 2003 that "the residents of 11 Essex Street should be immediately evacuated, because the building is unstable and could collapse at any

inspection and issuance of a violation on February 13, 2002, the premises was not re-inspected;

4. Complaint dated July 24, 2002 claims construction site next to 11 Essex Street caused water damage to the basement wall of 11 Essex Street. On July 26, 2002 a Department inspector observed no water in the basement of 11 Essex Street; and
5. Complaint dated February 4, 2004 claims interior cracking of walls at 11 Essex Street. On February 13, 2004 a Department inspector observed minor cracks in interior walls and minor water damage; No further action by the Department was deemed necessary.

In addition to inspections of the premises by Department inspectors in response to complaints, the premises was inspected twice by a Department engineer. On July 29, 2002, a Department engineer examined cracks in the west and southwest ground floor walls of the premises. The Department's engineer determined that the cracks were not large enough to pose a danger to the building's structure. On March 9, 2004 the same Department engineer who had inspected the premises in 2002 observed no conditions presenting an actual and immediate danger of collapse. Accordingly, there was no basis for a vacate order at the time of either inspection.

Five days prior to the engineer's March 9th inspection, the Department issued ECB Violation No. 34431380R at the premises for failure to maintain the exterior building wall. The issuing inspector observed cracks above and below windows and bulging at the first floor window and stone header at the basement in the southeast corner of the rear wall. The respondent has been ordered to correct the violating conditions cited in the ECB violation.

time"; and

WHEREAS, however, DOB responds that no DOB inspector or engineer observed conditions that warranted ordering the removal of occupants pursuant to the standards for such action set forth in Building Code §§ 26-127, 26-243(c) or 26-245; and

WHEREAS, Building Code § 26-127(b) reads, in relevant part: "In case any order to remedy a condition imminently perilous to life or property issued by the commissioner or the department is not complied with, or the commissioner certifies in writing that an emergency exists requiring such action, he or she may order and immediately cause any building, structure, place or premises . . . to be vacated"; and

WHEREAS, Building Code § 26-243(c) reads: "Where, in the opinion of the superintendent, there shall be actual and immediate danger that any structure or part thereof will fall so as to endanger life or property, or where any structure or part thereof has fallen and life is endangered by the occupation thereof, the superintendent is hereby authorized and empowered to order and require the inmates and occupants of such structure or part thereof to vacate the structure forthwith."; and

WHEREAS, Building Code § 26-245 reads: "In case, in the opinion of the superintendent, any defective or illegal work in violation of or not in compliance with any of the provisions or requirements of this subchapter or chapter one of title twenty-seven

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of the code shall endanger life or property, the superintendent, or such person as may be designated by him or her, shall have the right and is hereby authorized and empowered to order all further work to be stopped in and about such structure or premises, and to require all persons in and about such structure or premises forthwith to vacate it, and also to cause such work to be done in and about the structure as in his or her judgment may be necessary to remove any danger therefrom. The reason for such order shall be supplied in writing within one working day after the issuance of the order."; and

WHEREAS, DOB represents that it carefully considers the recommendations of privately retained engineers, but that its determination as to whether to issue a vacate order is properly based upon the expert opinion of its inspectors, engineers and borough commissioners, who are either registered architects or professional engineers, in light of the Building Code provisions set forth above; and

WHEREAS, the Board agrees that the above Building Code provisions clearly give DOB the sole authority to initially determine when it is appropriate to vacate a building, notwithstanding the report of a privately retained engineer; and

WHEREAS, DOB conducted inspections of the building in February and July of 2002, and again in February, March and September of 2004; and

WHEREAS, on July 29, 2004, a DOB engineer determined that the building was in no imminent danger of collapse, that the cracks in the ground floor wall were not large enough to pose a danger to the building and that the retaining wall at 7 Essex Street provided support to the building; and

WHEREAS, on March 9, 2004 and again on September 2,

WHEREAS, however, the Board notes that the owner appears to have delayed repairs that could be made immediately out of a desire to gut renovate the entire building, which may not be required to remedy the existing cracks; and

WHEREAS, the Board suggests that the owner of the subject building file plans for the necessary repairs at DOB; and

WHEREAS, Appellant also argues that a vacate order should have been issued to the premises in connection with two events: first, as a condition of the excavation permit issued to 7 Essex Street when the permitted work allegedly damaged 11 Essex Street; and second, upon issuance of a violation for failure to maintain 11 Essex Street; and

WHEREAS, specifically, Appellant states that DOB wrongfully failed to exercise its authority pursuant to Building Code § 27-203 (Compliance with safety requirements) when it did not compel the developer of 7 Essex Street to "remedy conditions at [11 Essex Street]. conjunctively with the construction of the new building [at 7 Essex Street]."; and

WHEREAS, Building Code § 27-203 provides that permits are subject to the condition that the work will meet safety requirements of the Code, and that the permit is subordinate to any Department order that the building under construction be vacated during the progress of work; and

WHEREAS, DOB observes, and the Board agrees, that Building Code § 27-203, unlike Building Code §§ 26-127, 26-243(c) or 26-245, does not grant authority to issue a vacate order, nor does it set forth any criteria by which to determine that a vacate order is warranted; rather, Building Code § 27-203 merely provides

2004, a DOB engineer concluded that the building was not in imminent danger of collapse and that the building at 7 Essex Street provided lateral support to the premises; and

WHEREAS, a committee of the Board, including Chair Srinivasan (who holds a degree in architecture), Vice-Chair Babbar (a Registered Architect), and Commissioner Miele (a Professional Engineer), conducted its own site visit and examination of the building prior to the first hearing of the instant appeal, and personally inspected essentially all areas of the exterior and interior of the building, including the roof and cellar; and

WHEREAS, in the professional judgment of the Board, which, as noted above, includes a Professional Engineer and a Registered Architect, both of whom have served as Commissioners of DOB and possess considerable experience in evaluating distressed buildings, no vacate of the building is warranted at this time; and

WHEREAS, the Board bases its conclusion upon the following observations: (1) all noted cracks in the building were minor with no significant displacement in any plane; (2) no significant bulging of walls was noted; (3) the building walls and floors were out-of-plumb to some degree as is common with such old buildings, but there is no evidence of recent movement; and (4) no partial collapse of any part of the exposed areas of the chimney was noted; and

WHEREAS, the Board also notes that the building is braced on either side by the adjacent buildings; and

WHEREAS, the Board determined that there was no imminent danger of collapse of the building; and

WHEREAS, therefore, the Board agrees with DOB that no vacate order for the building is necessary; and that permits are subject to the limitations of vacate orders at the site of the permitted work; and

WHEREAS, accordingly, the Board finds that Building Code § 27-203 does not compel DOB to issue a vacate order to 11 Essex Street; and

WHEREAS, Appellant also argues that a vacate order must accompany or follow an order to cure a violation for failure to maintain the premises where the owner obtains a statement from an engineer that it is impossible to repair the building while it is occupied; and

WHEREAS, DOB observes, and the Board agrees, that Appellant points to no specific statutory authority in support of this assertion; and

WHEREAS, DOB states that if, during the course of making repairs to cure the violation, there arises an immediate danger that the building or part of the building will fall so as to endanger occupants' life or property, DOB may order the building to be vacated; and

WHEREAS, the Board disagrees with Appellant's claim that repairs cannot occur while the building is occupied, because tenants may be relocated away from work areas as repairs proceed in the building since, as noted above, the building is not fully residentially occupied; and

WHEREAS, Appellant argues that since DOB has issued "hazardous violations" to 11 Essex, this provides the grounds for DOB issuance of a vacate order; and

WHEREAS, DOB observes, and the Board agrees, that conditions establishing a "hazardous" violation are not necessarily

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equivalent to conditions that are imminently perilous to building occupants' life or property, as such a violation does not inherently constitute an immediate emergency whereby a building must be vacated to preserve life and safety, even though immediate repair may be advisable; and

WHEREAS, Appellant also claims that vacate orders issued to other properties demonstrate the need for a vacate order in this case; and

WHEREAS, DOB responds, and the Board agrees, that the reports prepared by DOB's engineer do not support the necessity for a vacate order in this case, and that DOB has full authority to consider each building on a case by case basis; and

WHEREAS, the Board is unaware of any authority providing that DOB is bound to issue a vacate order for a building just because it has issued a vacate order to other buildings in the past; and

WHEREAS, Appellant also seeks a DOB request that the Department of Housing Preservation and Development ("HPD") perform the necessary repair work at the premises; and

WHEREAS, DOB states that Appellant does not set forth any authority for such a request; and

WHEREAS, DOB also states, and the Board agrees, that the instant facts do not present the type of conditions that would warrant HPD being asked to perform repairs; and

WHEREAS, the Board notes that if Appellant is concerned about the condition of the chimneys in the building, then plans to repair them should be filed with DOB; and

WHEREAS, also at the October 26 hearing, Appellant claimed that the New York City Fire Department ("FDNY") inspected the building and concluded that it was in danger of collapse, and that FDNY personnel indicated that they would not enter the building to put out a fire; and

WHEREAS, the Board received a written statement from FDNY Deputy Chief Inspector Anthony Scaduto, dated October 28, 2004, specifically discounting Appellant's claims; this statement indicates that although the FDNY inspected the site, there was no FDNY determination that the building was in danger of collapsing or that any further FDNY action was necessary; and

WHEREAS, also at the October 26, 2004 hearing, Appellant argued that the DOB engineer who issued the above-mentioned reports should have been present at the hearing and made available for "cross-examination" by Appellant; and

WHEREAS, DOB responded by stating that the reports issued by the engineer contain no ambiguity; consequently, his testimony would not be provide any information that would be helpful to the Board in making a ruling; and

WHEREAS, the Board agrees with DOB: the engineer's reports clearly state that there is no imminent danger of collapse and no need to vacate 11 Essex Street, and also set forth the observations that lead to this conclusion; and

WHEREAS, DOB was ably represented in this appeal by counsel, who was willing to obtain any technical information requested by the Board should the need have arisen; and

WHEREAS, moreover, the need for any Board questioning of the engineer, had such existed, was obviated by the committee of the Board's own inspection, which confirmed the observations of the DOB engineer; and

WHEREAS, further, the Board recognizes that this issue is not before it in the instant appeal, as the above-referenced DOB final determination does not address this issue; and

WHEREAS, at the October 26, 2004 hearing on the subject matter, a new concern was raised by Appellant; specifically, Appellant complained that cracks in the chimneys: (1) indicated an imminent peril that the building was going to collapse, and (2) were allowing unsafe levels of carbon monoxide to enter into 7 Essex Street; and

WHEREAS, the Board again recognizes that such complaints were not the basis of the final DOB determination set forth above and therefore not properly part of the instant appeal; nevertheless, the Board suggested that DOB investigate them; and

WHEREAS, DOB submitted a report from its inspectors stating that: (1) no cracks were observed in the building's chimneys; (2) no condition was observed that would pose a danger to occupants or visitors to the building, including firefighters; and (3) that boilers in the building were not functioning at the time of inspection, and that, consequently, no carbon monoxide could be detected within the premises; and

WHEREAS, the Board is satisfied that DOB has investigated these concerns, and that it will continue to do so should further complaints arise; and

WHEREAS, finally, Appellant misapprehends the hearing process of the Board: the Board's Rules of Practice and Procedure do not provide any mechanism for the cross-examination of witnesses, nor has cross-examination been allowed on an informal basis; and

WHEREAS, in conclusion, the Board finds that all of Appellant's claims are without merit, and that DOB's refusal to vacate the subject premises was appropriate given the observed condition of the building and the applicable law; and

WHEREAS, the Board notes that DOB has indicated that it will continue to monitor the premises; and

WHEREAS, finally, as noted above, the Board understands that the owner of the premises has done nothing to remediate the conditions cited by DOB on numerous occasions and strongly urges the owner to take all necessary steps to make indicated repairs.

Therefore it is Resolved that the final determination of the New York City Department of Buildings, dated June 4, 2004, is upheld and this appeal is denied.

Adopted by the Board of Standards and Appeals, December 7, 2004.

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## 330-04-BZY

APPLICANT - Law Office of Howard Goldman, for Arlington Suites, LLC, owners.

SUBJECT - Application October 7, 2004 - Application to extend time to complete construction for a minor development pursuant to Z.R. §11-331.

PREMISES AFFECTED - 3220/28 Arlington Avenue and 3223 Netherland Avenue, 200' north of the intersection of 232nd Street and Arlington and Netherland Avenues, Block 5788, Lots 78, 80,

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84 and 117.

**APPEARANCES -**

For Applicant: Howard Goldman.

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

**THE VOTE TO CLOSE HEARING-**

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

Negative:.....0

**THE VOTE TO GRANT-**

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

Negative:.....0

**THE RESOLUTION:**

WHEREAS, this is an application under Z.R. § 11-331, to renew a building permit and extend the time for the completion of the foundation of a minor development under construction; and

WHEREAS, a public hearing was held on this application on November 9, 2004 after due notice by publication in The City Record, with a continued hearing on December 7, 2004, on which date the matter was closed and

WHEREAS, the subject premises was formerly located within an R7-1 zoning district; and

WHEREAS, however, on September 28, 2004, the effective date of the rezoning (hereinafter, the "Rezoning Date"), the City Council voted to rezone the area which the subject premises is within to R6A; and

WHEREAS, the subject premises is proposed to be developed with a 13-story high mixed-use building with community facilities and parking on the first two floors, and residential units above, which would comply with the zoning regulations applicable to an R7-1 zoning district, but not those of an R6A zoning district; and

WHEREAS, Z.R. § 11-331 reads: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued as set forth in Section 11-31 paragraph (a), to a person with a possessory interest in a zoning lot, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and

a decision was rendered; and

WHEREAS, the following organizations and elected officials appeared in opposition to the subject application: Council Member Koppell, Assembly Member Dinowitz, State Senator Schneiderman and Community Board 8, Bronx ("CB8"); and

WHEREAS, although some of the testimony and submissions from opposition were relevant to the Board's proceedings, the Board notes that arguments were made that suggested that the developer acted in bad faith, sought to "beat the clock" by expediting excavation and foundation work, or attempted to undermine the hard work of the community in effecting a rezoning, which are not arguments that the Board may consider given the statutory framework set forth at Z.R. § 11-30 et seq.; and

WHEREAS, the site was inspected by a committee of the Board, including Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Chin and Commissioner Miele; and

WHEREAS, the subject premises is located on the block bounded by Netherland Avenue to the east, West 232nd Street to the south, Arlington Avenue to the west, and West 235th Street to the north; and

substantial progress made on foundations."; and

WHEREAS, Z.R. § 11-31(a) reads: "For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, because the Proposed Development contemplates a single building on one zoning lot, it meets the definition of Minor Development; and

WHEREAS, the Board notes that this application was made on October 7, 2004, which is within 30 days of the Rezoning Date, as required by Z.R. § 11-331; and

WHEREAS, the applicant represents that all of the relevant Department of Buildings permits was lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that on June 17, 2004, a new building permit (Permit No. 200859053-01-NB, hereinafter, the "NB Permit") for the new building was lawfully issued to the applicant by the Department of Buildings; and

WHEREAS, the Board has reviewed the record and agrees that the afore-mentioned permits were lawfully issued to the owner of the subject premises; and

WHEREAS, in a letter dated November 17, 2004, Charles Moerdler, Esq., on behalf of CB8, contends that the owner failed to obtain a lawfully issued permit for the entire building, stating that instead a "professionally certified"

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building permit application was first filed on September 24, 2004 and that permits were issued on September 27, 2004; and

WHEREAS, however, the record reveals that the permit issued on September 27, 2004 was actually for an alteration of the building, to bring it down in size in response to community concerns; the permit issued on September 27 did not supercede the NB Permit; and

WHEREAS, the Board finds that the NB Permit remained in effect from its issuance on June 17, 2004 until the Rezoning Date, when it lapsed by operation of law; and

WHEREAS, CB8 also argues that the NB Permit was revoked on the same day it was issued (June 17, 2004), and cites to a printout from DOB's on-line Building Information System ("BIS") which allegedly supports this argument; and

WHEREAS, however, evidence in the record indicates that such a conclusion is erroneous and based a misinterpretation of the record keeping practices of DOB as reflected on BIS; and

WHEREAS, the applicant represents that on BIS, the status date for a permit will always reflect the issued date of the permit, regardless of when it is revoked, so that even if

WHEREAS, the Board has reviewed the applicant's response and agrees that none of the cases cited in the CB8 submission are relevant; specifically, the Board finds that the cases are either factually dissimilar or were decided under provisions of law other than Z.R. § 11-331; and

WHEREAS, the applicant represents that prior to the Rezoning Date, on September 24, 2004, 100 percent of the excavation had been completed; and

WHEREAS, in support of the contention that excavation was complete as of September 24, 2004, the applicant has submitted photographs of the site, as well as an affidavit from the general manager of the firm that performed the excavation work on the project; and

WHEREAS, the Board has reviewed the photos and the affidavit, and agree that they support the conclusion that excavation was complete as of September 24, 2004; and

WHEREAS, the applicant represents that as of the Rezoning Date, substantial progress had been made on foundations; and

WHEREAS, in support of the contention that substantial progress had been made on foundations as of the Rezoning Date, the applicant has submitted, among other items a color-coded foundation plan that shows the extent of foundation work completed versus not completed, photographs dated September 27 or 28, 2004, various affidavits from construction contractors, and tables showing construction costs; and

WHEREAS, the Board notes that the foundation plan, when evaluated in conjunction with an affidavit from the president of the structural engineering firm for the project, shows that, as of the Rezoning Date, all of the one-sided form pours and underpinning had been completed, all of the reinforcing steel had been bent to the correct size and shape, tied together with wire, and that the pier cages had been constructed; and

WHEREAS, the applicant has submitted a foundation concrete schedule which states that 1,325 of the 1,635 cubic

BIS shows the permit has been revoked, the status date will not be updated; and

WHEREAS, the Board has reviewed the BIS printout in question and agrees that the status date always corresponds to the issued date for each permit listed on the print-out; and

WHEREAS, CB8 did not submit any other evidence aside from the BIS printout that suggests that the NB Permit lapsed or was otherwise invalid at any time prior to the Rezoning Date; and

WHEREAS, CB8 also argues that the applicant is not entitled to a renewal of the building permit and an extension of time to complete foundations because the work that it performed was not performed pursuant to a validly issued permit; and

WHEREAS, the submission made on behalf of CB8 cites to numerous cases which allegedly supports this argument; and

WHEREAS, the applicant responds by showing that none of the cited cases are applicable, and that the foundation work that was completed was performed pursuant to the issued NB Permit, dated June 17, 2004; and yards (or 82.4 percent) of the concrete required for the foundation had been poured as of the Rezoning Date; and

WHEREAS, the applicant has submitted an affidavit from the concrete supervisor which establishes that approximately 86% percent of the concrete work associated with the foundation had been completed as of the Rezoning Date; and

WHEREAS, at the request of the Board, the applicant also submitted an affidavit from the developer and owner (with an accompanying construction costs table) that indicates that \$1,621,704 of the \$1,796,214 estimated total cost of the foundation (or approximately 90 percent), not including excavation costs, had been expended as of the Rezoning Date; and

WHEREAS, the applicant represents that the foundation work began on June 25, 2004, and as of the Rezoning Date, only 10 more working days are needed to complete the foundation; and

WHEREAS, the Board finds all of the above-mentioned submitted evidence sufficient and credible; and

WHEREAS, additionally, the Board observed on its site visit that excavation was complete and substantial progress had been made on foundations, and notes that it is aware of the conditions that existed at the site as of the Rezoning Date through the submitted photos, and is therefore capable of disregarding any additional work performed post-Rezoning Date for safety reasons (as may have been authorized by the Department of Buildings); and

WHEREAS, based upon the above, the Board finds that excavation was complete and that substantial progress had been made on foundations, and, additionally, that the applicant has adequately satisfied all the requirements of Z.R. §11-331.

Therefore it is resolved that this application to renew New Building Permit No. 200859053-NB pursuant to Z.R. § 11-331 is granted, and the Board hereby extends the time to

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complete the required foundations for one term of sixth months from the date of this resolution, to expire on June 7, 2005.

Adopted by the Board of Standards and Appeals, December 7, 2004.

## 333-04-BZY

APPLICANT - Michael T. Sillerman/Gary R. Tarnoff, for 3618, LLC owner.

SUBJECT - Application October 8, 2004 - Application to extend time to complete construction for a minor development pursuant to Z.R. §11-331.

PREMISES AFFECTED - 640 West 237th Street, block bounded by Henry Hudson Parkway, West 236th Street and Independence Avenue, Block 5903, Lots 283 (tentative), and 299 and 300 (tentative), Borough of The Bronx.

WHEREAS, a public hearing was held on this application on November 9, 2004 after due notice by publication in The City Record, with a continued hearing on December 7, 2004, on which date the matter was closed and a decision was rendered; and

WHEREAS, the following organizations and elected officials appeared in opposition to the subject application: Council Member Koppell, Assembly Member Dinowitz, State Senator Schneiderman and Community Board 8, Bronx ("CB8"); and

WHEREAS, although some of the testimony and submissions from opposition were relevant to the Board's proceedings, the Board notes that arguments were made that suggested that the developer acted in bad faith, sought to "beat the clock" by expediting excavation and foundation work, or attempted to undermine the hard work of the community in effecting a rezoning, which are not arguments that the Board may consider given the statutory framework set forth at Z.R. §11-30 et seq.; and

WHEREAS, the site was inspected by a committee of the Board, including Chair Srinivasan, Vice-Chair Babbar, Commissioner Caliendo, Commissioner Chin and Commissioner Miele; and

WHEREAS, the subject premises is located on the block bounded by Henry Hudson Parkway to the east, West 235th Street to the south, Independence Avenue to the west, and West 237th Street to the north; and

WHEREAS, the subject premises was formerly located within an R7-1 zoning district; and

WHEREAS, however, on September 28, 2004, the effective date of the rezoning (hereinafter, the "Rezoning Date"), the City Council voted to rezone the area which the subject premises is within to R7A; and

WHEREAS, the subject premises is proposed to be developed with a 19-story high, 119,044 sq. ft. residential building, which would comply with the zoning regulations applicable to an R7-1 zoning district, but not those of an R7A zoning district; and

WHEREAS, Z.R. § 11-331 reads: "If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued as set forth in Section 11-31 paragraph (a), to a person with a possessory interest in a zoning lot, authorizing a minor

## APPEARANCES -

For Applicant: Gary Tarnoff.

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

## THE VOTE TO CLOSE HEARING-

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

Commissioner Chin.....5

Negative:.....0

## THE VOTE TO GRANT-

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

Commissioner Chin.....5

Negative:.....0

## THE RESOLUTION:

WHEREAS, this is an application under Z.R. § 11-331, to renew a building permit and extend the time for the completion of the foundation of a minor development under construction; and

development or a major development, such construction, if lawful in other respects, may be continued provided that: (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or (b) in the case of a major development, the foundations for at least one building of the development had been completed prior to such effective date. In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations."; and

WHEREAS, Z.R. § 11-31(a) reads: "For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes "complete plans and specifications" as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met."; and

WHEREAS, because the Proposed Development contemplates a single building on one zoning lot, it meets the definition of Minor Development; and

WHEREAS, the Board notes that this application was made on October 8, 2004, which is within 30 days of the Rezoning Date, as required by Z.R. § 11-331; and

WHEREAS, the applicant represents that all of the relevant Department of Buildings permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that on August 30, 2004 an

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excavation permit (Permit No. 200877694-01-EW; hereinafter, the "EW Permit") for the new building was lawfully issued to the applicant by the Department of Buildings; and

WHEREAS, the record indicates that on September 10, 2004, a new building permit (Permit No. 2008764346-01-NB, hereinafter, the "NB Permit") for the new building was lawfully issued to the applicant by the Department of Buildings; and

WHEREAS, the Board has reviewed the record and agrees that the afore-mentioned permits were lawfully issued to the owner of the subject premises; and

WHEREAS, in a letter dated November 17, 2004, CB8 contends that the NB Permit was revoked on the same day it was

WHEREAS, the Board has reviewed the BIS printout in question and agrees with the opinion expressed in the November 22, 2004 affidavit, and notes that the status date always corresponds to the issued date, for each permit listed on the print-out; and

WHEREAS, the applicant also references a Notice of Violation and Hearing, No. 34448004Y, issued by DOB on September 29, 2004, which describes the violation conditions observed as "failure to conform to zoning requirements" and instructs the applicant to "stop all work"; and

WHEREAS, the applicant states, and the Board agrees, that the NB Permit was revoked by DOB on September 29, 2004 following enactment of the Rezoning, and had the NB Permit been revoked on September 10, 2004, as suggested by the CB8, there would have been no need to revoke it again; and

WHEREAS, CB8 did not submit any other evidence aside from the BIS printout that suggests that the NB Permit lapsed or was otherwise invalid at any time prior to the Rezoning Date; and

WHEREAS, CB8 also argues that the applicant is not entitled to a renewal of the building permit and an extension of time to complete foundations because the work that it performed was not performed pursuant to a validly issued permit; and

WHEREAS, CB8 cites to numerous cases which it states supports its position; and

WHEREAS, the applicant responds by showing that none of the cited cases are applicable, and that the foundation work that was completed was done pursuant to the validly issued NB Permit, dated September 10, 2004; and

WHEREAS, the Board has reviewed the applicant's response and agrees that none of the cases cited by CB8 are relevant; specifically, the Board finds that the cases are either factually dissimilar or were decided under provisions of law other than Z.R. § 11-331; and

WHEREAS, the Board agrees with the applicant's assertion that excavation and foundation work may commence prior to the issuance of a new building permit, pursuant to a lawfully issued excavation permit, and that rights can vest under those permits so long as the statutory requirement of obtaining a new building permit before the effective date of the rezoning is satisfied; and

WHEREAS, the applicant represents that excavation of the site commenced subsequent to issuance of the EW Permit, and, well prior to the Rezoning Date, on September 13, 2004, 100 percent of the excavation had been completed; and

WHEREAS, in support of the contention that excavation was complete as of September 13, 2004, the applicant has submitted

issued (September 10, 2004), and cites to a printout from DOB's on-line Building Information System ("BIS") which allegedly supports this argument; and

WHEREAS, the applicant states, and the Board agrees, that such a conclusion is erroneous and based a misinterpretation of the record keeping practices of DOB as reflected on BIS; and

WHEREAS, the applicant has submitted an affidavit dated November 22, 2004 from the president of a building code and construction consultant company, which states that on BIS, the status date for a permit will always reflect the issued date of the permit, regardless of when it is revoked, so that even if BIS shows the permit has been revoked, the status date will not be updated; and photographs of the site taken on that date, as well as an affidavit from the construction manager; and

WHEREAS, the Board has reviewed the photos and the affidavit, and agree that they support the conclusion that excavation was complete as of September 13, 2004; and

WHEREAS, the applicant represents that, as of the Rezoning Date, substantial progress had been made on foundations; and

WHEREAS, in support of the claim that substantial progress had been made on foundations as of the Rezoning Date, the applicant has submitted, among other items, a foundation plan (revised at the request of the Board) marked to show the extent of foundation work completed versus not completed, photographs dated September 28, 2004, various affidavits from construction contractors, and tables showing construction costs; and

WHEREAS, the Board notes that the revised foundation plan as well an affidavit from the president of the structural engineering firm for the project, show that, as of the Rezoning Date, the foundation walls and six of the seven footings had been completed, and the only remaining work was the completion of the form work for the core, one footing and the elevator pit; and

WHEREAS, an affidavit, dated November 22, 2004, from the vice-president of the construction management firm for the project states that 275 of the 330 cubic yards (or 83 percent) of the concrete required for the foundation had been poured as of the Rezoning Date; and

WHEREAS, the applicant has submitted an additional affidavit and schedule of foundation work completed from the project's construction management firm, which states that \$672,680 of the \$687,000 (or 98 percent) of the excavation and foundation costs, excluding nonstructural work such as nonstructural slab-on-grade, grading and gravel below such slab, had been incurred as of the Rezoning Date; and

WHEREAS, the applicant represents that if site preparation and demolition costs are excluded, and the aforementioned nonstructural costs are included, \$672,680 of the \$750,000 of the costs related to foundation work would have been incurred as of the Rezoning Date; and

WHEREAS, at the request of the Board, the applicant also submitted documentation demonstrating that foundation work occurred for 12 of the 14 days scheduled for completion of the foundation, as of the Rezoning Date; and

WHEREAS, the Board finds all of above-mentioned submitted evidence sufficient and credible; and

WHEREAS, additionally, the Board observed on its site visit

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that excavation was complete and substantial progress had been made on foundations, and notes that it is aware of the conditions that existed at the site as of the Rezoning Date through the submitted photos, and is therefore capable of disregarding any additional work performed post-Rezoning Date for safety reasons (as may have been authorized by the Department of Buildings); and

WHEREAS, based upon the above, the Board finds that excavation was complete and that substantial progress had been

Adopted by the Board of Standards and Appeals, December 7, 2004.

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## 25-04-A

APPLICANT - Rothkrug Rothkrug Weinberg & Spector, for Michael Picciallo, owner.

SUBJECT - Application February 11, 2004 - Proposed construction of a one family dwelling, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED - 506 Bradford Avenue, south side, 148' south of Drumgoole Road, Block 6946, Lot 36, Borough of Staten Island.

### COMMUNITY BOARD #3

APPEARANCES -

For Applicant: Adam W. Rothkrug.

**ACTION OF THE BOARD** - Laid over to March 1, 2005, at 10 A.M., for continued hearing.

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## 26-04-A

APPLICANT - Rothkrug Rothkrug Weinberg & Spector, for Michael Picciallo, owner.

SUBJECT - Application February 11, 2004 - Proposed construction of a one family dwelling, located within the bed of a mapped street, is contrary to Section 35, Article 3 of the General City Law.

PREMISES AFFECTED - 510 Bradford Avenue, south side, 108' south of Drumgoole Road, Block 6946, Lot 38, Borough of Staten Island.

### COMMUNITY BOARD #3

APPEARANCES -

For Applicant: Adam W. Rothkrug.

**ACTION OF THE BOARD** - Laid over to March 1, 2005, at 10 A.M., for continued hearing.

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## 148-04-A

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

OWNER OF RECORD: Sterling & Seventh LLC.

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

made on foundations, and additionally, that the applicant has adequately satisfied all the requirements of Z.R. § 11-331.

Therefore it is resolved that this application to renew New Building permit No. 2008764346-01-NB pursuant to Z.R. § 11-331 is granted, and the Board hereby extends the time to complete the required foundations for one term of sixth months from the date of this resolution, to expire on June 7, 2005.

on Lot 52.

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

### COMMUNITY BOARD #6BK

APPEARANCES -

For Applicant: Peter Geis, Caroline Harris and Howard Goldman.

For Administration: Lisa Orantia, Department of Buildings.

THE VOTE TO REOPEN HEARING -

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

Commissioner Chin.....5

Negative:.....0

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

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## 346-04-BZY

APPLICANT - Sheldon Lobel, P.C., for GRA V LLC, owner.

SUBJECT - Application October 27, 2004- Application to extend time to complete construction for a minor development pursuant to Z.R. §11-331.

PREMISES AFFECTED - 3329-3333 Giles Place (a/k/a 3333 Giles Place), west side of Giles Place between Canon Place and Fort Independence Street, Block 3258, Lot 5 and 7, Borough of The Bronx.

APPEARANCES -

For Applicant: Jordan Most.

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

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*Pasquale Pacifico, Executive Director.*

Adjourned: 11:00 A.M.

**REGULAR MEETING  
TUESDAY AFTERNOON, DECEMBER 7, 2004  
2:00 P.M.**

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

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## ZONING CALENDAR

### 147-02-BZ

APPLICANT - Gerald J. Caliendo, R.A., for Joseph Pizzonia,  
PREMISES AFFECTED - 201-06 Hillside Avenue, southeast  
corner of 201<sup>st</sup> Street, Block 10495, Lot 52, Borough of Queens.

### COMMUNITY BOARD #12Q

#### APPEARANCES -

For Applicant: Sandy Anagnostou.

**ACTION OF THE BOARD** - Application granted on condition  
**THE VOTE TO GRANT-**

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

Commissioner Chin.....5

Negative:.....0

#### THE RESOLUTION:

WHEREAS, the decision of the Borough Commissioner,  
dated April 10, 2002, acting on Application No. 401122584,  
reads:

"Proposed change in use of covered parking area to  
automobile repair service bays (Use Group 16) and  
addition of mezzanine with accessory office (Use Group  
6) and storage area are contrary to previous approval  
granted by Board of Standards and Appeals Calendar  
#148-87-BZ. Refer to the Board of Standards and  
Appeals for a variance and for extension of term of  
previously granted variance."; and

WHEREAS, a public hearing was held on this  
application on June 22, 2004, after due notice by publication  
in The City Record, with continued hearings on August 10,  
2004, September 21, 2004, and November 9, 2004, and  
then to decision on December 7, 2004; and

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

WHEREAS, this is an application under Z.R. § 72-21, on  
a site previously before the Board, to permit, in a C1-2  
zoning district, the continued use of the premises as an  
automobile repair establishment, the legalization of the  
addition of a mezzanine level with accessory office and  
storage area, and the conversion of a previously-approved  
covered parking area to six additional service bays, contrary  
to Z.R. § 32-00; and

WHEREAS, in 1955, under BSA Calendar No.  
780-54-BZ, the Board granted an application to permit in a  
residential use district, the erection and maintenance of a  
gasoline service station, auto laundry, motor vehicle repair  
shop and the parking and storage of motor vehicles on the  
unbuilt portion of the lot; this variance was extended for a  
term of ten years in 1974, expiring in 1984; and

WHEREAS, in 1987, under BSA Calendar No.  
148-87-BZ, the Board granted an application, pursuant to ZR  
§§ 11-412 and 11-413, for (1) the construction of an

owner.

SUBJECT - Application May 8, 2002 - under Z.R. §72-21 to  
permit, in a C1-2 zoning district, the continued use of the  
premises as an automobile repair establishment, the  
legalization of the addition of a mezzanine level with  
accessory office and storage area, and the conversion of a  
previously-approved covered parking area to additional  
service bays, contrary to ZR § 32-00.

enlargement, and the legalization of another enlargement  
which was less than 50 percent, in aggregate, of the total  
floor area of the previously approved building, and (2) a  
change in use from an automobile service station (Use  
Group 16) to an automobile repair establishment (Use  
Group 16) for a term of ten years, expiring November 27,  
2000; and

WHEREAS, the site is located at the southeast corner  
of Hillside Avenue and 201st Street, and has a total lot area  
of approximately 10,412 square feet; and

WHEREAS, the applicant states that the site's history of  
development with Board-approved uses creates an  
unnecessary hardship in conforming strictly with the Zoning  
Resolution; and

WHEREAS, the applicant represents that the since the  
original grant, the business at the subject premises has  
evolved from a gas station/repair shop to an automotive  
repair shop, specializing in automotive transmission repair;  
and

WHEREAS, the applicant further represents that the  
sale of gas has been discontinued; and

WHEREAS, the Board finds that the history of  
development of the site and its continuous use as an  
automotive-related use create unnecessary hardship and  
practical difficulties in developing the site in conformity with  
the current zoning; and

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

WHEREAS, at the request of the Board, the applicant  
has submitted an additional study demonstrating that a four  
bay establishment (based upon the previous approval) is not  
feasible; and

WHEREAS, based upon its review of the submitted  
feasibility studies, the Board has determined there is no  
reasonable possibility that development in strict compliance  
with zoning regulations will provide a reasonable return; and

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

WHEREAS, in response to the concerns of the Board  
regarding sound attenuation measures, the applicant has  
replaced existing windows with glass block to reduce noise  
from the use of air tools; and

WHEREAS, in response to the concerns of the Board  
regarding traffic, the applicant has removed a curb cut on  
201st Street; and

WHEREAS, the applicant states that the establishment

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has been in operation for over 25 years without any complaints; and

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

WHEREAS, the Board finds that the hardship herein

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. 02-BSA-195Q dated March 8, 2004; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. § 72-21 and grants a variance to permit, in a C1-2 zoning district, the continued use of the premises as an automobile repair establishment, the legalization of the addition of a mezzanine level with accessory office and storage area, and the conversion of a previously-approved covered parking area to additional service bays, contrary to ZR § 32-00; on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 23, 2004" - (3) sheets and "Received July 26, 2004" - (3) sheets;

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

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

THAT there shall be no curb cut along 201st Street;

THAT there shall be no automotive body work or welding on the premises;

THAT there shall be no outdoor storage;

THAT all signage shall comply with the underlying C1-2

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

zoning regulations;

THAT the above conditions shall be noted in the Certificate of Occupancy;

THAT within 9 months from the date of this grant, the applicant shall obtain an Industrial Waste Discharge Plan approval from the New York City Department of Environmental Protection, to amend the previously approved plan that was submitted to the Board;

THAT no Certificate of Occupancy or Temporary Certificate of Occupancy shall be issued until the applicant submits evidence of this DEP approval to the Board;

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

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

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

Adopted by the Board of Standards and Appeals, December 7, 2004.

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## 255-03-BZ

APPLICANT - Sheldon Lobel, P.C., for Surf Avenue Enterprise, owner.

SUBJECT - Application August 11, 2003 - under Z.R. §72-21 to permit the legalization of an existing furniture store, Use Group 10, located in a C7 zoning district, also a request to vary the requirement of maintaining a loading berth on the premises, is contrary to Z.R. §32-10 and §36-62.

PREMISES AFFECTED - 1019 Surf Avenue, between West 8<sup>th</sup> and West 12<sup>th</sup> Streets, Block 7628, Lot 236, Borough of Brooklyn.

### COMMUNITY BOARD #13BK

APPEARANCES -

For Applicant: Richard Lobel.

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

**THE VOTE TO REOPEN HEARING-**

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

Negative:.....0

**THE VOTE TO CLOSE HEARING-**

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

Negative:.....0

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## THE VOTE TO GRANT-

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

Negative:.....0

"Proposed plans are contrary to ZR 32-10 in that the Use Group 10 is not [a] permitted use in [a] C-7 Zoning District.

1. Proposed plans [are] contrary to ZR 36-62 in that the required accessory off street loading requirements have not been met."; and

WHEREAS, a public hearing was held on this application on February 10, 2004 after due publication in The City Record, with continued hearings on April 13, 2004, May 25, 2004, August 17, 2004, October 19, 2004, and then to decision on December 7, 2004; and

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

WHEREAS, this is an application under Z.R. § 72-21, to permit, on a site previously before the Board currently located in a C7 zoning district, the legalization of the use of a one-story commercial building as a furniture store (Use Group 10), without the required off-street loading berth, contrary to Z.R. §§ 32-10 and 36-62; and

WHEREAS, the subject lot is located on the north side of Surf Avenue between West 8th and West 12th Streets, with a total lot area of approximately 9,746 sq. ft., and is currently improved upon with a one-story 9,746 sq. ft. furniture store; and

WHEREAS, the record indicates that the premises has been the subject of three previous Board actions: (1) in 1931, under BSA Cal. No. 337-31-A, the Board affirmed the decision of the Fire Commissioner, rejecting an application for a permit to display fireworks; (2) in 1938, under BSA Cal. No. 558-38-A, the Board affirmed the decision of the Fire Commissioner, requiring the owner of the premises to restore direct telegraph communication with Fire Department Headquarters; and (3) in 1949, under BSA Cal. No. 1051-48-A, the Board granted an appeal under Section 35 of the General City Law to permit the erection of a building within the bed of a mapped street (West 11th Street), noting that the building would be one-story, 14'-0" in height, 182'-1" by 63'-7½", irregular in area, and occupied by stores; and

WHEREAS, the applicant states that on May 24, 1985, the Department of Buildings, issued Certificate of Occupancy No. 224322, which listed the use of the premises as "Storage, Warehouse, Retail Sales Areas and Arcades"; and

WHEREAS, the applicant further states that since the issuance of such Certificate of Occupancy, the premises has been continuously used as a furniture store; and

WHEREAS, the subject application seeks to legalize the furniture store use and waive the requirements of Z.R. § 36-62, which requires that one off-street loading berth must be provided for commercial uses in a C7 zoning district with a total floor area exceeding 8,000 sq. ft.; 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 conformance with

## THE RESOLUTION-

WHEREAS, the decision of the Borough Commissioner, dated August 5, 2003, acting on Department of Buildings Application No. 301502835, reads, in pertinent part:

underlying district regulations: (1) the site is irregularly shaped; (2) the site is burdened with an irregularly shaped existing one-story building with very shallow depths ranging from 63.62 feet to 44.67 feet; and (3) the premises has been used as a furniture store for the past 19 years; and

WHEREAS, in response to the request of the Board for further amplification of the site's uniqueness, the applicant stated a conforming commercial use in the existing building would be unmarketable, due to the dimensions and shape of the lot; and

WHEREAS, the applicant states that the provision of the required off-street loading berth would be infeasible given the shallow depth of the building; and

WHEREAS, the applicant further asserts that the elevated train line in the rear of the premises limits the expansion possibilities and hinders the provision of a functional loading berth; and

WHEREAS, the Board finds that certain of the aforementioned unique physical conditions, namely the irregular shape of the lot and the depth of the building, when considered in the aggregate, create unnecessary hardship and practical difficulties in developing the site in conformity with the current zoning; and

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

WHEREAS, the applicant further asserts that adding a second floor to the building, in order to utilize the maximum Floor Area Ratio permitted, would be cost prohibitive, given the structural limitations of the existing building and the poor marketability of second floor occupancy in the area; and

WHEREAS, the applicant has provided a survey of the second story of buildings on both the north and south side of Surf Avenue, between West 8th and West 12th Streets, demonstrating the lack of conforming uses on the second floors of buildings in this area; and

WHEREAS, the applicant has provided a report of the owner's unsuccessful efforts to market the building for complying uses, which included newspaper advertisements; and

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

WHEREAS, the applicant represents that the proposed variance will not affect the character of the neighborhood and is compatible in terms of height and bulk with the other buildings in the area; and

WHEREAS, the applicant has submitted a land use map of the area which indicate a significant number of the conforming C7 uses are located on the opposite side of Surf Avenue, on larger lots that are more accommodating to C7 uses; and

WHEREAS, the Board has conducted a site visit and has reviewed the submitted land use map, and has determined that the furniture store use is consistent with the surrounding uses, which include numerous retail and sales establishments; and

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

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

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 02-BSA-195Q dated November 25, 2003; and

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

WHEREAS, the action is located within New York City's Coastal Zone Boundary, and has been determined to be consistent with the New York City Waterfront Revitalization Program; 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 on a site previously before the Board and currently located in a C7 zoning district, the legalization of the use of a one-story commercial building as a furniture store (Use Group 10) without the required off-street loading berth, contrary to Z.R. §§ 32-10 and 36-62; on condition that any and all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received December 6, 2004"- (8) sheets; and on further condition:

THAT the term of this variance shall be for two years, to expire on December 7, 2006;

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

THAT prior to any application for an extension of the term of the variance, the applicant shall submit proof of marketing attempts and a financial analysis for conforming use;

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

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

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

Adopted by the Board of Standards and Appeals, December 7, 2004.

## 273-03-BZ

APPLICANT - Sheldon Lobel, P.C., for 211 Building Corp., owner.

SUBJECT - Application August 27, 2003 - under Z.R. §72-21 to permit the proposed construction of a two-story, semi-detached, two family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for zoning district, number of dwelling units, floor area, floor area ratio, and open space ratio, is contrary to Z.R. §23-22, §23-141 (a) and §23-141.

PREMISES AFFECTED - 211-51 94th Road, center of the block between Jamaica and 94th Avenues, Block 10546, Lot 92, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES -

For Applicant: Richard Lobel.

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

**THE VOTE TO REOPEN HEARING-**

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

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

**THE VOTE TO CLOSE HEARING-**

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

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

**THE VOTE TO GRANT-**

**THE RESOLUTION -**

WHEREAS, the decision of the Borough Commissioner, dated November 19, 2004, acting on DOB Application No. 401632621, reads in pertinent part:

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"[1]. The proposed development does not comply with the minimum required open space ratio (OSR) and is contrary to section 23-141 Z.R.

[2]. The proposed development does not comply with the minimum required lot width as per section 23-32 Z.R."; and

WHEREAS, a public hearing was held on this application on February 3, 2004 after due notice by publication in The City Record, with continued hearings on March 30, 2004, May 18, 2004, July 20, 2004, August 17, 2004 and October 19, 2004, and then to December 7, 2004 for decision; and

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

WHEREAS, this is an application under Z.R. § 72-21, to permit, within an R2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for open space and minimum lot width, contrary to Z.R. §§ 23-141 and 23-32; and

WHEREAS, this application is filed with eleven companion cases, under BSA Calendar Nos. 274-03-BZ through 275-03-BZ and 277-03-BZ through 285-03-BZ, for the construction of a total of 12 detached, two-story one-family dwellings, on 12 individual tax lots, formed upon the subdivision of the pre-existing Lots 48 and 92 (hereinafter, the "Zoning Lot"); and

WHEREAS, each of the 12 developments proposed to be constructed on the Zoning Lot will require waivers for floor area, open space and minimum lot width; some of the developments require a waiver for minimum lot area and side yard; and

WHEREAS, the Board notes that although this and the other 11 applications set forth specific DOB objections and request slightly different relief for each proposed dwelling, the Board analyzed the variance application in terms of the findings based upon the Zoning Lot; and

WHEREAS, however, the above-noted DOB objection is for the referenced Tentative Lot 92 only; and

WHEREAS, in response to concerns expressed by the Board that the original proposal for the Zoning Lot (12 semi-detached, two-story two-family dwellings and 1 detached, two-story one-family dwelling, for a total of 25 dwelling units) was in excess of the minimum variance and also altered the essential character of the community, the applicant eventually modified the original proposal to the current proposal; and

WHEREAS, prior to submitting the current proposal, the applicant offered a number of different proposals which the Board also felt were inconsistent with the character of the surrounding community; these included a proposal with 12 two-story, two-family

WHEREAS, the Board notes that a complying proposal would be a development with a maximum of nine dwelling units; and

WHEREAS, the Board notes that the lack of access to the landlocked Lot 92 required creation of a private road on Lot 48, thereby diminishing the amount of area on the Zoning Lot that could be developed residentially; and

WHEREAS, the Board finds that the irregular shape of the Zoning Lot, when considered in conjunction with the current lack of

dwellings (for a total of 24 dwelling units), a proposal with seven two-story, two-family dwellings and five two-story, one-family dwellings (for a total of 19 dwelling units), and a proposal with six detached two-story, two-family dwellings and four detached two-story, one-family dwellings (for a total of 16 dwelling units); and

WHEREAS, Queens Community Board No. 13, after initially recommending denial of the original proposal, later withdrew its objection upon review of current proposal; and

WHEREAS, other community members appeared at the public hearings in opposition to both the original and the intermediate proposals; and

WHEREAS, the Zoning Lot is in the center of the block bounded by Jamaica and 94th Avenues, Hollis Court Boulevard and 212th Street, and has a total lot area 61,211.92 sq. ft.; and

WHEREAS, Lot 48 is a rectangular shaped lot, approximately 100 feet by 60 feet with a total lot area of 5,940 sq. ft., with a frontage of 60 feet on the west side of 212th Street between 94th Avenue and Jamaica Avenue; and

WHEREAS, Lot 92 is a landlocked parcel with an irregular "L" shape, and dimensions of approximately 200 feet by 300 feet by 160 feet by 110 feet by 40 feet by 140 feet, with a total area of approximately 55,272 sq. ft.; and

WHEREAS, the entire Zoning Lot is split between an R2 zoning district and an R3-2(C1-2) zoning district; specifically, Lot 48 is entirely within the R2 zoning district, whereas Lot 92 is split between the R2 zoning district and the R3-2(C1-2) zoning district; and

WHEREAS, the overall development proposal contemplates the construction of a mapped street, to be known as 94th Road, which will be constructed on Lot 48 and provide access to the proposed dwelling on the Zoning Lot from 212th Street; and

WHEREAS, the Board has determined that the area within the bed of the mapped street, totaling 12,296.93 sq. ft., is not considered as lot area for zoning purposes; and

WHEREAS, the applicant states that Zoning Lot was formerly improved upon with two two-story dwellings, but these buildings were demolished in 2003 after being declared unsafe by DOB; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the Zoning Lot in strict compliance with underlying zoning regulations: (1) the Zoning Lot is irregular in shape, with Lot 92 being "L" shaped with dimensions as noted above; and (2) the Zoning Lot is landlocked without any frontage on a public street; access can only be provided through Lot 48; (3) the layout of the land is situated in such a way that any division of the land would create landlocked parcels or functionally limited parcels; and

access to Lot 92 and the afore-mentioned resulting diminished usable floor area resulting from the private road, creates unnecessary hardship and practical difficulties in strictly complying with the applicable provision of the Zoning Resolution; and

WHEREAS, the applicant initially submitted a feasibility study, which purported to show that a complying development with nine dwelling units would not realize a reasonable return; and

WHEREAS, the Board questioned certain features of this

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feasibility study, and, in response, the applicant has provided additional, more accurate financial information with regard to comparables and adjustments for sellout and construction costs used in the financial analysis; and

WHEREAS, at the request of the Board, the applicant has also submitted a revised feasibility study, reflecting the current proposal (nine one-family, two-story dwellings; and

WHEREAS, based upon its review of the revised feasibility study, the Board has determined that because of the above-mentioned unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning district regulations will provide a reasonable return; and

WHEREAS, the applicant represents that the current proposal will not impact 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 record indicates that there is an R3-2 district to the west of the site and R2 and R3-2 districts beyond the railroad track at the southern boundary of the site; and

WHEREAS, the applicant contended that the original proposal, which contemplated semi-detached dwellings, was compatible with the character of the community; and

WHEREAS, however, as discussed above, the above-mentioned committee of the Board conducted a site and neighborhood visit and ascertained that the residential areas surrounding the Zoning Lot are developed primarily with detached single-family dwellings, some with zero-lot line development; and

WHEREAS, the Board instructed the applicant that the original proposal was not compatible with the detached, single-family homes which are the predominant land use in the area surrounding the Zoning Lot; and

WHEREAS, the applicant made the above-mentioned incremental changes in the proposal, none of which were satisfactory to the Board in that they raised the same concerns about community character as the original proposal; and

WHEREAS, in response, the applicant has reduced the number of structures and dwelling units to be constructed on the Zoning Lot; and

WHEREAS, the Board has reviewed the current proposal and the submitted land use map and has determined that the proposed

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. § 72-21, and grants a variation in the application of the Zoning Resolution, limited to the objections cited, to permit, within an R2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space and minimum lot width, contrary to Z.R. §§ 23-141 and 23-32, on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 23, 2004"-(2) sheets and "Received December 6, 2004"-(5) sheets; and on further condition;

density is compatible with the built conditions in the area; and

WHEREAS, the Board further notes that a similar sized parcel, not suffering from the land-locked condition that Lot 92 is subject to, would permit construction of a 12 unit development as-of-right; and

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

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

WHEREAS, after accepting guidance from the Board as to both the proper amount of relief necessary to alleviate the hardship associated with the site and the appropriate number and size of the dwelling units, the applicant significantly modified the proposal to reflect the current proposal; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 04-BSA-038Q dated November 10, 2003; and

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

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

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

THAT the Floor Area Ratio for the proposed dwelling on Tentative Lot 92 shall be limited to 0.42;

THAT only one dwelling shall be located on Tentative Lot 92;

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

THAT the Floor Area Ratio over all of the Tentative Lots, excluding the area within the bed of a mapped street shall be limited to 0.61; the Floor Area Ratio over all of the Tentative Lots, including the area within the bed of a mapped street shall be limited to 0.49;

THAT the residential Floor Area over all 12 of the Tentative Lots, when taking into account the proposed dwelling approved in the instant application and the other companion applications, shall not exceed 29,991.6 sq. ft.;

THAT the total number of dwelling units over all 12 of the Tentative Lots shall be limited to 12, one for each lot;

THAT DOB shall confirm compliance with the Floor Area

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limitations set forth above;

THAT the total number of parking spaces that shall be provided over all 12 of the Tentative Lots shall be 24, with two accessory parking spaces per dwelling for each dwelling;

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

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

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

Adopted by the Board of Standards and Appeals, December 7, 2004.

## 274-03-BZ

APPLICANT - Sheldon Lobel, P.C., for 211 Building Corp., owner.  
SUBJECT - Application August 27, 2003 - under Z.R. §72-21 to permit the proposed construction of a two-story, semi-detached, two family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for zoning district, number of dwelling units, floor area, floor area ratio, and open space ratio, is contrary to Z.R. §23-22, §23-141 (a) and §23-141.

PREMISES AFFECTED - 211-49 94th Road, center of the block between Jamaica and 94th Avenues, Block 10546, Lot 93, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES -

For Applicant: Richard Lobel.

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

**THE VOTE TO REOPEN HEARING-**

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

WHEREAS, this application is filed with eleven companion cases, under BSA Calendar Nos. 274-03-BZ through 275-03-BZ and 277-03-BZ through 285-03-BZ, for the construction of a total of 12 detached, two-story one-family dwellings, on 12 individual tax lots, formed upon the subdivision of the pre-existing Lots 48 and 92 (hereinafter, the "Zoning Lot"); and

WHEREAS, each of the 12 developments proposed to be constructed on the Zoning Lot will require waivers for floor area, open space and minimum lot width; some of the developments require a waiver for minimum lot area and side yard; and

WHEREAS, the Board notes that although this and the other 11 applications set forth specific DOB objections and request slightly different relief for each proposed dwelling, the Board analyzed the variance application in terms of the findings based upon the Zoning Lot; and

WHEREAS, however, the above-noted DOB objection is for the referenced Tentative Lot 92 only; and

WHEREAS, in response to concerns expressed by the Board

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

**THE VOTE TO CLOSE HEARING-**

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

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

**THE VOTE TO GRANT-**

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

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

**THE RESOLUTION:**

WHEREAS, the decision of the Borough Commissioner, dated November 19, 2004, acting on DOB Application No. 401632612, reads:

"1. The proposed Floor Area and FAR exceeds that permitted by section 23-141(a) Z.R.

2. The proposed development does not comply with the minimum required open space ratio (OSR) and is contrary to section 23-141 Z.R.

3. The proposed development does not comply with the minimum required lot width as per section 23-32 Z.R.

4. The proposed development does not comply with the minimum required side yard as per section 23-461."; and

WHEREAS, a public hearing was held on this application on February 3, 2004 after due notice by publication in The City Record, with continued hearings on March 30, 2004, May 18, 2004, July 20, 2004, August 17, 2004 and October 19, 2004, and then to December 7, 2004 for decision; and

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

WHEREAS, this is an application under Z.R. § 72-21, to permit, within an R2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space, minimum lot width and side yard, contrary to Z.R. §§ 23-141 and 23-32; and

that the original proposal for the Zoning Lot (12 semi-detached, two-story two-family dwellings and 1 detached, two-story one-family dwelling, for a total of 25 dwelling units) was in excess of the minimum variance and also altered the essential character of the community, the applicant eventually modified the original proposal to the current proposal; and

WHEREAS, prior to submitting the current proposal, the applicant offered a number of different proposals which the Board also felt were inconsistent with the character of the surrounding community; these included a proposal with 12 two-story, two-family dwellings (for a total of 24 dwelling units), a proposal with seven two-story, two-family dwellings and five two-story, one-family dwellings (for a total of 19 dwelling units), and a proposal with six detached two-story, two-family dwellings and four detached two-story, one-family dwellings (for a total of 16 dwelling units); and

WHEREAS, Queens Community Board No. 13, after initially recommending denial of the original proposal, later withdrew its

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objection upon review of current proposal; and

WHEREAS, other community members appeared at the public hearings in opposition to both the original and the intermediate proposals; and

WHEREAS, the Zoning Lot is in the center of the block bounded by Jamaica and 94th Avenues, Hollis Court Boulevard and 212th Street, and has a total lot area 61,211.92 sq. ft.; and

WHEREAS, Lot 48 is a rectangular shaped lot, approximately 100 feet by 60 feet with a total lot area of 5,940 sq. ft., with a frontage of 60 feet on the west side of 212th Street between 94th Avenue and Jamaica Avenue; and

WHEREAS, Lot 92 is a landlocked parcel with an irregular "L" shape, and dimensions of approximately 200 feet by 300 feet by 160 feet by 110 feet by 40 feet by 140 feet, with a total area of approximately 55,272 sq. ft.; and

WHEREAS, the entire Zoning Lot is split between an R2 zoning district and an R3-2(C1-2) zoning district; specifically, Lot 48 is entirely within the R2 zoning district, whereas Lot 92 is split between the R2 zoning district and the R3-2(C1-2) zoning district; and

WHEREAS, the overall development proposal contemplates the construction of a mapped street, to be known as 94th Road, which will be constructed on Lot 48 and provide access to the proposed dwelling on the Zoning Lot from 212th Street; and

WHEREAS, the Board has determined that the area within the bed of the mapped street, totaling 12,296.93 sq. ft., is not considered as lot area for zoning purposes; and

WHEREAS, the applicant states that Zoning Lot was formerly improved upon with two two-story dwellings, but these buildings were demolished in 2003 after being declared unsafe by DOB; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and

WHEREAS, based upon its review of the revised feasibility study, the Board has determined that because of the above-mentioned unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning district regulations will provide a reasonable return; and

WHEREAS, the applicant represents that the current proposal will not impact 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 record indicates that there is an R3-2 district to the west of the site and R2 and R3-2 districts beyond the railroad track at the southern boundary of the site; and

WHEREAS, the applicant contended that the original proposal, which contemplated semi-detached dwellings, was compatible with the character of the community; and

WHEREAS, however, as discussed above, the above-mentioned committee of the Board conducted a site and neighborhood visit and ascertained that the residential areas surrounding the Zoning Lot are developed primarily with detached single-family dwellings, some with zero-lot line development; and

WHEREAS, the Board instructed the applicant that the original proposal was not compatible with the detached, single-family homes which are the predominant land use in the area surrounding the Zoning Lot; and

WHEREAS, the applicant made the above-mentioned

unnecessary hardship in developing the Zoning Lot in strict compliance with underlying zoning regulations: (1) the Zoning Lot is irregular in shape, with Lot 92 being "L" shaped with dimensions as noted above; and (2) the Zoning Lot is landlocked without any frontage on a public street; access can only be provided through Lot 48; (3) the layout of the land is situated in such a way that any division of the land would create landlocked parcels or functionally limited parcels; and

WHEREAS, the Board notes that a complying proposal would be a development with a maximum of nine dwelling units; and

WHEREAS, the Board notes that the lack of access to the landlocked Lot 92 required creation of a private road on Lot 48, thereby diminishing the amount of area on the Zoning Lot that could be developed residentially; and

WHEREAS, the Board finds that the irregular shape of the Zoning Lot, when considered in conjunction with the current lack of access to Lot 92 and the afore-mentioned resulting diminished usable floor area resulting from the private road, creates unnecessary hardship and practical difficulties in strictly complying with the applicable provision of the Zoning Resolution; and

WHEREAS, the applicant initially submitted a feasibility study, which purported to show that a complying development with nine dwelling units would not realize a reasonable return; and

WHEREAS, the Board questioned certain features of this feasibility study, and, in response, the applicant has provided additional, more accurate financial information with regard to comparables and adjustments for sellout and construction costs used in the financial analysis; and

WHEREAS, at the request of the Board, the applicant has also submitted a revised feasibility study, reflecting the current proposal (nine one-family, two-story dwellings; and incremental changes in the proposal, none of which were satisfactory to the Board in that they raised the same concerns about community character as the original proposal; and

WHEREAS, in response, the applicant has reduced the number of structures and dwelling units to be constructed on the Zoning Lot; and

WHEREAS, the Board has reviewed the current proposal and the submitted land use map and has determined that the proposed density is compatible with the built conditions in the area; and

WHEREAS, the Board further notes that a similar sized parcel, not suffering from the land-locked condition that Lot 92 is subject to, would permit construction of a 12 unit development as-of-right; and

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

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

WHEREAS, after accepting guidance from the Board as to both the proper amount of relief necessary to alleviate the hardship associated with the site and the appropriate number and size of the dwelling units, the applicant significantly modified the proposal to reflect the current proposal; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 04-BSA-038Q dated November 10, 2003; and

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

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

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

Therefore it is Resolved that the Board of Standards and

THAT the residential Floor Area over all 12 of the Tentative Lots, when taking into account the proposed dwelling approved in the instant application and the other companion applications, shall not exceed 29,991.6 sq. ft.;

THAT the total number of dwelling units over all 12 of the Tentative Lots shall be limited to 12, one for each lot;

THAT DOB shall confirm compliance with the Floor Area limitations set forth above;

THAT the total number of parking spaces that shall be provided over all 12 of the Tentative Lots shall be 24, with two accessory parking spaces per dwelling for each dwelling;

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

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

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

Adopted by the Board of Standards and Appeals, December 7, 2004.

## 275-03-BZ

APPLICANT - Sheldon Lobel, P.C., for 211 Building Corp., owner.  
SUBJECT - Application August 27, 2003 - under Z.R. §72-21 to permit the proposed construction of a two-story, semi-detached, two family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for zoning district, number of

Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. § 72-21, and grants a variation in the application of the Zoning Resolution, limited to the objections cited, to permit, within an R2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space and minimum lot width, contrary to Z.R. §§ 23-141 and 23-32, on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 23, 2004" -(2) sheets and "Received December 6, 2004"-(5) sheets; and on further condition;

THAT the Floor Area Ratio for the proposed dwelling on Tentative Lot 93 shall be limited to 0.68;

THAT only one dwelling shall be located on Tentative Lot 93;

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

THAT the Floor Area Ratio over all of the Tentative Lots, excluding the area within the bed of a mapped street shall be limited to 0.61; the Floor Area Ratio over all of the Tentative Lots, including the area within the bed of a mapped street shall be limited to 0.49; dwelling units, floor area, floor area ratio, and open space ratio, is contrary to Z.R. §23-22, §23-141 (a) and §23-141.

PREMISES AFFECTED - 211-47 94th Road, center of the block between Jamaica and 94th Avenues, Block 10546, Lot 94, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES -

For Applicant: Richard Lobel.

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

**THE VOTE TO REOPEN HEARING-**

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

Commissioner Chin.....5

Negative:.....0

**THE VOTE TO CLOSE HEARING-**

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

Commissioner Chin.....5

Negative:.....0

**THE VOTE TO WITHDRAW -**

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

Commissioner Chin.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, December 7, 2004.

## 276-03-BZ

APPLICANT - Sheldon Lobel, P.C., for 211 Building Corp., owner.

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SUBJECT - Application August 27, 2003 - under Z.R. §72-21 to permit the proposed construction of a two-story, semi-detached, two family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for zoning district, number of dwelling units, floor area, floor area ratio, and open space ratio, is contrary to Z.R. §23-22, §23-141 (a) and §23-141.

PREMISES AFFECTED - 211-45 94th Road, center of the block between Jamaica and 94th Avenues, Block 10546, Lot 95, Borough of Queens.

**COMMUNITY BOARD #13Q**

**APPEARANCES -**

For Applicant: Richard Lobel.

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

**THE VOTE TO REOPEN HEARING-**

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

Negative:.....0

**THE VOTE TO CLOSE HEARING-**

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

WHEREAS, a public hearing was held on this application on February 3, 2004 after due notice by publication in The City Record, with continued hearings on March 30, 2004, May 18, 2004, July 20, 2004, August 17, 2004 and October 19, 2004, and then to December 7, 2004 for decision; and

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

WHEREAS, this is an application under Z.R. § 72-21, to permit, within an R2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space, minimum lot width and side yard, contrary to Z.R. §§ 23-141 and 23-32; and

WHEREAS, this application is filed with eleven companion cases, under BSA Calendar Nos. 274-03-BZ through 275-03-BZ and 277-03-BZ through 285-03-BZ, for the construction of a total of 12 detached, two-story one-family dwellings, on 12 individual tax lots, formed upon the subdivision of the pre-existing Lots 48 and 92 (hereinafter, the "Zoning Lot"); and

WHEREAS, each of the 12 developments proposed to be constructed on the Zoning Lot will require waivers for floor area, open space and minimum lot width; some of the developments require a waiver for minimum lot area and side yard; and

WHEREAS, the Board notes that although this and the other 11 applications set forth specific DOB objections and request slightly different relief for each proposed dwelling, the Board analyzed the variance application in terms of the findings based upon the Zoning Lot; and

WHEREAS, however, the above-noted DOB objection is for the referenced Tentative Lot 92 only; and

WHEREAS, in response to concerns expressed by the Board that the original proposal for the Zoning Lot (12 semi-detached, two-story two-family dwellings and 1 detached, two-story one-family dwelling, for a total of 25 dwelling units) was in excess of the minimum variance and also altered the essential character of the

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

**THE VOTE TO GRANT-**

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

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

**THE RESOLUTION:**

WHEREAS, the decision of the Borough Commissioner, dated November 19, 2004, acting on DOB Application No. 401632603, reads:

- "1. The proposed Floor Area and FAR exceeds that permitted by section 23-141(a) Z.R.
2. The proposed development does not comply with the minimum required open space ratio (OSR) and is contrary to section 23-141 Z.R.
3. The proposed development does not comply with the minimum required lot width as per section 23-32 Z.R.
4. The proposed development does not comply with the minimum required side yard as per section 23-461."; and

community, the applicant eventually modified the original proposal to the current proposal; and

WHEREAS, prior to submitting the current proposal, the applicant offered a number of different proposals which the Board also felt were inconsistent with the character of the surrounding community; these included a proposal with 12 two-story, two-family dwellings (for a total of 24 dwelling units), a proposal with seven two-story, two-family dwellings and five two-story, one-family dwellings (for a total of 19 dwelling units), and a proposal with six detached two-story, two-family dwellings and four detached two-story, one-family dwellings (for a total of 16 dwelling units); and

WHEREAS, Queens Community Board No. 13, after initially recommending denial of the original proposal, later withdrew its objection upon review of current proposal; and

WHEREAS, other community members appeared at the public hearings in opposition to both the original and the intermediate proposals; and

WHEREAS, the Zoning Lot is in the center of the block bounded by Jamaica and 94th Avenues, Hollis Court Boulevard and 212th Street, and has a total lot area 61,211.92 sq. ft.; and

WHEREAS, Lot 48 is a rectangular shaped lot, approximately 100 feet by 60 feet with a total lot area of 5,940 sq. ft., with a frontage of 60 feet on the west side of 212th Street between 94th Avenue and Jamaica Avenue; and

WHEREAS, Lot 92 is a landlocked parcel with an irregular "L" shape, and dimensions of approximately 200 feet by 300 feet by 160 feet by 110 feet by 40 feet by 140 feet, with a total area of approximately 55,272 sq. ft.; and

WHEREAS, the entire Zoning Lot is split between an R2 zoning district and an R3-2(C1-2) zoning district; specifically, Lot 48 is entirely within the R2 zoning district, whereas Lot 92 is split between the R2 zoning district and the R3-2(C1-2) zoning district; and

WHEREAS, the overall development proposal contemplates the construction of a mapped street, to be known as 94th Road,

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which will be constructed on Lot 48 and provide access to the proposed dwelling on the Zoning Lot from 212th Street; and

WHEREAS, the Board has determined that the area within the bed of the mapped street, totaling 12,296.93 sq. ft., is not considered as lot area for zoning purposes; and

WHEREAS, the applicant states that Zoning Lot was formerly improved upon with two two-story dwellings, but these buildings were demolished in 2003 after being declared unsafe by DOB; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the Zoning Lot in strict compliance with underlying zoning regulations: (1) the Zoning Lot is irregular in shape, with Lot 92 being "L" shaped with dimensions as noted above; and (2) the Zoning Lot is landlocked without any frontage on a public street; access can only be provided through Lot 48; (3) the layout of the land is situated in such a way that any division of the land would create landlocked parcels or functionally limited

WHEREAS, the Board questioned certain features of this feasibility study, and, in response, the applicant has provided additional, more accurate financial information with regard to comparables and adjustments for sellout and construction costs used in the financial analysis; and

WHEREAS, at the request of the Board, the applicant has also submitted a revised feasibility study, reflecting the current proposal (nine one-family, two-story dwellings; and

WHEREAS, based upon its review of the revised feasibility study, the Board has determined that because of the above-mentioned unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning district regulations will provide a reasonable return; and

WHEREAS, the applicant represents that the current proposal will not impact 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 record indicates that there is an R3-2 district to the west of the site and R2 and R3-2 districts beyond the railroad track at the southern boundary of the site; and

WHEREAS, the applicant contended that the original proposal, which contemplated semi-detached dwellings, was compatible with the character of the community; and

WHEREAS, however, as discussed above, the above-mentioned committee of the Board conducted a site and neighborhood visit and ascertained that the residential areas surrounding the Zoning Lot are developed primarily with detached single-family dwellings, some with zero-lot line development; and

WHEREAS, the Board instructed the applicant that the original proposal was not compatible with the detached, single-family homes which are the predominant land use in the area surrounding the Zoning Lot; and

WHEREAS, the applicant made the above-mentioned incremental changes in the proposal, none of which were satisfactory to the Board in that they raised the same concerns about community character as the original proposal; and

WHEREAS, in response, the applicant has reduced the number of structures and dwelling units to be constructed on the Zoning Lot; and

parcels; and

WHEREAS, the Board notes that a complying proposal would be a development with a maximum of nine dwelling units; and

WHEREAS, the Board notes that the lack of access to the landlocked Lot 92 required creation of a private road on Lot 48, thereby diminishing the amount of area on the Zoning Lot that could be developed residentially; and

WHEREAS, the Board finds that the irregular shape of the Zoning Lot, when considered in conjunction with the current lack of access to Lot 92 and the afore-mentioned resulting diminished usable floor area resulting from the private road, creates unnecessary hardship and practical difficulties in strictly complying with the applicable provision of the Zoning Resolution; and

WHEREAS, the applicant initially submitted a feasibility study, which purported to show that a complying development with nine dwelling units would not realize a reasonable return; and

WHEREAS, the Board has reviewed the current proposal and the submitted land use map and has determined that the proposed density is compatible with the built conditions in the area; and

WHEREAS, the Board further notes that a similar sized parcel, not suffering from the land-locked condition that Lot 92 is subject to, would permit construction of a 12 unit development as-of-right; and

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

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

WHEREAS, after accepting guidance from the Board as to both the proper amount of relief necessary to alleviate the hardship associated with the site and the appropriate number and size of the dwelling units, the applicant significantly modified the proposal to reflect the current proposal; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 04-BSA-038Q dated November 10, 2003; and

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

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

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foreseeable; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. § 72-21, and grants a variation in the application of the Zoning Resolution, limited to the objections cited, to permit, within an

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

THAT the Floor Area Ratio over all of the Tentative Lots, excluding the area within the bed of a mapped street shall be limited to 0.61; the Floor Area Ratio over all of the Tentative Lots, including the area within the bed of a mapped street shall be limited to 0.49;

THAT the residential Floor Area over all 12 of the Tentative Lots, when taking into account the proposed dwelling approved in the instant application and the other companion applications, shall not exceed 29,991.6 sq. ft.;

THAT the total number of dwelling units over all 12 of the Tentative Lots shall be limited to 12, one for each lot;

THAT DOB shall confirm compliance with the Floor Area limitations set forth above;

THAT the total number of parking spaces that shall be provided over all 12 of the Tentative Lots shall be 24, with two accessory parking spaces per dwelling for each dwelling;

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

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

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

Adopted by the Board of Standards and Appeals, December 7, 2004.

## 277-03-BZ

APPLICANT - Sheldon Lobel, P.C., for 211 Building Corp., owner.  
SUBJECT - Application August 27, 2003 - under Z.R. §72-21 to permit the proposed construction of a two-story, semi-detached, two family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for zoning district, number of dwelling units, floor area, floor area ratio, and open space ratio, is contrary to Z.R. §23-22, §23-141 (a) and §23-141.

PREMISES AFFECTED - 211-43 94th Road, center of the block between Jamaica and 94th Avenues, Block 10546, Lot 96, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES -

R2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space and minimum lot width, contrary to Z.R. §§ 23-141 and 23-32, on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 23, 2004"-(2) sheets and "Received December 6, 2004"-(5) sheets; and on further condition;

THAT the Floor Area Ratio for the proposed dwelling on Tentative Lot 94 shall be limited to 0.68;

THAT only one dwelling shall be located on Tentative Lot 94; For Applicant: Richard Lobel.

**ACTION OF THE BOARD** - Application granted on condition.  
**THE VOTE TO REOPEN HEARING-**

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

Commissioner Chin.....5

Negative:.....0

**THE VOTE TO CLOSE HEARING-**

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

Commissioner Chin.....5

Negative:.....0

**THE VOTE TO GRANT-**

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

Commissioner Chin.....5

Negative:.....0

**THE RESOLUTION:**

WHEREAS, the decision of the Borough Commissioner, dated November 19, 2004, acting on DOB Application No. 401632596, reads:

- "1. The proposed Floor Area and FAR exceeds that permitted by section 23-141(a) Z.R.
2. The proposed development does not comply with the minimum required open space ratio (OSR) and is contrary to section 23-141 Z.R.
3. The proposed development does not comply with the minimum required lot width as per section 23-32 Z.R.
4. The proposed development does not comply with the minimum required side yard as per section 23-461."; and

WHEREAS, a public hearing was held on this application on February 3, 2004 after due notice by publication in The City Record, with continued hearings on March 30, 2004, May 18, 2004, July 20, 2004, August 17, 2004 and October 19, 2004, and then to December 7, 2004 for decision; and

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

WHEREAS, this is an application under Z.R. § 72-21, to permit, within an R2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space, minimum lot width and side yard, contrary to Z.R. §§ 23-141 and 23-32; and

WHEREAS, this application is filed with eleven companion cases, under BSA Calendar Nos. 274-03-BZ through 275-03-BZ

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and 277-03-BZ through 285-03-BZ, for the construction of a total of 12 detached, two-story one-family dwellings, on 12 individual tax lots, formed upon the subdivision of the pre-existing Lots 48 and 92 (hereinafter, the "Zoning Lot"); and

WHEREAS, each of the 12 developments proposed to be constructed on the Zoning Lot will require waivers for floor area, open space and minimum lot width; some of the developments require

WHEREAS, however, the above-noted DOB objection is for the referenced Tentative Lot 92 only; and

WHEREAS, in response to concerns expressed by the Board that the original proposal for the Zoning Lot (12 semi-detached, two-story two-family dwellings and 1 detached, two-story one-family dwelling, for a total of 25 dwelling units) was in excess of the minimum variance and also altered the essential character of the community, the applicant eventually modified the original proposal to the current proposal; and

WHEREAS, prior to submitting the current proposal, the applicant offered a number of different proposals which the Board also felt were inconsistent with the character of the surrounding community; these included a proposal with 12 two-story, two-family dwellings (for a total of 24 dwelling units), a proposal with seven two-story, two-family dwellings and five two-story, one-family dwellings (for a total of 19 dwelling units), and a proposal with six detached two-story, two-family dwellings and four detached two-story, one-family dwellings (for a total of 16 dwelling units); and

WHEREAS, Queens Community Board No. 13, after initially recommending denial of the original proposal, later withdrew its objection upon review of current proposal; and

WHEREAS, other community members appeared at the public hearings in opposition to both the original and the intermediate proposals; and

WHEREAS, the Zoning Lot is in the center of the block bounded by Jamaica and 94th Avenues, Hollis Court Boulevard and 212th Street, and has a total lot area 61,211.92 sq. ft.; and

WHEREAS, Lot 48 is a rectangular shaped lot, approximately 100 feet by 60 feet with a total lot area of 5,940 sq. ft., with a frontage of 60 feet on the west side of 212th Street between 94th Avenue and Jamaica Avenue; and

WHEREAS, Lot 92 is a landlocked parcel with an irregular "L" shape, and dimensions of approximately 200 feet by 300 feet by 160 feet by 110 feet by 40 feet by 140 feet, with a total area of approximately 55,272 sq. ft.; and

WHEREAS, the entire Zoning Lot is split between an R2 zoning district and an R3-2(C1-2) zoning district; specifically, Lot 48 is entirely within the R2 zoning district, whereas Lot 92 is split between the R2 zoning district and the R3-2(C1-2) zoning district; and

WHEREAS, the overall development proposal contemplates the construction of a mapped street, to be known as 94th Road, which will be constructed on Lot 48 and provide access to the proposed dwelling on the Zoning Lot from 212th Street; and

WHEREAS, the Board has determined that the area within the bed of the mapped street, totaling 12,296.93 sq. ft., is not considered as lot area for zoning purposes; and

WHEREAS, the applicant states that Zoning Lot was formerly improved upon with two two-story dwellings, but these buildings were demolished in 2003 after being declared unsafe by DOB; and

a waiver for minimum lot area and side yard; and

WHEREAS, the Board notes that although this and the other 11 applications set forth specific DOB objections and request slightly different relief for each proposed dwelling, the Board analyzed the variance application in terms of the findings based upon the Zoning Lot; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the Zoning Lot in strict compliance with underlying zoning regulations: (1) the Zoning Lot is irregular in shape, with Lot 92 being "L" shaped with dimensions as noted above; and (2) the Zoning Lot is landlocked without any frontage on a public street; access can only be provided through Lot 48; (3) the layout of the land is situated in such a way that any division of the land would create landlocked parcels or functionally limited parcels; and

WHEREAS, the Board notes that a complying proposal would be a development with a maximum of nine dwelling units; and

WHEREAS, the Board notes that the lack of access to the landlocked Lot 92 required creation of a private road on Lot 48, thereby diminishing the amount of area on the Zoning Lot that could be developed residentially; and

WHEREAS, the Board finds that the irregular shape of the Zoning Lot, when considered in conjunction with the current lack of access to Lot 92 and the afore-mentioned resulting diminished usable floor area resulting from the private road, creates unnecessary hardship and practical difficulties in strictly complying with the applicable provision of the Zoning Resolution; and

WHEREAS, the applicant initially submitted a feasibility study, which purported to show that a complying development with nine dwelling units would not realize a reasonable return; and

WHEREAS, the Board questioned certain features of this feasibility study, and, in response, the applicant has provided additional, more accurate financial information with regard to comparables and adjustments for sellout and construction costs used in the financial analysis; and

WHEREAS, at the request of the Board, the applicant has also submitted a revised feasibility study, reflecting the current proposal (nine one-family, two-story dwellings); and

WHEREAS, based upon its review of the revised feasibility study, the Board has determined that because of the above-mentioned unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning district regulations will provide a reasonable return; and

WHEREAS, the applicant represents that the current proposal will not impact 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 record indicates that there is an R3-2 district to the west of the site and R2 and R3-2 districts beyond the railroad track at the southern boundary of the site; and

WHEREAS, the applicant contended that the original proposal, which contemplated semi-detached dwellings, was compatible with the character of the community; and

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WHEREAS, however, as discussed above, the above-mentioned committee of the Board conducted a site and neighborhood visit and ascertained that the residential areas surrounding the Zoning Lot are developed primarily with detached single-family dwellings, some with zero-lot line development; and

WHEREAS, the Board instructed the applicant that the original proposal was not compatible with the detached, single-family homes which are the predominant land use in the area surrounding the Zoning Lot; and

WHEREAS, the applicant made the above-mentioned incremental changes in the proposal, none of which were satisfactory to the Board in that they raised the same concerns about community character as the original proposal; and

WHEREAS, in response, the applicant has reduced the number of structures and dwelling units to be constructed on the Zoning Lot; and

WHEREAS, the Board has reviewed the current proposal and the submitted land use map and has determined that the proposed density is compatible with the built conditions in the area; and

WHEREAS, the Board further notes that a similar sized parcel, not suffering from the land-locked condition that Lot 92 is subject to, would permit construction of a 12 unit development as-of-right; and

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

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

WHEREAS, after accepting guidance from the Board as to both the proper amount of relief necessary to alleviate the hardship associated with the site and the appropriate number and size of the dwelling units, the applicant significantly modified the proposal to reflect the current proposal; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 04-BSA-038Q dated November 10, 2003; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources;

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

Adopted by the Board of Standards and Appeals, December 7,

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. § 72-21, and grants a variation in the application of the Zoning Resolution, limited to the objections cited, to permit, within an R2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space and minimum lot width, contrary to Z.R. §§ 23-141 and 23-32, on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 23, 2004" -(2) sheets and "Received December 6, 2004"-(5) sheets; and on further condition;

THAT the Floor Area Ratio for the proposed dwelling on Tentative Lot 95 shall be limited to 0.73;

THAT only one dwelling shall be located on Tentative Lot 95;

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

THAT the Floor Area Ratio over all of the Tentative Lots, excluding the area within the bed of a mapped street shall be limited to 0.61; the Floor Area Ratio over all of the Tentative Lots, including the area within the bed of a mapped street shall be limited to 0.49;

THAT the residential Floor Area over all 12 of the Tentative Lots, when taking into account the proposed dwelling approved in the instant application and the other companion applications, shall not exceed 29,991.6 sq. ft.;

THAT the total number of dwelling units over all 12 of the Tentative Lots shall be limited to 12, one for each lot;

THAT DOB shall confirm compliance with the Floor Area limitations set forth above;

THAT the total number of parking spaces that shall be provided over all 12 of the Tentative Lots shall be 24, with two accessory parking spaces per dwelling for each dwelling;

THAT this 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; 2004.

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**278-03-BZ**

APPLICANT - Sheldon Lobel, P.C., for 211 Building Corp.,

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owner.

SUBJECT - Application August 27, 2003 - under Z.R. §72-21 to permit the proposed construction of a two-story, semi-detached, two family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for zoning district, number of dwelling units, floor area, floor area ratio, and open space ratio, is contrary to Z.R. §23-22, §23-141 (a) and §23-141.

PREMISES AFFECTED - 211-41 94th Road, center of the block between Jamaica and 94th Avenues, Block 10546, Lot 97, Borough of Queens.

## COMMUNITY BOARD #13Q

### APPEARANCES -

For Applicant: Richard Lobel.

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

### THE VOTE TO REOPEN HEARING-

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

Commissioner Chin.....5

Negative:.....0

### THE VOTE TO CLOSE HEARING-

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

Commissioner Chin.....5

Negative:.....0

### THE VOTE TO GRANT-

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

Commissioner Chin.....5

Negative:.....0

### THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated November 19, 2004, acting on DOB Application No. 401632587, reads:

1. The proposed Floor Area and FAR exceeds that permitted by section 23-141(a) Z.R.
2. The proposed development does not comply with the minimum required open space ratio (OSR) and is contrary to section 23-141 Z.R.
3. The proposed development does not comply with the minimum required lot width as per section 23-32 Z.R.
4. The proposed development does not comply with the minimum required side yard as per section 23-461."; and

WHEREAS, a public hearing was held on this application on February 3, 2004 after due notice by publication in The City Record, with continued hearings on March 30, 2004, May 18, 2004, July 20, 2004, August 17, 2004 and October 19, 2004, and then to December 7, 2004 for decision; and

WHEREAS, the Zoning Lot is in the center of the block bounded by Jamaica and 94th Avenues, Hollis Court Boulevard and 212th Street, and has a total lot area 61,211.92 sq. ft.; and

WHEREAS, Lot 48 is a rectangular shaped lot, approximately 100 feet by 60 feet with a total lot area of 5,940 sq. ft., with a frontage of 60 feet on the west side of 212th Street between 94th Avenue and Jamaica Avenue; and

WHEREAS, Lot 92 is a landlocked parcel with an irregular "L"

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, this is an application under Z.R. §72-21, to permit, within an R2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space, minimum lot width and side yard, contrary to Z.R. §§ 23-141 and 23-32; and

WHEREAS, this application is filed with eleven companion cases, under BSA Calendar Nos. 274-03-BZ through 275-03-BZ and 277-03-BZ through 285-03-BZ, for the construction of a total of 12 detached, two-story one-family dwellings, on 12 individual tax lots, formed upon the subdivision of the pre-existing Lots 48 and 92 (hereinafter, the "Zoning Lot"); and

WHEREAS, each of the 12 developments proposed to be constructed on the Zoning Lot will require waivers for floor area, open space and minimum lot width; some of the developments require a waiver for minimum lot area and side yard; and

WHEREAS, the Board notes that although this and the other 11 applications set forth specific DOB objections and request slightly different relief for each proposed dwelling, the Board analyzed the variance application in terms of the findings based upon the Zoning Lot; and

WHEREAS, however, the above-noted DOB objection is for the referenced Tentative Lot 92 only; and

WHEREAS, in response to concerns expressed by the Board that the original proposal for the Zoning Lot (12 semi-detached, two-story two-family dwellings and 1 detached, two-story one-family dwelling, for a total of 25 dwelling units) was in excess of the minimum variance and also altered the essential character of the community, the applicant eventually modified the original proposal to the current proposal; and

WHEREAS, prior to submitting the current proposal, the applicant offered a number of different proposals which the Board also felt were inconsistent with the character of the surrounding community; these included a proposal with 12 two-story, two-family dwellings (for a total of 24 dwelling units), a proposal with seven two-story, two-family dwellings and five two-story, one-family dwellings (for a total of 19 dwelling units), and a proposal with six detached two-story, two-family dwellings and four detached two-story, one-family dwellings (for a total of 16 dwelling units); and

WHEREAS, Queens Community Board No. 13, after initially recommending denial of the original proposal, later withdrew its objection upon review of current proposal; and

WHEREAS, other community members appeared at the public hearings in opposition to both the original and the intermediate proposals; and

shape, and dimensions of approximately 200 feet by 300 feet by 160 feet by 110 feet by 40 feet by 140 feet, with a total area of approximately 55,272 sq. ft.; and

WHEREAS, the entire Zoning Lot is split between an R2 zoning district and an R3-2(C1-2) zoning district; specifically, Lot 48 is entirely within the R2 zoning district, whereas Lot 92 is split between the R2 zoning district and the R3-2(C1-2) zoning district; and

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WHEREAS, the overall development proposal contemplates the construction of a mapped street, to be known as 94th Road, which will be constructed on Lot 48 and provide access to the proposed dwelling on the Zoning Lot from 212th Street; and

WHEREAS, the Board has determined that the area within the bed of the mapped street, totaling 12,296.93 sq. ft., is not considered as lot area for zoning purposes; and

WHEREAS, the applicant states that Zoning Lot was formerly improved upon with two two-story dwellings, but these buildings were demolished in 2003 after being declared unsafe by DOB; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the Zoning Lot in strict compliance with underlying zoning regulations: (1) the Zoning Lot is irregular in shape, with Lot 92 being "L" shaped with dimensions as noted above; and (2) the Zoning Lot is landlocked without any frontage on a public street; access can only be provided through Lot 48; (3) the layout of the land is situated in such a way that any division of the land would create landlocked parcels or functionally limited parcels; and

WHEREAS, the Board notes that a complying proposal would be a development with a maximum of nine dwelling units; and

WHEREAS, the Board notes that the lack of access to the landlocked Lot 92 required creation of a private road on Lot 48, thereby diminishing the amount of area on the Zoning Lot that could be developed residentially; and

WHEREAS, the Board finds that the irregular shape of the Zoning Lot, when considered in conjunction with the current lack of access to Lot 92 and the afore-mentioned resulting diminished usable floor area resulting from the private road, creates unnecessary hardship and practical difficulties in strictly complying with the applicable provision of the Zoning Resolution; and

WHEREAS, the applicant initially submitted a feasibility study, which purported to show that a complying development with nine dwelling units would not realize a reasonable return; and

WHEREAS, the Board questioned certain features of this feasibility study, and, in response, the applicant has provided additional, more accurate financial information with regard to comparables and adjustments for sellout and construction costs used in the financial analysis; and

WHEREAS, at the request of the Board, the applicant has also submitted a revised feasibility study, reflecting the current proposal

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

WHEREAS, after accepting guidance from the Board as to both the proper amount of relief necessary to alleviate the hardship associated with the site and the appropriate number and size of the dwelling units, the applicant significantly modified the proposal to reflect the current proposal; and

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

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

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

(nine one-family, two-story dwellings; and

WHEREAS, based upon its review of the revised feasibility study, the Board has determined that because of the above-mentioned unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning district regulations will provide a reasonable return; and

WHEREAS, the applicant represents that the current proposal will not impact 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 record indicates that there is an R3-2 district to the west of the site and R2 and R3-2 districts beyond the railroad track at the southern boundary of the site; and

WHEREAS, the applicant contended that the original proposal, which contemplated semi-detached dwellings, was compatible with the character of the community; and

WHEREAS, however, as discussed above, the above-mentioned committee of the Board conducted a site and neighborhood visit and ascertained that the residential areas surrounding the Zoning Lot are developed primarily with detached single-family dwellings, some with zero-lot line development; and

WHEREAS, the Board instructed the applicant that the original proposal was not compatible with the detached, single-family homes which are the predominant land use in the area surrounding the Zoning Lot; and

WHEREAS, the applicant made the above-mentioned incremental changes in the proposal, none of which were satisfactory to the Board in that they raised the same concerns about community character as the original proposal; and

WHEREAS, in response, the applicant has reduced the number of structures and dwelling units to be constructed on the Zoning Lot; and

WHEREAS, the Board has reviewed the current proposal and the submitted land use map and has determined that the proposed density is compatible with the built conditions in the area; and

WHEREAS, the Board further notes that a similar sized parcel, not suffering from the land-locked condition that Lot 92 is subject to, would permit construction of a 12 unit development as-of-right; and

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

WHEREAS, the Board 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-038Q dated November 10, 2003; and

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

WHEREAS, no other significant effects upon the environment

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that would require an Environmental Impact Statement are foreseeable; and

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. § 72-21, and grants a variation in the application of the Zoning Resolution, limited to the objections cited, to permit, within an R2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space and minimum lot width, contrary to Z.R. §§23-141 and 23-32, on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 23, 2004"-(2) sheets and "Received December 6, 2004"-(5) sheets; and on further condition;

THAT the Floor Area Ratio for the proposed dwelling on Tentative Lot 96 shall be limited to 0.63;

THAT only one dwelling shall be located on Tentative Lot 96;

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

THAT the Floor Area Ratio over all of the Tentative Lots, excluding the area within the bed of a mapped street shall be limited to 0.61; the Floor Area Ratio over all of the Tentative Lots, including the area within the bed of a mapped street shall be limited to 0.49;

THAT the residential Floor Area over all 12 of the Tentative Lots, when taking into account the proposed dwelling approved in the instant application and the other companion applications, shall not exceed 29,991.6 sq. ft.;

THAT the total number of dwelling units over all 12 of the Tentative Lots shall be limited to 12, one for each lot;

THAT DOB shall confirm compliance with the Floor Area limitations set forth above;

THAT the total number of parking spaces that shall be provided  
Commissioner Chin.....5  
Negative.....0

#### THE VOTE TO CLOSE HEARING-

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

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

#### THE VOTE TO GRANT-

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

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

#### THE RESOLUTION-

WHEREAS, the decision of the Borough Commissioner, dated November 19, 2004, acting on DOB Application No. 401632578, reads:

"1. The proposed Floor Area and FAR exceeds that permitted by section 23-141(a) Z.R.

over all 12 of the Tentative Lots shall be 24, with two accessory parking spaces per dwelling for each dwelling;

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

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

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

Adopted by the Board of Standards and Appeals, December 7, 2004.

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#### 279-03-BZ

APPLICANT - Sheldon Lobel, P.C., for 211 Building Corp., owner.

SUBJECT - Application August 27, 2003 - under Z.R. §72-21 to permit the proposed construction of a two-story, semi-detached, two family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for zoning district, number of dwelling units, floor area, floor area ratio, and open space ratio, is contrary to Z.R. §23-22, §23-141 (a) and §23-141.

PREMISES AFFECTED - 211-54 94th Road, center of the block between Jamaica and 94th Avenues, Block 10546, Lot 98, Borough of Queens.

#### COMMUNITY BOARD #13Q

APPEARANCES -

For Applicant: Richard Lobel.

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

**THE VOTE TO REOPEN HEARING-**

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

2. The proposed development does not comply with the minimum required open space ratio (OSR) and is contrary to section 23-141 Z.R.

3. The proposed development does not comply with the minimum required lot width as per section 23-32 Z.R.

4. The proposed development does not comply with the minimum required side yard as per section 23-461."; and

WHEREAS, a public hearing was held on this application on February 3, 2004 after due notice by publication in The City Record, with continued hearings on March 30, 2004, May 18, 2004, July 20, 2004, August 17, 2004 and October 19, 2004, and then to December 7, 2004 for decision; and

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

WHEREAS, this is an application under Z.R. § 72-21, to permit, within an R2 and C2-2 within an R3-2 zoning district, the proposed construction of one detached two-story, one-family

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dwelling which does not comply with the requirements for floor area, open space, minimum lot width and side yard, contrary to Z.R. §§ 23-141 and 23-32; and

WHEREAS, this application is filed with eleven companion cases, under BSA Calendar Nos. 274-03-BZ through 275-03-BZ and 277-03-BZ through 285-03-BZ, for the construction of a total of 12 detached, two-story one-family dwellings, on 12 individual tax lots, formed upon the subdivision of the pre-existing Lots 48 and 92 (hereinafter, the "Zoning Lot"); and

WHEREAS, each of the 12 developments proposed to be constructed on the Zoning Lot will require waivers for floor area, open space and minimum lot width; some of the developments require a waiver for minimum lot area and side yard; and

WHEREAS, the Board notes that although this and the other 11 applications set forth specific DOB objections and request slightly different relief for each proposed dwelling, the Board analyzed the variance application in terms of the findings based upon the Zoning Lot; and

WHEREAS, however, the above-noted DOB objection is for the referenced Tentative Lot 92 only; and

WHEREAS, in response to concerns expressed by the Board that the original proposal for the Zoning Lot (12 semi-detached, two-story two-family dwellings and 1 detached, two-story one-family dwelling, for a total of 25 dwelling units) was in excess of the minimum variance and also altered the essential character of the community, the applicant eventually modified the original proposal to the current proposal; and

WHEREAS, prior to submitting the current proposal, the applicant offered a number of different proposals which the Board also felt were inconsistent with the character of the surrounding community; these included a proposal with 12 two-story, two-family dwellings (for a total of 24 dwelling units), a proposal with seven two-story, two-family dwellings and five two-story, one-family dwellings (for a total of 19 dwelling units), and a proposal with six

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the Zoning Lot in strict compliance with underlying zoning regulations: (1) the Zoning Lot is irregular in shape, with Lot 92 being "L" shaped with dimensions as noted above; and (2) the Zoning Lot is landlocked without any frontage on a public street; access can only be provided through Lot 48; (3) the layout of the land is situated in such a way that any division of the land would create landlocked parcels or functionally limited parcels; and

WHEREAS, the Board notes that a complying proposal would be a development with a maximum of nine dwelling units; and

WHEREAS, the Board notes that the lack of access to the landlocked Lot 92 required creation of a private road on Lot 48, thereby diminishing the amount of area on the Zoning Lot that could be developed residentially; and

WHEREAS, the Board finds that the irregular shape of the Zoning Lot, when considered in conjunction with the current lack of access to Lot 92 and the afore-mentioned resulting diminished usable floor area resulting from the private road, creates unnecessary hardship and practical difficulties in strictly complying with the applicable provision of the Zoning Resolution; and

detached two-story, two-family dwellings and four detached two-story, one-family dwellings (for a total of 16 dwelling units); and

WHEREAS, Queens Community Board No. 13, after initially recommending denial of the original proposal, later withdrew its objection upon review of current proposal; and

WHEREAS, other community members appeared at the public hearings in opposition to both the original and the intermediate proposals; and

WHEREAS, the Zoning Lot is in the center of the block bounded by Jamaica and 94th Avenues, Hollis Court Boulevard and 212th Street, and has a total lot area 61,211.92 sq. ft.; and

WHEREAS, Lot 48 is a rectangular shaped lot, approximately 100 feet by 60 feet with a total lot area of 5,940 sq. ft., with a frontage of 60 feet on the west side of 212th Street between 94th Avenue and Jamaica Avenue; and

WHEREAS, Lot 92 is a landlocked parcel with an irregular "L" shape, and dimensions of approximately 200 feet by 300 feet by 160 feet by 110 feet by 40 feet by 140 feet, with a total area of approximately 55,272 sq. ft.; and

WHEREAS, the entire Zoning Lot is split between an R2 zoning district and an R3-2(C1-2) zoning district; specifically, Lot 48 is entirely within the R2 zoning district, whereas Lot 92 is split between the R2 zoning district and the R3-2(C1-2) zoning district; and

WHEREAS, the overall development proposal contemplates the construction of a mapped street, to be known as 94th Road, which will be constructed on Lot 48 and provide access to the proposed dwelling on the Zoning Lot from 212th Street; and

WHEREAS, the Board has determined that the area within the bed of the mapped street, totaling 12,296.93 sq. ft., is not considered as lot area for zoning purposes; and

WHEREAS, the applicant states that Zoning Lot was formerly improved upon with two two-story dwellings, but these buildings were demolished in 2003 after being declared unsafe by DOB; and

WHEREAS, the applicant initially submitted a feasibility study, which purported to show that a complying development with nine dwelling units would not realize a reasonable return; and

WHEREAS, the Board questioned certain features of this feasibility study, and, in response, the applicant has provided additional, more accurate financial information with regard to comparables and adjustments for sellout and construction costs used in the financial analysis; and

WHEREAS, at the request of the Board, the applicant has also submitted a revised feasibility study, reflecting the current proposal (nine one-family, two-story dwellings; and

WHEREAS, based upon its review of the revised feasibility study, the Board has determined that because of the above-mentioned unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning district regulations will provide a reasonable return; and

WHEREAS, the applicant represents that the current proposal will not impact 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 record indicates that there is an R3-2 district to the west of the site and R2 and R3-2 districts beyond the railroad

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track at the southern boundary of the site; and

WHEREAS, the applicant contended that the original proposal, which contemplated semi-detached dwellings, was compatible with the character of the community; and

WHEREAS, however, as discussed above, the above-mentioned committee of the Board conducted a site and neighborhood visit and ascertained that the residential areas surrounding the Zoning Lot are developed primarily with detached single-family dwellings, some with zero-lot line development; and

WHEREAS, the Board instructed the applicant that the original proposal was not compatible with the detached, single-family homes which are the predominant land use in the area surrounding the Zoning Lot; and

WHEREAS, the applicant made the above-mentioned incremental changes in the proposal, none of which were satisfactory to the Board in that they raised the same concerns about community character as the original proposal; and

WHEREAS, in response, the applicant has reduced the number of structures and dwelling units to be constructed on the Zoning Lot; and

WHEREAS, the Board has reviewed the current proposal and the submitted land use map and has determined that the proposed density is compatible with the built conditions in the area; and

WHEREAS, the Board further notes that a similar sized parcel, not suffering from the land-locked condition that Lot 92 is subject to, would permit construction of a 12 unit development as-of-right; 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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. § 72-21, and grants a variation in the application of the Zoning Resolution, limited to the objections cited, to permit, within an R2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space and minimum lot width, contrary to Z.R. §§ 23-141 and 23-32, on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 23, 2004" -(2) sheets and "Received December 6, 2004" -(5) sheets; and on further condition;

THAT the Floor Area Ratio for the proposed dwelling on Tentative Lot 98 shall be limited to 0.60;

THAT only one dwelling shall be located on Tentative Lot 98;

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

THAT the Floor Area Ratio over all of the Tentative Lots,

detrimental to the public welfare; and

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

WHEREAS, after accepting guidance from the Board as to both the proper amount of relief necessary to alleviate the hardship associated with the site and the appropriate number and size of the dwelling units, the applicant significantly modified the proposal to reflect the current proposal; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 04-BSA-038Q dated November 10, 2003; and

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

excluding the area within the bed of a mapped street shall be limited to 0.61; the Floor Area Ratio over all of the Tentative Lots, including the area within the bed of a mapped street shall be limited to 0.49;

THAT the residential Floor Area over all 12 of the Tentative Lots, when taking into account the proposed dwelling approved in the instant application and the other companion applications, shall not exceed 29,991.6 sq. ft.;

THAT the total number of dwelling units over all 12 of the Tentative Lots shall be limited to 12, one for each lot;

THAT DOB shall confirm compliance with the Floor Area limitations set forth above;

THAT the total number of parking spaces that shall be provided over all 12 of the Tentative Lots shall be 24, with two accessory parking spaces per dwelling for each dwelling;

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

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

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

Adopted by the Board of Standards and Appeals, December 7, 2004.

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## 280-03-BZ

APPLICANT - Sheldon Lobel, P.C., for 211 Building Corp., owner.  
SUBJECT - Application August 27, 2003 - under Z.R. §72-21 to permit the proposed construction of a two-story, semi-detached, two family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for zoning district, number of dwelling units, floor area, floor area ratio, and open space ratio, is contrary to Z.R. §23-22, §23-141 (a) and §23-141.

PREMISES AFFECTED - 211-52 94th Road, center of the block between Jamaica and 94th Avenues, Block 10546, Lot 99, Borough of Queens.

## COMMUNITY BOARD #13Q

### APPEARANCES -

For Applicant: Richard Lobel.

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

### THE VOTE TO REOPEN HEARING-

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

Negative:.....0

### THE VOTE TO CLOSE HEARING-

WHEREAS, a public hearing was held on this application on February 3, 2004 after due notice by publication in The City Record, with continued hearings on March 30, 2004, May 18, 2004, July 20, 2004, August 17, 2004 and October 19, 2004, and then to December 7, 2004 for decision; and

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

WHEREAS, this is an application under Z.R. § 72-21, to permit, within an R2 and C2-2 within an R3-2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space, minimum lot width and side yard, contrary to Z.R. §§ 23-141 and 23-32; and

WHEREAS, this application is filed with eleven companion cases, under BSA Calendar Nos. 274-03-BZ through 275-03-BZ and 277-03-BZ through 285-03-BZ, for the construction of a total of 12 detached, two-story one-family dwellings, on 12 individual tax lots, formed upon the subdivision of the pre-existing Lots 48 and 92 (hereinafter, the "Zoning Lot"); and

WHEREAS, each of the 12 developments proposed to be constructed on the Zoning Lot will require waivers for floor area, open space and minimum lot width; some of the developments require a waiver for minimum lot area and side yard; and

WHEREAS, the Board notes that although this and the other 11 applications set forth specific DOB objections and request slightly different relief for each proposed dwelling, the Board analyzed the variance application in terms of the findings based upon the Zoning Lot; and

WHEREAS, however, the above-noted DOB objection is for the referenced Tentative Lot 92 only; and

WHEREAS, in response to concerns expressed by the Board that the original proposal for the Zoning Lot (12 semi-detached,

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

Negative:.....0

### THE VOTE TO GRANT-

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

Negative:.....0

### THE RESOLUTION-

WHEREAS, the decision of the Borough Commissioner, dated November 19, 2004, acting on DOB Application No. 401632569, reads:

- "1. The proposed Floor Area and FAR exceeds that permitted by section 23-141(a) Z.R.
2. The proposed development does not comply with the minimum required open space ratio (OSR) and is contrary to section 23-141 Z.R.
3. The proposed development does not comply with the minimum required lot width as per section 23-32 Z.R.
4. The proposed development does not comply with the minimum required side yard as per section 23-461."; and

two-story two-family dwellings and 1 detached, two-story one-family dwelling, for a total of 25 dwelling units) was in excess of the minimum variance and also altered the essential character of the community, the applicant eventually modified the original proposal to the current proposal; and

WHEREAS, prior to submitting the current proposal, the applicant offered a number of different proposals which the Board also felt were inconsistent with the character of the surrounding community; these included a proposal with 12 two-story, two-family dwellings (for a total of 24 dwelling units), a proposal with seven two-story, two-family dwellings and five two-story, one-family dwellings (for a total of 19 dwelling units), and a proposal with six detached two-story, two-family dwellings and four detached two-story, one-family dwellings (for a total of 16 dwelling units); and

WHEREAS, Queens Community Board No. 13, after initially recommending denial of the original proposal, later withdrew its objection upon review of current proposal; and

WHEREAS, other community members appeared at the public hearings in opposition to both the original and the intermediate proposals; and

WHEREAS, the Zoning Lot is in the center of the block bounded by Jamaica and 94th Avenues, Hollis Court Boulevard and 212th Street, and has a total lot area 61,211.92 sq. ft.; and

WHEREAS, Lot 48 is a rectangular shaped lot, approximately 100 feet by 60 feet with a total lot area of 5,940 sq. ft., with a frontage of 60 feet on the west side of 212th Street between 94th Avenue and Jamaica Avenue; and

WHEREAS, Lot 92 is a landlocked parcel with an irregular "L" shape, and dimensions of approximately 200 feet by 300 feet by 160 feet by 110 feet by 40 feet by 140 feet, with a total area of approximately 55,272 sq. ft.; and

WHEREAS, the entire Zoning Lot is split between an R2 zoning district and an R3-2(C1-2) zoning district; specifically, Lot 48

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is entirely within the R2 zoning district, whereas Lot 92 is split between the R2 zoning district and the R3-2(C1-2) zoning district; and

WHEREAS, the overall development proposal contemplates the construction of a mapped street, to be known as 94th Road, which will be constructed on Lot 48 and provide access to the proposed dwelling on the Zoning Lot from 212th Street; and

WHEREAS, the Board has determined that the area within the bed of the mapped street, totaling 12,296.93 sq. ft., is not considered as lot area for zoning purposes; and

WHEREAS, the applicant states that Zoning Lot was formerly improved upon with two two-story dwellings, but these buildings were demolished in 2003 after being declared unsafe by DOB; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the Zoning Lot in strict compliance with underlying zoning regulations: (1) the Zoning Lot is irregular in shape, with Lot 92 being "L" shaped with dimensions as noted above; and (2) the Zoning Lot is landlocked without any

WHEREAS, the Board questioned certain features of this feasibility study, and, in response, the applicant has provided additional, more accurate financial information with regard to comparables and adjustments for sellout and construction costs used in the financial analysis; and

WHEREAS, at the request of the Board, the applicant has also submitted a revised feasibility study, reflecting the current proposal (nine one-family, two-story dwellings; and

WHEREAS, based upon its review of the revised feasibility study, the Board has determined that because of the above-mentioned unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning district regulations will provide a reasonable return; and

WHEREAS, the applicant represents that the current proposal will not impact 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 record indicates that there is an R3-2 district to the west of the site and R2 and R3-2 districts beyond the railroad track at the southern boundary of the site; and

WHEREAS, the applicant contended that the original proposal, which contemplated semi-detached dwellings, was compatible with the character of the community; and

WHEREAS, however, as discussed above, the above-mentioned committee of the Board conducted a site and neighborhood visit and ascertained that the residential areas surrounding the Zoning Lot are developed primarily with detached single-family dwellings, some with zero-lot line development; and

WHEREAS, the Board instructed the applicant that the original proposal was not compatible with the detached, single-family homes which are the predominant land use in the area surrounding the Zoning Lot; and

WHEREAS, the applicant made the above-mentioned incremental changes in the proposal, none of which were satisfactory to the Board in that they raised the same concerns about community character as the original proposal; and

WHEREAS, in response, the applicant has reduced the number

frontage on a public street; access can only be provided through Lot 48; (3) the layout of the land is situated in such a way that any division of the land would create landlocked parcels or functionally limited parcels; and

WHEREAS, the Board notes that a complying proposal would be a development with a maximum of nine dwelling units; and

WHEREAS, the Board notes that the lack of access to the landlocked Lot 92 required creation of a private road on Lot 48, thereby diminishing the amount of area on the Zoning Lot that could be developed residentially; and

WHEREAS, the Board finds that the irregular shape of the Zoning Lot, when considered in conjunction with the current lack of access to Lot 92 and the afore-mentioned resulting diminished usable floor area resulting from the private road, creates unnecessary hardship and practical difficulties in strictly complying with the applicable provision of the Zoning Resolution; and

WHEREAS, the applicant initially submitted a feasibility study, which purported to show that a complying development with nine dwelling units would not realize a reasonable return; and of structures and dwelling units to be constructed on the Zoning Lot; and

WHEREAS, the Board has reviewed the current proposal and the submitted land use map and has determined that the proposed density is compatible with the built conditions in the area; and

WHEREAS, the Board further notes that a similar sized parcel, not suffering from the land-locked condition that Lot 92 is subject to, would permit construction of a 12 unit development as-of-right; and

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

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

WHEREAS, after accepting guidance from the Board as to both the proper amount of relief necessary to alleviate the hardship associated with the site and the appropriate number and size of the dwelling units, the applicant significantly modified the proposal to reflect the current proposal; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 04-BSA-038Q dated November 10, 2003; and

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

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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

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

THAT the Floor Area Ratio over all of the Tentative Lots, excluding the area within the bed of a mapped street shall be limited to 0.61; the Floor Area Ratio over all of the Tentative Lots, including the area within the bed of a mapped street shall be limited to 0.49;

THAT the residential Floor Area over all 12 of the Tentative Lots, when taking into account the proposed dwelling approved in the instant application and the other companion applications, shall not exceed 29,991.6 sq. ft.;

THAT the total number of dwelling units over all 12 of the Tentative Lots shall be limited to 12, one for each lot;

THAT DOB shall confirm compliance with the Floor Area limitations set forth above;

THAT the total number of parking spaces that shall be provided over all 12 of the Tentative Lots shall be 24, with two accessory parking spaces per dwelling for each dwelling;

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

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

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

Adopted by the Board of Standards and Appeals, December 7, 2004.

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## 281-03-BZ

APPLICANT - Sheldon Lobel, P.C., for 211 Building Corp., owner.  
SUBJECT - Application August 27, 2003 - under Z.R. §72-21 to permit the proposed construction of a two-story, semi-detached, two family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for zoning district, number of dwelling units, floor area, floor area ratio, and open space ratio, is contrary to Z.R. §23-22, §23-141 (a) and §23-141.

PREMISES AFFECTED - 211-50 94th Road, center of the block between Jamaica and 94th Avenues, Block 10546, Lot 100,

under Z.R. §72-21, and grants a variation in the application of the Zoning Resolution, limited to the objections cited, to permit, within an R2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space and minimum lot width, contrary to Z.R. §§ 23-141 and 23-32, on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 23, 2004" -(2) sheets and "Received December 6, 2004"-(5) sheets; and on further condition;

THAT the Floor Area Ratio for the proposed dwelling on Tentative Lot 99 shall be limited to 0.62;

THAT only one dwelling shall be located on Tentative Lot 99; Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES -

For Applicant: Richard Lobel.

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

**THE VOTE TO REOPEN HEARING-**

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

**THE VOTE TO CLOSE HEARING-**

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

**THE VOTE TO GRANT-**

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

**THE RESOLUTION:**

WHEREAS, the decision of the Borough Commissioner, dated November 19, 2004, acting on DOB Application No. 401632550, reads:

- "1. The proposed Floor Area and FAR exceeds that permitted by section 23-141(a) Z.R.
2. The proposed development does not comply with the minimum required open space ratio (OSR) and is contrary to section 23-141 Z.R.
3. The proposed development does not comply with the minimum required lot width as per section 23-32 Z.R.
4. The proposed development does not comply with the minimum required lot area as per section 23-32. Z.R.
5. The proposed development does not comply with the minimum required side yard as per section 23-461."; and

WHEREAS, a public hearing was held on this application on February 3, 2004 after due notice by publication in The City Record, with continued hearings on March 30, 2004, May 18, 2004, July 20, 2004, August 17, 2004 and October 19, 2004, and then to December 7, 2004 for decision; and

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

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of Chair Srinivasan and Vice-Chair Babbar; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, within an R2 and C2-2 within an R3-2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space, minimum lot width, minimum lot area and side yard, contrary to Z.R. §§ 23-141 and 23-32; and

WHEREAS, this application is filed with eleven companion cases, under BSA Calendar Nos. 274-03-BZ through 275-03-BZ

WHEREAS, the Board notes that although this and the other 11 applications set forth specific DOB objections and request slightly different relief for each proposed dwelling, the Board analyzed the variance application in terms of the findings based upon the Zoning Lot; and

WHEREAS, however, the above-noted DOB objection is for the referenced Tentative Lot 92 only; and

WHEREAS, in response to concerns expressed by the Board that the original proposal for the Zoning Lot (12 semi-detached, two-story two-family dwellings and 1 detached, two-story one-family dwelling, for a total of 25 dwelling units) was in excess of the minimum variance and also altered the essential character of the community, the applicant eventually modified the original proposal to the current proposal; and

WHEREAS, prior to submitting the current proposal, the applicant offered a number of different proposals which the Board also felt were inconsistent with the character of the surrounding community; these included a proposal with 12 two-story, two-family dwellings (for a total of 24 dwelling units), a proposal with seven two-story, two-family dwellings and five two-story, one-family dwellings (for a total of 19 dwelling units), and a proposal with six detached two-story, two-family dwellings and four detached two-story, one-family dwellings (for a total of 16 dwelling units); and

WHEREAS, Queens Community Board No. 13, after initially recommending denial of the original proposal, later withdrew its objection upon review of current proposal; and

WHEREAS, other community members appeared at the public hearings in opposition to both the original and the intermediate proposals; and

WHEREAS, the Zoning Lot is in the center of the block bounded by Jamaica and 94th Avenues, Hollis Court Boulevard and 212th Street, and has a total lot area 61,211.92 sq. ft.; and

WHEREAS, Lot 48 is a rectangular shaped lot, approximately 100 feet by 60 feet with a total lot area of 5,940 sq. ft., with a frontage of 60 feet on the west side of 212th Street between 94th Avenue and Jamaica Avenue; and

WHEREAS, Lot 92 is a landlocked parcel with an irregular "L" shape, and dimensions of approximately 200 feet by 300 feet by 160 feet by 110 feet by 40 feet by 140 feet, with a total area of approximately 55,272 sq. ft.; and

WHEREAS, the entire Zoning Lot is split between an R2 zoning district and an R3-2(C1-2) zoning district; specifically, Lot 48 is entirely within the R2 zoning district, whereas Lot 92 is split between the R2 zoning district and the R3-2(C1-2) zoning district; and

WHEREAS, the overall development proposal contemplates the construction of a mapped street, to be known as 94th Road, which will be constructed on Lot 48 and provide access to the proposed

and 277-03-BZ through 285-03-BZ, for the construction of a total of 12 detached, two-story one-family dwellings, on 12 individual tax lots, formed upon the subdivision of the pre-existing Lots 48 and 92 (hereinafter, the "Zoning Lot"); and

WHEREAS, each of the 12 developments proposed to be constructed on the Zoning Lot will require waivers for floor area, open space and minimum lot width; some of the developments require a waiver for minimum lot area and side yard; and

dwelling on the Zoning Lot from 212th Street; and

WHEREAS, the Board has determined that the area within the bed of the mapped street, totaling 12,296.93 sq. ft., is not considered as lot area for zoning purposes; and

WHEREAS, the applicant states that Zoning Lot was formerly improved upon with two two-story dwellings, but these buildings were demolished in 2003 after being declared unsafe by DOB; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the Zoning Lot in strict compliance with underlying zoning regulations: (1) the Zoning Lot is irregular in shape, with Lot 92 being "L" shaped with dimensions as noted above; and (2) the Zoning Lot is landlocked without any frontage on a public street; access can only be provided through Lot 48; (3) the layout of the land is situated in such a way that any division of the land would create landlocked parcels or functionally limited parcels; and

WHEREAS, the Board notes that a complying proposal would be a development with a maximum of nine dwelling units; and

WHEREAS, the Board notes that the lack of access to the landlocked Lot 92 required creation of a private road on Lot 48, thereby diminishing the amount of area on the Zoning Lot that could be developed residentially; and

WHEREAS, the Board finds that the irregular shape of the Zoning Lot, when considered in conjunction with the current lack of access to Lot 92 and the afore-mentioned resulting diminished usable floor area resulting from the private road, creates unnecessary hardship and practical difficulties in strictly complying with the applicable provision of the Zoning Resolution; and

WHEREAS, the applicant initially submitted a feasibility study, which purported to show that a complying development with nine dwelling units would not realize a reasonable return; and

WHEREAS, the Board questioned certain features of this feasibility study, and, in response, the applicant has provided additional, more accurate financial information with regard to comparables and adjustments for sellout and construction costs used in the financial analysis; and

WHEREAS, at the request of the Board, the applicant has also submitted a revised feasibility study, reflecting the current proposal (nine one-family, two-story dwellings); and

WHEREAS, based upon its review of the revised feasibility study, the Board has determined that because of the above-mentioned unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning district regulations will provide a reasonable return; and

WHEREAS, the applicant represents that the current proposal will not impact the essential character of the surrounding

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

WHEREAS, the record indicates that there is an R3-2 district to

WHEREAS, the applicant contended that the original proposal, which contemplated semi-detached dwellings, was compatible with the character of the community; and

WHEREAS, however, as discussed above, the above-mentioned committee of the Board conducted a site and neighborhood visit and ascertained that the residential areas surrounding the Zoning Lot are developed primarily with detached single-family dwellings, some with zero-lot line development; and

WHEREAS, the Board instructed the applicant that the original proposal was not compatible with the detached, single-family homes which are the predominant land use in the area surrounding the Zoning Lot; and

WHEREAS, the applicant made the above-mentioned incremental changes in the proposal, none of which were satisfactory to the Board in that they raised the same concerns about community character as the original proposal; and

WHEREAS, in response, the applicant has reduced the number of structures and dwelling units to be constructed on the Zoning Lot; and

WHEREAS, the Board has reviewed the current proposal and the submitted land use map and has determined that the proposed density is compatible with the built conditions in the area; and

WHEREAS, the Board further notes that a similar sized parcel, not suffering from the land-locked condition that Lot 92 is subject to, would permit construction of a 12 unit development as-of-right; and

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

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

WHEREAS, after accepting guidance from the Board as to both the proper amount of relief necessary to alleviate the hardship associated with the site and the appropriate number and size of the dwelling units, the applicant significantly modified the proposal to reflect the current proposal; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 04-BSA-038Q dated November 10, 2003; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design

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

the west of the site and R2 and R3-2 districts beyond the railroad track at the southern boundary of the site; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. §72-21, and grants a variation in the application of the Zoning Resolution, limited to the objections cited, to permit, within an R2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space and minimum lot width, contrary to Z.R. §§ 23-141 and 23-32, on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 23, 2004"-(2) sheets and "Received December 6, 2004"-(5) sheets; and on further condition;

THAT the Floor Area Ratio for the proposed dwelling on Tentative Lot 100 shall be limited to 0.62;

THAT only one dwelling shall be located on Tentative Lot 100;

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

THAT the Floor Area Ratio over all of the Tentative Lots, excluding the area within the bed of a mapped street shall be limited to 0.61; the Floor Area Ratio over all of the Tentative Lots, including the area within the bed of a mapped street shall be limited to 0.49;

THAT the residential Floor Area over all 12 of the Tentative Lots, when taking into account the proposed dwelling approved in the instant application and the other companion applications, shall not exceed 29,991.6 sq. ft.;

THAT the total number of dwelling units over all 12 of the Tentative Lots shall be limited to 12, one for each lot;

THAT DOB shall confirm compliance with the Floor Area limitations set forth above;

THAT the total number of parking spaces that shall be provided over all 12 of the Tentative Lots shall be 24, with two accessory parking spaces per dwelling for each dwelling;

THAT this 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; Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related

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to the relief granted.

Adopted by the Board of Standards and Appeals, December 7, 2004.

## 282-03-BZ

APPLICANT - Sheldon Lobel, P.C., for 211 Building Corp., owner.  
SUBJECT - Application August 27, 2003 - under Z.R. §72-21 to permit the proposed construction of a two-story, semi-detached, two family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for zoning district, number of dwelling units, floor area, floor area ratio, and open space ratio, is contrary to Z.R. §23-22, §23-141 (a) and §23-141.

PREMISES AFFECTED - 211-48 94th Road, center of the block between Jamaica and 94th Avenues, Block 10546, Lot 101, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES -

For Applicant: Richard Lobel.

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

**THE VOTE TO REOPEN HEARING-**

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

Commissioner Chin.....5

Negative:.....0

**THE VOTE TO CLOSE HEARING-**

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

Commissioner Chin.....5

Negative:.....0

**THE VOTE TO GRANT-**

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

Commissioner Chin.....5

Negative:.....0

**THE RESOLUTION-**

WHEREAS, the decision of the Borough Commissioner, dated November 19, 2004, acting on DOB Application No. 401632541, reads:

1. The proposed Floor Area and FAR exceeds that permitted by section 23-141(a) Z.R.
2. The proposed development does not comply with the minimum required open space ratio (OSR) and is contrary to section 23-141 Z.R.
3. The proposed development does not comply with the minimum required lot width as per section 23-32 Z.R.
4. The proposed development does not comply with the minimum required lot area as per section 23-32. Z.R.
5. The proposed development does not comply with the

WHEREAS, Queens Community Board No. 13, after initially recommending denial of the original proposal, later withdrew its objection upon review of current proposal; and

WHEREAS, other community members appeared at the public hearings in opposition to both the original and the intermediate proposals; and

minimum required side yard as per section 23-461."; and

WHEREAS, a public hearing was held on this application on February 3, 2004 after due notice by publication in The City Record, with continued hearings on March 30, 2004, May 18, 2004, July 20, 2004, August 17, 2004 and October 19, 2004, and then to December 7, 2004 for decision; and

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

WHEREAS, this is an application under Z.R. § 72-21, to permit, within an R2 and C2-2 within an R3-2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space, minimum lot width, minimum lot area and side yard, contrary to Z.R. §§ 23-141 and 23-32; and

WHEREAS, this application is filed with eleven companion cases, under BSA Calendar Nos. 274-03-BZ through 275-03-BZ and 277-03-BZ through 285-03-BZ, for the construction of a total of 12 detached, two-story one-family dwellings, on 12 individual tax lots, formed upon the subdivision of the pre-existing Lots 48 and 92 (hereinafter, the "Zoning Lot"); and

WHEREAS, each of the 12 developments proposed to be constructed on the Zoning Lot will require waivers for floor area, open space and minimum lot width; some of the developments require a waiver for minimum lot area and side yard; and

WHEREAS, the Board notes that although this and the other 11 applications set forth specific DOB objections and request slightly different relief for each proposed dwelling, the Board analyzed the variance application in terms of the findings based upon the Zoning Lot; and

WHEREAS, however, the above-noted DOB objection is for the referenced Tentative Lot 92 only; and

WHEREAS, in response to concerns expressed by the Board that the original proposal for the Zoning Lot (12 semi-detached, two-story two-family dwellings and 1 detached, two-story one-family dwelling, for a total of 25 dwelling units) was in excess of the minimum variance and also altered the essential character of the community, the applicant eventually modified the original proposal to the current proposal; and

WHEREAS, prior to submitting the current proposal, the applicant offered a number of different proposals which the Board also felt were inconsistent with the character of the surrounding community; these included a proposal with 12 two-story, two-family dwellings (for a total of 24 dwelling units), a proposal with seven two-story, two-family dwellings and five two-story, one-family dwellings (for a total of 19 dwelling units), and a proposal with six detached two-story, two-family dwellings and four detached two-story, one-family dwellings (for a total of 16 dwelling units); and

WHEREAS, the Zoning Lot is in the center of the block bounded by Jamaica and 94th Avenues, Hollis Court Boulevard and 212th Street, and has a total lot area 61.211.92 sq. ft.; and

WHEREAS, Lot 48 is a rectangular shaped lot, approximately 100 feet by 60 feet with a total lot area of 5,940 sq. ft., with a frontage of 60 feet on the west side of 212th Street between 94th

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Avenue and Jamaica Avenue; and

WHEREAS, Lot 92 is a landlocked parcel with an irregular "L" shape, and dimensions of approximately 200 feet by 300 feet by 160 feet by 110 feet by 40 feet by 140 feet, with a total area of approximately 55,272 sq. ft.; and

WHEREAS, the entire Zoning Lot is split between an R2 zoning district and an R3-2(C1-2) zoning district; specifically, Lot 48 is entirely within the R2 zoning district, whereas Lot 92 is split between the R2 zoning district and the R3-2(C1-2) zoning district; and

WHEREAS, the overall development proposal contemplates the construction of a mapped street, to be known as 94th Road, which will be constructed on Lot 48 and provide access to the proposed dwelling on the Zoning Lot from 212th Street; and

WHEREAS, the Board has determined that the area within the bed of the mapped street, totaling 12,296.93 sq. ft., is not considered as lot area for zoning purposes; and

WHEREAS, the applicant states that Zoning Lot was formerly improved upon with two two-story dwellings, but these buildings were demolished in 2003 after being declared unsafe by DOB; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the Zoning Lot in strict compliance with underlying zoning regulations: (1) the Zoning Lot is irregular in shape, with Lot 92 being "L" shaped with dimensions as noted above; and (2) the Zoning Lot is landlocked without any frontage on a public street; access can only be provided through Lot 48; (3) the layout of the land is situated in such a way that any division of the land would create landlocked parcels or functionally limited parcels; and

WHEREAS, the Board notes that a complying proposal would be a development with a maximum of nine dwelling units; and

WHEREAS, the Board notes that the lack of access to the landlocked Lot 92 required creation of a private road on Lot 48, thereby diminishing the amount of area on the Zoning Lot that could be developed residentially; and

WHEREAS, the Board finds that the irregular shape of the Zoning Lot, when considered in conjunction with the current lack of access to Lot 92 and the afore-mentioned resulting diminished usable floor area resulting from the private road, creates unnecessary hardship and practical difficulties in strictly complying with the applicable provision of the Zoning Resolution; and

WHEREAS, the applicant initially submitted a feasibility study, which purported to show that a complying development with nine

WHEREAS, the Board further notes that a similar sized parcel, not suffering from the land-locked condition that Lot 92 is subject to, would permit construction of a 12 unit development as-of-right; and

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

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

WHEREAS, after accepting guidance from the Board as to both the proper amount of relief necessary to alleviate the hardship associated with the site and the appropriate number and size of the dwelling units, the applicant significantly modified the proposal to

dwelling units would not realize a reasonable return; and

WHEREAS, the Board questioned certain features of this feasibility study, and, in response, the applicant has provided additional, more accurate financial information with regard to comparables and adjustments for sellout and construction costs used in the financial analysis; and

WHEREAS, at the request of the Board, the applicant has also submitted a revised feasibility study, reflecting the current proposal (nine one-family, two-story dwellings; and

WHEREAS, based upon its review of the revised feasibility study, the Board has determined that because of the above-mentioned unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning district regulations will provide a reasonable return; and

WHEREAS, the applicant represents that the current proposal will not impact 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 record indicates that there is an R3-2 district to the west of the site and R2 and R3-2 districts beyond the railroad track at the southern boundary of the site; and

WHEREAS, the applicant contended that the original proposal, which contemplated semi-detached dwellings, was compatible with the character of the community; and

WHEREAS, however, as discussed above, the above-mentioned committee of the Board conducted a site and neighborhood visit and ascertained that the residential areas surrounding the Zoning Lot are developed primarily with detached single-family dwellings, some with zero-lot line development; and

WHEREAS, the Board instructed the applicant that the original proposal was not compatible with the detached, single-family homes which are the predominant land use in the area surrounding the Zoning Lot; and

WHEREAS, the applicant made the above-mentioned incremental changes in the proposal, none of which were satisfactory to the Board in that they raised the same concerns about community character as the original proposal; and

WHEREAS, in response, the applicant has reduced the number of structures and dwelling units to be constructed on the Zoning Lot; and

WHEREAS, the Board has reviewed the current proposal and the submitted land use map and has determined that the proposed density is compatible with the built conditions in the area; and reflect the current proposal; and

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

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 04-BSA-038Q dated November 10, 2003; and

WHEREAS, the EAS documents that the project as proposed

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. §72-21, and grants a variation in the application of the Zoning Resolution, limited to the objections cited, to permit, within an R2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space and minimum lot width, contrary to Z.R. §§ 23-141 and 23-32, on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 23, 2004"-(2) sheets and "Received December 6, 2004"-(5) sheets; and on further condition;

THAT the Floor Area Ratio for the proposed dwelling on Tentative Lot 101 shall be limited to 0.63;

THAT only one dwelling shall be located on Tentative Lot 101;

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

THAT the Floor Area Ratio over all of the Tentative Lots, excluding the area within the bed of a mapped street shall be limited to 0.61; the Floor Area Ratio over all of the Tentative Lots, including the area within the bed of a mapped street shall be limited to 0.49; PREMISES AFFECTED - 211-46 94th Road, center of the block between Jamaica and 94th Avenues, Block 10546, Lot 102, Borough of Queens.

## COMMUNITY BOARD #13Q

### APPEARANCES -

For Applicant: Richard Lobel.

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

### THE VOTE TO REOPEN HEARING-

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

Commissioner Chin.....5

Negative:.....0

### THE VOTE TO CLOSE HEARING-

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

Commissioner Chin.....5

Negative:.....0

### THE VOTE TO GRANT-

THAT the residential Floor Area over all 12 of the Tentative Lots, when taking into account the proposed dwelling approved in the instant application and the other companion applications, shall not exceed 29,991.6 sq. ft.;

THAT the total number of dwelling units over all 12 of the Tentative Lots shall be limited to 12, one for each lot;

THAT DOB shall confirm compliance with the Floor Area limitations set forth above;

THAT the total number of parking spaces that shall be provided over all 12 of the Tentative Lots shall be 24, with two accessory parking spaces per dwelling for each dwelling;

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

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

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

Adopted by the Board of Standards and Appeals, December 7, 2004.

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## 283-03-BZ

APPLICANT - Sheldon Lobel, P.C., for 211 Building Corp., owner.

SUBJECT - Application August 27, 2003 - under Z.R. §72-21 to permit the proposed construction of a two-story, semi-detached, two family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for zoning district, number of dwelling units, floor area, floor area ratio, and open space ratio, is contrary to Z.R. §23-22, §23-141 (a) and §23-141.

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

Commissioner Chin.....5

Negative:.....0

### THE RESOLUTION -

WHEREAS, the decision of the Borough Commissioner, dated November 19, 2004, acting on DOB Application No. 401632532, reads:

"1. The proposed Floor Area and FAR exceeds that permitted by section 23-141(a) Z.R.

2. The proposed development does not comply with the minimum required open space ratio (OSR) and is contrary to section 23-141 Z.R.

3. The proposed development does not comply with the minimum required lot width as per section 23-32 Z.R.

4. The proposed development does not comply with the minimum required lot area as per section 23-32. Z.R.

5. The proposed development does not comply with the

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minimum required side yard as per section 23-461."; and

WHEREAS, a public hearing was held on this application on February 3, 2004 after due notice by publication in The City Record, with continued hearings on March 30, 2004, May 18, 2004, July 20, 2004, August 17, 2004 and October 19, 2004, and then on December 7, 2004 for decision; and

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

WHEREAS, this is an application under Z.R. § 72-21, to permit, within an R2 and C2-2 within an R3-2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space, minimum lot width, minimum lot area and side yard, contrary to Z.R. §§ 23-141 and 23-32; and

WHEREAS, this application is filed with eleven companion cases, under BSA Calendar Nos. 274-03-BZ through 275-03-BZ and 277-03-BZ through 285-03-BZ, for the construction of a total of 12 detached, two-story one-family dwellings, on 12 individual tax lots, formed upon the subdivision of the pre-existing Lots 48 and 92 (hereinafter, the "Zoning Lot"); and

WHEREAS, each of the 12 developments proposed to be constructed on the Zoning Lot will require waivers for floor area, open space and minimum lot width; some of the developments require a waiver for minimum lot area and side yard; and

WHEREAS, the Board notes that although this and the other 11 applications set forth specific DOB objections and request slightly different relief for each proposed dwelling, the Board analyzed the variance application in terms of the findings based upon the Zoning Lot; and

WHEREAS, however, the above-noted DOB objection is for the referenced Tentative Lot 92 only; and

WHEREAS, in response to concerns expressed by the Board that the original proposal for the Zoning Lot (12 semi-detached, two-story two-family dwellings and 1 detached, two-story one-family

WHEREAS, the overall development proposal contemplates the construction of a mapped street, to be known as 94th Road, which will be constructed on Lot 48 and provide access to the proposed dwelling on the Zoning Lot from 212th Street; and

WHEREAS, the Board has determined that the area within the bed of the mapped street, totaling 12,296.93 sq. ft., is not considered as lot area for zoning purposes; and

WHEREAS, the applicant states that Zoning Lot was formerly improved upon with two two-story dwellings, but these buildings were demolished in 2003 after being declared unsafe by DOB; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the Zoning Lot in strict compliance with underlying zoning regulations: (1) the Zoning Lot is irregular in shape, with Lot 92 being "L" shaped with dimensions as noted above; and (2) the Zoning Lot is landlocked without any frontage on a public street; access can only be provided through Lot 48; (3) the layout of the land is situated in such a way that any division of the land would create landlocked parcels or functionally limited parcels; and

WHEREAS, the Board notes that a complying proposal would

dwelling, for a total of 25 dwelling units) was in excess of the minimum variance and also altered the essential character of the community, the applicant eventually modified the original proposal to the current proposal; and

WHEREAS, prior to submitting the current proposal, the applicant offered a number of different proposals which the Board also felt were inconsistent with the character of the surrounding community; these included a proposal with 12 two-story, two-family dwellings (for a total of 24 dwelling units), a proposal with seven two-story, two-family dwellings and five two-story, one-family dwellings (for a total of 19 dwelling units), and a proposal with six detached two-story, two-family dwellings and four detached two-story, one-family dwellings (for a total of 16 dwelling units); and

WHEREAS, Queens Community Board No. 13, after initially recommending denial of the original proposal, later withdrew its objection upon review of current proposal; and

WHEREAS, other community members appeared at the public hearings in opposition to both the original and the intermediate proposals; and

WHEREAS, the Zoning Lot is in the center of the block bounded by Jamaica and 94th Avenues, Hollis Court Boulevard and 212th Street, and has a total lot area 61,211.92 sq. ft.; and

WHEREAS, Lot 48 is a rectangular shaped lot, approximately 100 feet by 60 feet with a total lot area of 5,940 sq. ft., with a frontage of 60 feet on the west side of 212th Street between 94th Avenue and Jamaica Avenue; and

WHEREAS, Lot 92 is a landlocked parcel with an irregular "L" shape, and dimensions of approximately 200 feet by 300 feet by 160 feet by 110 feet by 40 feet by 140 feet, with a total area of approximately 55,272 sq. ft.; and

WHEREAS, the entire Zoning Lot is split between an R2 zoning district and an R3-2(C1-2) zoning district; specifically, Lot 48 is entirely within the R2 zoning district, whereas Lot 92 is split between the R2 zoning district and the R3-2(C1-2) zoning district; and

be a development with a maximum of nine dwelling units; and

WHEREAS, the Board notes that the lack of access to the landlocked Lot 92 required creation of a private road on Lot 48, thereby diminishing the amount of area on the Zoning Lot that could be developed residentially; and

WHEREAS, the Board finds that the irregular shape of the Zoning Lot, when considered in conjunction with the current lack of access to Lot 92 and the afore-mentioned resulting diminished usable floor area resulting from the private road, creates unnecessary hardship and practical difficulties in strictly complying with the applicable provision of the Zoning Resolution; and

WHEREAS, the applicant initially submitted a feasibility study, which purported to show that a complying development with nine dwelling units would not realize a reasonable return; and

WHEREAS, the Board questioned certain features of this feasibility study, and, in response, the applicant has provided additional, more accurate financial information with regard to comparables and adjustments for sellout and construction costs used in the financial analysis; and

WHEREAS, at the request of the Board, the applicant has also submitted a revised feasibility study, reflecting the current proposal

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(nine one-family, two-story dwellings; and

WHEREAS, based upon its review of the revised feasibility study, the Board has determined that because of the above-mentioned unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning district regulations will provide a reasonable return; and

WHEREAS, the applicant represents that the current proposal will not impact 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 record indicates that there is an R3-2 district to the west of the site and R2 and R3-2 districts beyond the railroad track at the southern boundary of the site; and

WHEREAS, the applicant contended that the original proposal, which contemplated semi-detached dwellings, was compatible with the character of the community; and

WHEREAS, however, as discussed above, the above-mentioned committee of the Board conducted a site and neighborhood visit and ascertained that the residential areas surrounding the Zoning Lot are developed primarily with detached single-family dwellings, some with zero-lot line development; and

WHEREAS, the Board instructed the applicant that the original proposal was not compatible with the detached, single-family homes which are the predominant land use in the area surrounding the Zoning Lot; and

WHEREAS, the applicant made the above-mentioned incremental changes in the proposal, none of which were satisfactory to the Board in that they raised the same concerns about community

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-038Q dated November 10, 2003; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. § 72-21, and grants a variation in the application of the Zoning Resolution, limited to the objections cited, to permit, within an R2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the

character as the original proposal; and

WHEREAS, in response, the applicant has reduced the number of structures and dwelling units to be constructed on the Zoning Lot; and

WHEREAS, the Board has reviewed the current proposal and the submitted land use map and has determined that the proposed density is compatible with the built conditions in the area; and

WHEREAS, the Board further notes that a similar sized parcel, not suffering from the land-locked condition that Lot 92 is subject to, would permit construction of a 12 unit development as-of-right; and

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

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

WHEREAS, after accepting guidance from the Board as to both the proper amount of relief necessary to alleviate the hardship associated with the site and the appropriate number and size of the dwelling units, the applicant significantly modified the proposal to reflect the current proposal; and

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

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

WHEREAS, the project is classified as an Unlisted action pursuant to 6NYCRR, Part 617; and requirements for floor area, open space and minimum lot width, contrary to Z.R. §§ 23-141 and 23-32, on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 23, 2004" -(2) sheets and "Received December 6, 2004" -(5) sheets; and on further condition;

THAT the Floor Area Ratio for the proposed dwelling on Tentative Lot 102 shall be limited to 0.67;

THAT only one dwelling shall be located on Tentative Lot 102;

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

THAT the Floor Area Ratio over all of the Tentative Lots, excluding the area within the bed of a mapped street shall be limited to 0.61; the Floor Area Ratio over all of the Tentative Lots, including the area within the bed of a mapped street shall be limited to 0.49;

THAT the residential Floor Area over all 12 of the Tentative Lots, when taking into account the proposed dwelling approved in the instant application and the other companion applications, shall not exceed 29,991.6 sq. ft.;

THAT the total number of dwelling units over all 12 of the Tentative Lots shall be limited to 12, one for each lot;

THAT DOB shall confirm compliance with the Floor Area limitations set forth above;

THAT the total number of parking spaces that shall be provided over all 12 of the Tentative Lots shall be 24, with two accessory parking spaces per dwelling for each dwelling;

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

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objection(s) only;

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

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

Adopted by the Board of Standards and Appeals, December 7, 2004.

## 284-03-BZ

APPLICANT - Sheldon Lobel, P.C., for 211 Building Corp., owner.  
SUBJECT - Application August 27, 2003 - under Z.R. §72-21 to permit the proposed construction of a two-story, semi-detached, two family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for zoning district, number of dwelling units, floor area, floor area ratio, and open space ratio, is contrary to Z.R. §23-22, §23-141 (a) and §23-141.

PREMISES AFFECTED - 211-44 94th Road, center of the block between Jamaica and 94th Avenues, Block 10546, Lot 103,

"1. The proposed Floor Area and FAR exceeds that permitted by section 23-141(a) Z.R.

2. The proposed development does not comply with the minimum required open space ratio (OSR) and is contrary to section 23-141 Z.R.

3. The proposed development does not comply with the minimum required lot width as per section 23-32 Z.R.

4. The proposed development does not comply with the minimum required lot area as per section 23-32. Z.R.

5. The proposed development does not comply with the minimum required side yard as per section 23-461."; and

WHEREAS, a public hearing was held on this application on February 3, 2004 after due notice by publication in The City Record, with continued hearings on March 30, 2004, May 18, 2004, July 20, 2004, August 17, 2004 and October 19, 2004, and then to December 7, 2004 for decision; and

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

WHEREAS, this is an application under Z.R. § 72-21, to permit, within an R2 and C2-2 within an R3-2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space, minimum lot width, minimum lot area and side yard, contrary to Z.R. §§ 23-141 and 23-32; and

WHEREAS, this application is filed with eleven companion cases, under BSA Calendar Nos. 274-03-BZ through 275-03-BZ and 277-03-BZ through 285-03-BZ, for the construction of a total of 12 detached, two-story one-family dwellings, on 12 individual tax lots, formed upon the subdivision of the pre-existing Lots 48 and 92 (hereinafter, the "Zoning Lot"); and

WHEREAS, each of the 12 developments proposed to be

Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES -

For Applicant: Richard Lobel.

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

**THE VOTE TO REOPEN HEARING-**

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

Commissioner Chin.....5

Negative:.....0

**THE VOTE TO CLOSE HEARING-**

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

Commissioner Chin.....5

Negative:.....0

**THE VOTE TO GRANT-**

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

Commissioner Chin.....5

Negative:.....0

**THE RESOLUTION -**

WHEREAS, the decision of the Borough Commissioner, dated November 19, 2004, acting on DOB Application No. 401632523, reads:

constructed on the Zoning Lot will require waivers for floor area, open space and minimum lot width; some of the developments require a waiver for minimum lot area and side yard; and

WHEREAS, the Board notes that although this and the other 11 applications set forth specific DOB objections and request slightly different relief for each proposed dwelling, the Board analyzed the variance application in terms of the findings based upon the Zoning Lot; and

WHEREAS, however, the above-noted DOB objection is for the referenced Tentative Lot 92 only; and

WHEREAS, in response to concerns expressed by the Board that the original proposal for the Zoning Lot (12 semi-detached, two-story two-family dwellings and 1 detached, two-story one-family dwelling, for a total of 25 dwelling units) was in excess of the minimum variance and also altered the essential character of the community, the applicant eventually modified the original proposal to the current proposal; and

WHEREAS, prior to submitting the current proposal, the applicant offered a number of different proposals which the Board also felt were inconsistent with the character of the surrounding community; these included a proposal with 12 two-story, two-family dwellings (for a total of 24 dwelling units), a proposal with seven two-story, two-family dwellings and five two-story, one-family dwellings (for a total of 19 dwelling units), and a proposal with six detached two-story, two-family dwellings and four detached two-story, one-family dwellings (for a total of 16 dwelling units); and

WHEREAS, Queens Community Board No. 13, after initially recommending denial of the original proposal, later withdrew its objection upon review of current proposal; and

WHEREAS, other community members appeared at the public hearings in opposition to both the original and the intermediate proposals; and

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WHEREAS, the Zoning Lot is in the center of the block bounded by Jamaica and 94th Avenues, Hollis Court Boulevard and 212th Street, and has a total lot area 61,211.92 sq. ft.; and

WHEREAS, Lot 48 is a rectangular shaped lot, approximately 100 feet by 60 feet with a total lot area of 5,940 sq. ft., with a frontage of 60 feet on the west side of 212th Street between 94th Avenue and Jamaica Avenue; and

WHEREAS, Lot 92 is a landlocked parcel with an irregular "L" shape, and dimensions of approximately 200 feet by 300 feet by 160 feet by 110 feet by 40 feet by 140 feet, with a total area of approximately 55,272 sq. ft.; and

WHEREAS, the entire Zoning Lot is split between an R2 zoning district and an R3-2(C1-2) zoning district; specifically, Lot 48 is entirely within the R2 zoning district, whereas Lot 92 is split between the R2 zoning district and the R3-2(C1-2) zoning district; and

WHEREAS, the overall development proposal contemplates the construction of a mapped street, to be known as 94th Road, which will be constructed on Lot 48 and provide access to the proposed dwelling on the Zoning Lot from 212th Street; and

WHEREAS, the Board notes that the lack of access to the landlocked Lot 92 required creation of a private road on Lot 48, thereby diminishing the amount of area on the Zoning Lot that could be developed residentially; and

WHEREAS, the Board finds that the irregular shape of the Zoning Lot, when considered in conjunction with the current lack of access to Lot 92 and the afore-mentioned resulting diminished usable floor area resulting from the private road, creates unnecessary hardship and practical difficulties in strictly complying with the applicable provision of the Zoning Resolution; and

WHEREAS, the applicant initially submitted a feasibility study, which purported to show that a complying development with nine dwelling units would not realize a reasonable return; and

WHEREAS, the Board questioned certain features of this feasibility study, and, in response, the applicant has provided additional, more accurate financial information with regard to comparables and adjustments for sellout and construction costs used in the financial analysis; and

WHEREAS, at the request of the Board, the applicant has also submitted a revised feasibility study, reflecting the current proposal (nine one-family, two-story dwellings); and

WHEREAS, based upon its review of the revised feasibility study, the Board has determined that because of the above-mentioned unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning district regulations will provide a reasonable return; and

WHEREAS, the applicant represents that the current proposal will not impact 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 record indicates that there is an R3-2 district to the west of the site and R2 and R3-2 districts beyond the railroad track at the southern boundary of the site; and

WHEREAS, the applicant contended that the original proposal, which contemplated semi-detached dwellings, was compatible with the character of the community; and

WHEREAS, however, as discussed above, the

WHEREAS, the Board has determined that the area within the bed of the mapped street, totaling 12,296.93 sq. ft., is not considered as lot area for zoning purposes; and

WHEREAS, the applicant states that Zoning Lot was formerly improved upon with two two-story dwellings, but these buildings were demolished in 2003 after being declared unsafe by DOB; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the Zoning Lot in strict compliance with underlying zoning regulations: (1) the Zoning Lot is irregular in shape, with Lot 92 being "L" shaped with dimensions as noted above; and (2) the Zoning Lot is landlocked without any frontage on a public street; access can only be provided through Lot 48; (3) the layout of the land is situated in such a way that any division of the land would create landlocked parcels or functionally limited parcels; and

WHEREAS, the Board notes that a complying proposal would be a development with a maximum of nine dwelling units; and

above-mentioned committee of the Board conducted a site and neighborhood visit and ascertained that the residential areas surrounding the Zoning Lot are developed primarily with detached single-family dwellings, some with zero-lot line development; and

WHEREAS, the Board instructed the applicant that the original proposal was not compatible with the detached, single-family homes which are the predominant land use in the area surrounding the Zoning Lot; and

WHEREAS, the applicant made the above-mentioned incremental changes in the proposal, none of which were satisfactory to the Board in that they raised the same concerns about community character as the original proposal; and

WHEREAS, in response, the applicant has reduced the number of structures and dwelling units to be constructed on the Zoning Lot; and

WHEREAS, the Board has reviewed the current proposal and the submitted land use map and has determined that the proposed density is compatible with the built conditions in the area; and

WHEREAS, the Board further notes that a similar sized parcel, not suffering from the land-locked condition that Lot 92 is subject to, would permit construction of a 12 unit development as-of-right; and

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

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

WHEREAS, after accepting guidance from the Board as to both the proper amount of relief necessary to alleviate the hardship associated with the site and the appropriate number and size of the dwelling units, the applicant significantly modified the proposal to reflect the current proposal; and

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

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

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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-038Q dated November 10, 2003; and

WHEREAS, the EAS documents that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. § 72-21, and grants a variation in the application of the Zoning Resolution, limited to the objections cited, to permit, within an R2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space and minimum lot width, contrary to Z.R. §§ 23-141 and 23-32, on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 23, 2004"-(2) sheets and "Received December 6, 2004"-(5) sheets; and on further condition;

THAT the Floor Area Ratio for the proposed dwelling on Tentative Lot 103 shall be limited to 0.75;

THAT only one dwelling shall be located on Tentative Lot 103;

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

THAT the Floor Area Ratio over all of the Tentative Lots, excluding the area within the bed of a mapped street shall be limited to 0.61; the Floor Area Ratio over all of the Tentative Lots, including the area within the bed of a mapped street shall be limited to 0.49;

THAT the residential Floor Area over all 12 of the Tentative Lots, when taking into account the proposed dwelling approved in the instant application and the other companion applications, shall not exceed 29,991.6 sq. ft.;

THAT the total number of dwelling units over all 12 of the Tentative Lots shall be limited to 12, one for each lot;

THAT DOB shall confirm compliance with the Floor Area limitations set forth above;

THAT the total number of parking spaces that shall be provided over all 12 of the Tentative Lots shall be 24, with two accessory parking spaces per dwelling for each dwelling;

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

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

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

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.

Adopted by the Board of Standards and Appeals, December 7, 2004.

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## 285-03-BZ

APPLICANT - Sheldon Lobel, P.C., for 211 Building Corp., owner.

SUBJECT - Application August 27, 2003 - under Z.R. §72-21 to permit the proposed construction of a two-story, semi-detached, two family residence, located in an R-2 zoning district, which does not comply with the zoning requirements for zoning district, number of dwelling units, floor area, floor area ratio, and open space ratio, is contrary to Z.R. §23-22, §23-141 (a) and §23-141.

PREMISES AFFECTED - 211-42 94th Road, center of the block between Jamaica and 94th Avenues, Block 10546, Lot 104, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES -

For Applicant: Richard Lobel.

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

**THE VOTE TO REOPEN HEARING-**

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

Commissioner Chin.....5

Negative:.....0

**THE VOTE TO CLOSE HEARING-**

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

Commissioner Chin.....5

Negative:.....0

**THE VOTE TO GRANT-**

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

Commissioner Chin.....5

Negative:.....0

**THE RESOLUTION -**

WHEREAS, the decision of the Borough Commissioner, dated November 19, 2004, acting on DOB Application No. 401632514, reads:

"1. The proposed Floor Area and FAR exceeds that permitted by section 23-141(a) Z.R.

2. The proposed development does not comply with the minimum required open space ratio (OSR) and is contrary to section 23-141 Z.R.

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3. The proposed development does not comply with the minimum required lot width as per section 23-32 Z.R.

4. The proposed development does not comply with the minimum required lot area as per section 23-32. Z.R.

5. The proposed development does not comply with the minimum required side yard as per section 23-461."; and

WHEREAS, a public hearing was held on this application on

WHEREAS, this is an application under Z.R. § 72-21, to permit, within an R2 and C2-2 within an R3-2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space, minimum lot width, minimum lot area and side yard, contrary to Z.R. §§ 23-141 and 23-32; and

WHEREAS, this application is filed with eleven companion cases, under BSA Calendar Nos. 274-03-BZ through 275-03-BZ and 277-03-BZ through 285-03-BZ, for the construction of a total of 12 detached, two-story one-family dwellings, on 12 individual tax lots, formed upon the subdivision of the pre-existing Lots 48 and 92 (hereinafter, the "Zoning Lot"); and

WHEREAS, each of the 12 developments proposed to be constructed on the Zoning Lot will require waivers for floor area, open space and minimum lot width; some of the developments require a waiver for minimum lot area and side yard; and

WHEREAS, the Board notes that although this and the other 11 applications set forth specific DOB objections and request slightly different relief for each proposed dwelling, the Board analyzed the variance application in terms of the findings based upon the Zoning Lot; and

WHEREAS, however, the above-noted DOB objection is for the referenced Tentative Lot 92 only; and

WHEREAS, in response to concerns expressed by the Board that the original proposal for the Zoning Lot (12 semi-detached, two-story two-family dwellings and 1 detached, two-story one-family dwelling, for a total of 25 dwelling units) was in excess of the minimum variance and also altered the essential character of the community, the applicant eventually modified the original proposal to the current proposal; and

WHEREAS, prior to submitting the current proposal, the applicant offered a number of different proposals which the Board also felt were inconsistent with the character of the surrounding community; these included a proposal with 12 two-story, two-family dwellings (for a total of 24 dwelling units), a proposal with seven two-story, two-family dwellings and five two-story, one-family dwellings (for a total of 19 dwelling units), and a proposal with six detached two-story, two-family dwellings and four detached two-story, one-family dwellings (for a total of 16 dwelling units); and

WHEREAS, Queens Community Board No. 13, after initially recommending denial of the original proposal, later withdrew its objection upon review of current proposal; and

WHEREAS, other community members appeared at the public hearings in opposition to both the original and the intermediate proposals; and

WHEREAS, the Zoning Lot is in the center of the block bounded by Jamaica and 94th Avenues, Hollis Court Boulevard and 212th Street, and has a total lot area 61,211.92 sq. ft.; and

WHEREAS, Lot 48 is a rectangular shaped lot, approximately

February 3, 2004 after due notice by publication in The City Record, with continued hearings on March 30, 2004, May 18, 2004, July 20, 2004, August 17, 2004 and October 19, 2004, and then to December 7, 2004 for decision; and

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

100 feet by 60 feet with a total lot area of 5,940 sq. ft., with a frontage of 60 feet on the west side of 212th Street between 94th Avenue and Jamaica Avenue; and

WHEREAS, Lot 92 is a landlocked parcel with an irregular "L" shape, and dimensions of approximately 200 feet by 300 feet by 160 feet by 110 feet by 40 feet by 140 feet, with a total area of approximately 55,272 sq. ft.; and

WHEREAS, the entire Zoning Lot is split between an R2 zoning district and an R3-2(C1-2) zoning district; specifically, Lot 48 is entirely within the R2 zoning district, whereas Lot 92 is split between the R2 zoning district and the R3-2(C1-2) zoning district; and

WHEREAS, the overall development proposal contemplates the construction of a mapped street, to be known as 94th Road, which will be constructed on Lot 48 and provide access to the proposed dwelling on the Zoning Lot from 212th Street; and

WHEREAS, the Board has determined that the area within the bed of the mapped street, totaling 12,296.93 sq. ft., is not considered as lot area for zoning purposes; and

WHEREAS, the applicant states that Zoning Lot was formerly improved upon with two two-story dwellings, but these buildings were demolished in 2003 after being declared unsafe by DOB; and

WHEREAS, the applicant represents that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the Zoning Lot in strict compliance with underlying zoning regulations: (1) the Zoning Lot is irregular in shape, with Lot 92 being "L" shaped with dimensions as noted above; and (2) the Zoning Lot is landlocked without any frontage on a public street; access can only be provided through Lot 48; (3) the layout of the land is situated in such a way that any division of the land would create landlocked parcels or functionally limited parcels; and

WHEREAS, the Board notes that a complying proposal would be a development with a maximum of nine dwelling units; and

WHEREAS, the Board notes that the lack of access to the landlocked Lot 92 required creation of a private road on Lot 48, thereby diminishing the amount of area on the Zoning Lot that could be developed residentially; and

WHEREAS, the Board finds that the irregular shape of the Zoning Lot, when considered in conjunction with the current lack of access to Lot 92 and the afore-mentioned resulting diminished usable floor area resulting from the private road, creates unnecessary hardship and practical difficulties in strictly complying with the applicable provision of the Zoning Resolution; and

WHEREAS, the applicant initially submitted a feasibility study, which purported to show that a complying development with nine dwelling units would not realize a reasonable return; and

WHEREAS, the Board questioned certain features of this feasibility study, and, in response, the applicant has provided

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additional, more accurate financial information with regard to comparables and adjustments for sellout and construction costs used in the financial analysis; and

WHEREAS, based upon its review of the revised feasibility study, the Board has determined that because of the above-mentioned unique physical conditions, there is no reasonable possibility that development in strict compliance with applicable zoning district regulations will provide a reasonable return; and

WHEREAS, the applicant represents that the current proposal will not impact 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 record indicates that there is an R3-2 district to the west of the site and R2 and R3-2 districts beyond the railroad track at the southern boundary of the site; and

WHEREAS, the applicant contended that the original proposal, which contemplated semi-detached dwellings, was compatible with the character of the community; and

WHEREAS, however, as discussed above, the above-mentioned committee of the Board conducted a site and neighborhood visit and ascertained that the residential areas surrounding the Zoning Lot are developed primarily with detached single-family dwellings, some with zero-lot line development; and

WHEREAS, the Board instructed the applicant that the original proposal was not compatible with the detached, single-family homes which are the predominant land use in the area surrounding the Zoning Lot; and

WHEREAS, the applicant made the above-mentioned incremental changes in the proposal, none of which were satisfactory to the Board in that they raised the same concerns about community character as the original proposal; and

WHEREAS, in response, the applicant has reduced the number of structures and dwelling units to be constructed on the Zoning Lot; and

WHEREAS, the Board has reviewed the current proposal and the submitted land use map and has determined that the proposed density is compatible with the built conditions in the area; and

WHEREAS, the Board further notes that a similar sized parcel, not suffering from the land-locked condition that Lot 92 is subject to, would permit construction of a 12 unit development as-of-right; and

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

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

WHEREAS, after accepting guidance from the Board as to both the proper amount of relief necessary to alleviate the hardship associated with the site and the appropriate number and size of the dwelling units, the applicant significantly modified the proposal to reflect the current proposal; and

WHEREAS, accordingly, the Board finds that the current THAT the residential Floor Area over all 12 of the Tentative Lots, when taking into account the proposed dwelling approved in the instant application and the other companion applications, shall not exceed 29,991.6 sq. ft.;

WHEREAS, at the request of the Board, the applicant has also submitted a revised feasibility study, reflecting the current proposal (nine one-family, two-story dwellings; and proposal is the minimum necessary to afford the owner relief; and

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

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

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 04-BSA-038Q dated November 10, 2003; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended and makes each and every one of the required findings under Z.R. § 72-21, and grants a variation in the application of the Zoning Resolution, limited to the objections cited, to permit, within an R2 zoning district, the proposed construction of one detached two-story, one-family dwelling which does not comply with the requirements for floor area, open space and minimum lot width, contrary to Z.R. §§ 23-141 and 23-32, on condition that all work shall substantially conform to drawings as they apply to the objections above noted, filed with this application marked "Received November 23, 2004"-(2) sheets and "Received December 6, 2004"-(5) sheets; and on further condition;

THAT the Floor Area Ratio for the proposed dwelling on Tentative Lot 104 shall be limited to 0.76;

THAT only one dwelling shall be located on Tentative Lot 104;

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

THAT the Floor Area Ratio over all of the Tentative Lots, excluding the area within the bed of a mapped street shall be limited to 0.61; the Floor Area Ratio over all of the Tentative Lots, including the area within the bed of a mapped street shall be limited to 0.49;

THAT the total number of dwelling units over all 12 of the Tentative Lots shall be limited to 12, one for each lot;

THAT DOB shall confirm compliance with the Floor Area limitations set forth above;

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THAT the total number of parking spaces that shall be provided over all 12 of the Tentative Lots shall be 24, with two accessory parking spaces per dwelling for each dwelling;

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

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

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

Adopted by the Board of Standards and Appeals, December 7, 2004.

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## 364-03-BZ

APPLICANT - Rothkrug Rothkrug Weinberg & Spector, for Alpro 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.

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

### THE VOTE TO GRANT-

Affirmative:.....0

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

### THE RESOLUTION-

WHEREAS, the decision of the Borough Commissioner dated November 3, 2004, acting on Department of Buildings Application No. 401724862, reads:

"Use contrary to Section 32-00 Z.R."; and

WHEREAS, a public hearing was held on this application on May 18, 2004 after due publication in The City Record, with continued hearings on July 13, September 14, and October 26, 2004, and then to decision on December 7, 2004; and

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

WHEREAS, the Board finds that the applicant has not provided any evidence that the alleged physical conditions compromise the income that could be generated from a conforming residential scenario; and

WHEREAS, instead, the Board observes that the applicant has only offered conclusory assertions that the location and shape of the

Commissioner Miele; and

WHEREAS, this is an application under Z.R. § 72-21, to permit, on a lot within a C2-2(R6) zoning district, an automatic car wash (with one tube), with an accessory store and lubritorium, contrary to Z.R. §32-00; and

WHEREAS, both the Queens Borough President and Queens Community Board No. 14 recommended conditional approval of this application; and

WHEREAS, various individual neighbors, as well as the Bayswater Civic Association and the Frank Avenue Civic Association, opposed the subject application; and

WHEREAS, the subject premises is an irregularly shaped but large lot, located on the southeast corner of Far Rockaway and Sea Girt Boulevards, in the Far Rockaways section of Queens; and

WHEREAS, to the south, the site also borders the Rockaway Freeway (the "Freeway") and elevated subway tracks situated above the Freeway; and

WHEREAS, the site has a total lot area of approximately 37,255 sq. ft., and is currently improved with two connected commercial buildings (hereinafter, the "Existing Building"), with a combined total floor area of 11,500 sq. ft.; and

WHEREAS, the proposed carwash facility, the retail store, and the lubritorium are proposed to have a total floor area of 12,977.3 sq. ft.; and

WHEREAS, the applicant alleges that the following are unique physical conditions, which create practical difficulties and unnecessary hardship in developing the subject lot in strict conformance with underlying district regulations: (1) access to the site from the Rockaway Freeway frontage is not available, due to a City-owned strip of property directly adjacent to the Freeway, which makes conforming retail and residential use undesirable and less marketable; (2) the Existing Building is obsolete, in that it is in a state of disrepair, and was not designed for and is not suitable for commercial use; (3) the site's irregular configuration limits the viability of conforming residential development, in that it narrows from 225.5 ft. along the easterly lot line, to 121.3 ft. along the westerly lot line; (4) the site's irregular configuration also necessitates the need for creation of an interior road for certain residential scenarios, which results in some conforming residences with only 8 ft. rear yards backing onto Sea Girt Boulevard; (5) the site is affected by a high water table, which increases construction costs for conforming development; and (6) underground storage tanks, pump islands and contaminated soil must be removed from the site; and

WHEREAS, as an initial matter, the Board notes that the mere existence of certain physical conditions on a site is insufficient to support the uniqueness finding set forth at Z.R. §72-21(a); and

WHEREAS, Z.R. § 72-21 (a) provides that the alleged physical conditions must result in practical difficulties or unnecessary hardship in strictly conforming to applicable zoning provisions; and

lot makes such a determination obvious; and

WHEREAS, the Board also finds that the applicant has failed to provide any evidence that the alleged physical conditions lead to premium construction costs that, when considered in the aggregate, would cause a conforming residential development to be infeasible; and

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WHEREAS, as to those conditions that arguably impact generation of income from residential use, the Board notes that the applicant has not sufficiently proved how the site's shape and alleged access problems impact conforming development; and

WHEREAS, the applicant has submitted two site plans showing semi-detached dwelling scenarios, one with 18 three-story, three-family units (which assumes access from the Freeway), and one with 11 three-story, three-family units; and

WHEREAS, the applicant claims that the 11 unit, three-family scenario represents the most residential floor area that could be placed on the site without access from the Freeway; and

WHEREAS, the applicant notes that due to the site's shape and the lack of access from the Freeway, a private road with a turnaround must be constructed, which allegedly diminishes the amount of lot area available for placement of residential floor area; and

WHEREAS, however, the Board disagrees that the site's shape, which is large, impacts conforming residential development to the degree applicant contends; and

WHEREAS, the Vice-Chair of the Board, who is a Registered Architect, stated at hearing that regardless of the site's minimum dimension of 121 feet, the site was still large enough to accommodate a turnaround and viable conforming development; and

WHEREAS, the Board has reviewed the submitted site plan for the 11 unit scenario, and finds that it fails to utilize the space in a way that is the most effective in terms of maximizing available residential floor area while still providing marketable units; and

WHEREAS, based upon its review of this site plan, the Board is not convinced that more units could not be accommodated on the site; and

WHEREAS, the Board also disagrees that lack of access to the site from the Rockaway Freeway would greatly impact the economic return on residential development, as such access, while perhaps important for a conforming retail scenario, becomes less important for a conforming residential scenario; and

WHEREAS, the Board notes that the site has substantial frontages along two other public ways (Sea Girt Boulevard - 121 ft., and Far Rockaway Boulevard - 206 ft.) from which access may be gained; and

WHEREAS, moreover, the applicant has not quantified any impact that the site's location has on the potential income to be generated from conforming residential use, separating out such impact from general market conditions for residential use in the area; and

WHEREAS, as to those conditions that could arguably create premium construction costs, the Board notes that the only alleged

WHEREAS, over the course of the hearing process, the applicant submitted studies for the following residential scenarios: a multi-story, residential apartment building with 66 rental apartments; a mixed-use retail/residential building with 18 apartments; and the afore-mentioned 18 three-story, three-family dwellings scenario, with assumed access from the Freeway; and

WHEREAS, however, the applicant failed to submit a feasibility study for the afore-mentioned 11 three-story, three-family dwelling scenario, even though this was specifically requested by the Board for comparison purposes; and

WHEREAS, in each case where a feasibility study of a residential scenario was performed, the applicant claimed that a

premium costs identified and quantified by the applicant were those related to the demolition of the Existing Building (\$200,000) and the environmental clean-up and tank removal (\$108,000); and

WHEREAS, the applicant refused to attempt to quantify or prove any premium costs related to the alleged high water table, because, as set forth in a letter dated October 12, 2004 from the applicant's financial consultant, such an exercise was not considered necessary; and

WHEREAS, thus, the Board can only credit the premium costs associated with the demolition of the Existing Building and environmental clean-up and tank removal, which, when aggregated, do not amount to an unnecessary hardship or practical difficulty in developing the site with a conforming residential use, such that a use change is justified; and

WHEREAS, in addition, the Board notes that the Existing Building may not properly be considered a unique physical condition given that it is proposed to be demolished and possesses no structural uniqueness that leads to higher than normal demolition costs; and

WHEREAS, the Board notes that even if the cost of demolition is considered, there is still no significant hardship that would support the use change proposed by applicant; and

WHEREAS, in sum, the applicant has not provided sufficient evidence as to the nexus between the alleged physical conditions (as opposed to prevailing general market conditions) and actual and verifiable financial hardship related to conforming residential development; and

WHEREAS, for the reasons set forth above, the Board finds that the applicant has failed to provide substantial evidence in support of the finding set forth at Z.R. § 72-21(a); and

WHEREAS, because the finding set forth at Z.R. § 72-21(a) has not been met, it follows that the finding at Z.R. §72-21 (b) can not be met; and

WHEREAS, moreover, even assuming arguendo that the finding set forth at Z.R. § 72-21(a) was met, the applicant has failed to submit credible financial data in support of its claim that conforming residential development on the site will not bring a reasonable return; and

WHEREAS, initially, the applicant only submitted feasibility studies for a one-story retail building and the proposed carwash; and

WHEREAS, however, the Board observed that residential use would be as-of-right on the site and thus requested that studies of residential scenarios be conducted; and

negative return would result from such development; and

WHEREAS, at hearing, the Board expressed skepticism as to the financial information upon which this claim was based; and

WHEREAS, in particular, the Board questioned the methodology of the site valuation, which the applicant stated was \$1,125,000; and

WHEREAS, specifically, the Board notes that certain assumptions made in the site valuation appear to be flawed; and

WHEREAS, the record indicates that the land is valued at \$250,000, which appears reasonable; and

WHEREAS, however, in addition to the land, the site valuation also includes the Existing Building, which is valued at \$875,000; and

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WHEREAS, the valuation of the Existing Building is based upon comparables reflecting total property values; said total property values include both the value of the building and, impermissibly, the value of the underlying land; and

WHEREAS, this impermissible increase in the valuation of the Existing Building based upon a double-counting of land values inflates the site valuation and skews the rate of return; and

WHEREAS, in addition, the building comparables are questionable with respect to actual comparability, as all are described as being in "average" condition, and no adjustments are made to reflect the actual condition of the Existing Building; and

WHEREAS, as noted above, the applicant contends that the Existing Building is in a state of disrepair, and was not designed for and is not suitable for commercial use; and

WHEREAS, in fact, the applicant described the condition of the Existing Building at hearing as "horrible"; and

WHEREAS, the Board notes that if the Existing Building is as stated by the applicant then there should be no value ascribed to it since it has no contributory economic value to the site; and

WHEREAS, it follows that the site valuation should really only reflect the land value of \$250,000, and minor site preparation costs of \$10,000; and

WHEREAS, even if some value is ascribed to the Existing Building, this valuation should be based on comparables that reflect only the value of a building without land, and that are adjusted for condition; and

WHEREAS, thus, because the site valuation is impermissibly inflated, the Board concludes that the potential income from the proffered conforming residential scenarios is understated, rendering the submitted feasibility studies flawed and unreliable; and

WHEREAS, the Board notes that it asked the applicant to address this deficiency, but the applicant did not provide a response; and

WHEREAS, additionally, the applicant, as discussed above, did not submit a requested study on the 11 three-story, three-family dwellings scenario; and

WHEREAS, for the reasons set forth above, the Board finds that the applicant has failed to provide substantial evidence in support of the finding set forth at Z.R. § 72-21(b); and

## 125-04-BZ

APPLICANT - Steven M. Sinacori/Stadtmauer Bailkin, for Everest Realty, LLC, owner.

SUBJECT - Application March 9, 2004 - under Z.R. §72-21 to permit the proposed two story expansion of an existing one story commercial building, for residential use, Use Groups 2 and 6, located in R4, C2-2 and R3A zoning districts, which does not comply with the zoning requirements for floor area, lot coverage, open space, number of dwelling units and height of building, is contrary to Z.R. §23-141, §35-31, §23-22 and §23-631.

PREMISES AFFECTED - 247-39 Jamaica Avenue, north side, between 91<sup>st</sup> Avenue and Commonwealth Boulevard, Block 8662, Lot 50, Borough of Queens.

## COMMUNITY BOARD #13Q

APPEARANCES -

For Applicant: Eric Palatnik.

WHEREAS, since the application fails to provide substantial evidence or other data in support of the findings set forth at Z.R. § 72-21 (a) and (b), it must be denied; and

WHEREAS, additionally, because the Board finds that the application fails to meet the findings set forth at Z.R. § 72-21(a) and (b), which are the threshold findings for any variance grant, the Board declines to address the remaining findings.

Therefore it is Resolved that the decision of the Borough Commissioner, dated November 3, 2004, acting on Department of Buildings Application No. 401724862, is sustained and the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, December 7, 2004.

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## 390-03-BZ

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

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

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

## COMMUNITY BOARD #1BK

APPEARANCES -

For Applicant: Elisa Hwu.

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

**THE VOTE TO WITHDRAW** -

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

Commissioner Chin.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, December 7, 2004.

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

**THE VOTE TO GRANT**-

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

Commissioner Chin.....5

Negative:.....0

**THE RESOLUTION**-

WHEREAS, the decision of the Borough Commissioner dated November 3, 2004, acting on Department of Buildings Application No. 401766601, reads:

"1. Proposed floor area is contrary to Z.R. section 35-31.

2. Proposed number and location of accessory parking spaces is contrary to Z.R. sections 36-21 and 22-00 respectively."; and

WHEREAS, a public hearing was held on this application on July 20, 2004 after due publication in The City Record, with continued hearings on August 17, 2004 and October 19, 2004, and

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then to decision on December 7, 2004; and

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

WHEREAS, this is an application under Z.R. § 72-21, to permit on a lot within both R4/C2-2 and R3A zoning districts, the enlargement of a one-story commercial building through a minor addition on the first floor and the construction of a second floor, which does not comply with the requirements for floor area and accessory parking, contrary to Z.R. §§ 35-31, 36-21 and 22-00; and

WHEREAS, the subject application originally contemplated the construction of two additional levels for residential use, and an additional studio residential unit on the first floor, but at the request of the Board, the applicant has revised the application to its current form; and

WHEREAS, Queens Community Board No. 13, which recommended denial of the original proposal, now recommends approval of the revised application; and

WHEREAS, the subject premises is an irregularly shaped hexagonal lot, located on the north side of Jamaica Avenue between 91st Avenue and Commonwealth Boulevard, has a total lot area of approximately 11,567 sq. ft., and is currently improved with a 3,417 square foot commercial building; and

WHEREAS, this application seeks a 770 sq. ft. enlargement of the first floor, which includes two egress stairs, an elevator and lobby to the second floor, and a minor addition to the existing first floor retail space; and

WHEREAS, the proposed second floor will be comprised of 4,760 sq. ft. of floor area, to be used for commercial space; and

WHEREAS, the number of parking spaces required, based upon the total 5,530 sq. ft. of added floor area and utilizing the formula of 1 space for every 300 square feet, is 18 spaces; and

WHEREAS, the applicant is proposing to provide 13 parking

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 conformance and compliance with the two different zoning district regulations will provide a reasonable return; and

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 applicant notes that the immediate neighborhood within the 400 foot radius area is characterized by a mix of two and three-story detached houses and row homes, low-rise, two-story mixed-use buildings with ground floor retail and office uses, and commercial buildings, as well as a two-story church; 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 Board has conducted its own site visit and has reviewed the submitted land use map and accompanying photographs of the site; and

WHEREAS, based upon the representations of the applicant, its

spaces; 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 conformance and compliance with underlying district regulations: (1) the site possesses an irregular hexagonal shape; and (2) the site is divided between two zoning districts; and

WHEREAS, the record indicates that approximately 7,198 sq. ft. (62.2%) of the lot is located within an R4/C2-2 zoning district, while approximately 4,396 sq. ft. (37.8%) is within an R3A zoning district; and

WHEREAS, the applicant asserts that the R3A portion of the site is triangularly-shaped, with no street frontage, and cannot be reasonably separated from the remainder of the zoning lot for a conforming use (one and two-family dwellings) because of its land-locked nature; therefore the applicant states that permitted floor area within the R3A portion is unusable; and

WHEREAS, the applicant notes that the maximum permitted Floor Area Ratio ("F.A.R.") in the C2-2 zoning district is 1.0, and the proposed addition would increase the F.A.R. to 1.24 if the site is only viewed in terms of the C2-2, without inclusion of the R3A district portion; and

WHEREAS, however, if viewed in terms of the entire lot area inclusive of the R3A portion, the maximum permitted floor area is 0.81 and the proposed F.A.R. would be 0.77; and

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

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

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, after accepting guidance from the Board as to both the proper amount of relief necessary to alleviate the hardship associated with the site and the appropriate building form, the applicant significantly modified the proposal to reflect a lower, decreased bulk building that more closely conforms with the surrounding area; and

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

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

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

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

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(EAS) CEQR No. 04-BSA-140Q dated March 9, 2004; and

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

WHEREAS, 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 within R4/C2-2 and R3A zoning districts, the enlargement of a one-story commercial building through a minor addition on the first floor and the construction of a second floor, which does not comply with the requirements for floor area and accessory parking, contrary to Z.R. §§ 35-31, 36-21 and 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 November 22, 2004"- (9) sheets and "Received November 30, 2004"- (1) sheet; and on further condition;

PREMISES AFFECTED - 1336 East 22nd Street, West side, 180.0' north of Avenue "M", Block 7639, Lot 76, Borough of Brooklyn.

## COMMUNITY BOARD #14BK

APPEARANCES - None.

ACTION OF THE BOARD -Application granted on condition.

THE VOTE TO GRANT-

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

Negative:.....0

THE RESOLUTION:

WHEREAS, the decision of the Borough Commissioner, dated March 2, 2004, acting on Department of Buildings Application No. 301687985, reads, in pertinent part:

"1. Proposed F.A.R. and O.S.R. constitutes an increase in the degree of existing non-compliance contrary to Sec. 23-14 of the N.Y.C. Zoning Resolution.

2. Proposed horizontal enlargement provides less than the required rear yard contrary to Sec. 23-27, Z.R."; and

WHEREAS a public hearing was held on this application on November 9, 2004 after due notice by publication in The City Record, and then to December 7, 2004 for decision; and

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

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

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

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

Adopted by the Board of Standards and Appeals, December 7, 2004.

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## 167-04-BZ

APPLICANT - Dennis D. Dell'Angelino, R.A., for Steven Katz, owner.

SUBJECT - Application April 23, 2004 - under Z.R. §73-622 to permit Proposed enlargement of an existing single family detached residence, Use Group 1, located in an R2 zoning district, which does not comply with the zoning requirements for floor area ratio, open space ratio and the required rear yard, is contrary to Z.R. §23-14 and §23-47.

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 R2 zoning district, which does not comply with the zoning requirements for floor area, open space and rear yard, contrary to Z.R. §§ 23-14 and 23-47; and

WHEREAS, the subject lot is located on the west side of East 22nd Street between Avenues L and M, 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-and-a-half-story and cellar residential structure; and

WHEREAS, the applicant seeks an increase in the floor area from 2412.7 sq. ft. (0.60 Floor Area Ratio or "FAR") to 2746.2 sq. ft. (0.68 FAR) - the maximum floor area permitted is 2,000 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will reduce the Open Space Ratio ("OSR") from 1.05 to 0.807 - the minimum open space required is 1.50; and

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

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

WHEREAS, the Board finds that the proposed enlargement will not alter the essential character of the surrounding neighborhood nor

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will it impair the future use and development of the surrounding area; and

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

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

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

Therefore it is Resolved that the Board of Standards and Appeals issues a Type II determination under 6 N.Y.C.R.R. Part 617.5 and 617.13 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and makes the required findings under Z.R. §§ 73-622 and 73-03, to permit the proposed enlargement of an existing single family residence (Use Group 1), located in an R2 zoning district, which does not comply with the zoning requirements for floor area, open space and rear yard, contrary to Z.R. §§ 23-14 and 23-47; on condition that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked "Received September 2, 2004" - (8) sheets and "Received November 22, 2004" - (1) sheet; and on further condition;

THAT there shall be no habitable room in the cellar;

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

THAT the use and layout of the cellar shall be as approved by

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

**THE VOTE TO GRANT-**

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

Commissioner Chin.....5

Negative:.....0

**THE RESOLUTION -**

WHEREAS, the decision of the Borough Commissioner, dated April 23, 2004, acting on Department of Buildings Application No. 301773132, reads, in pertinent part:

"1. Proposed F.A.R. and O.S.R. constitutes an increase in the degree of existing non-compliance contrary to Sec. 23-14 of the N.Y.C. Zoning Resolution."; and

WHEREAS a public hearing was held on this application on November 9, 2004 after due notice by publication in The City Record, and then to December 7, 2004 for decision; 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 R2 zoning district, which does not comply with the zoning requirements for floor area and open space, contrary to Z.R. § 23-14; and

WHEREAS, the subject lot is located on the north side of Avenue K between Bedford Street and East 24th Street, and has a total lot area of approximately 4,600 sq. ft.; and

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

the Department of Buildings;

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

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

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

Adopted by the Board of Standards and Appeals, December 7, 2004.

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## 170-04-BZ

APPLICANT - Dennis Dell'Angelo, R.A., for Jean Teichman, owner.

SUBJECT - Application April 26, 2004 - under Z.R. §73-622 to permit the proposed enlargement of an existing one family residence, which does not comply with the zoning requirements for floor area ratio and open space ratio, is contrary to Z.R. §23-141.

PREMISES AFFECTED - 2409 Avenue "K", north side, 53.0' east of East 24th Street, Block 7606, Lot 6, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES - None.

residential structure; and

WHEREAS, the applicant seeks an increase in the floor area from 2,800 sq. ft. (0.60 Floor Area Ratio or "FAR") to 4135.04 sq. ft. (0.9 FAR) - the maximum floor area permitted is 2,300 sq. ft. (0.50 FAR); and

WHEREAS, the proposed enlargement will reduce the Open Space Ratio ("OSR") from 1.14 to 0.66 - the minimum open space required is 1.50; and

WHEREAS, the record indicates that the existing building has an existing non-complying front yard of 10'-0" which will be unaffected by the proposed enlargement; and

WHEREAS, the applicant represents that because the subject lot is located within 100'-0" from an intersection, no rear yard is required; and

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

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

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

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

WHEREAS, therefore the Board has determined that the

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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 R2 zoning district, which does not comply with the zoning requirements for floor area and open space, contrary to Z.R. §23-14; 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 26, 2004"- (1) sheet, "Received September 2, 2004"- (5) sheets and "Received November 22, 2004"- (2) sheets; and on further condition;

THAT there shall be no habitable room in the cellar;

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

THAT any yard shed shall be as reviewed and approved by the Department of Buildings;

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;

THAT all rooms to be occupied must comply with all legal requirements as to habitability, as determined by the Department of PREMISES AFFECTED - 291 Kent Avenue, 35/37 South Second Street and 29/33 South Third Street, east side of Kent Avenue, between South Second and Third Streets, Block 2415, Lots 10, 14, 15, 41-43, 114 and 116, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

### APPEARANCES -

For Applicant: Elisa B. Hwu.

**ACTION OF THE BOARD** - Laid over to January 25, 2005, 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

### APPEARANCES -

For Applicant: Richard Lobel.

### THE VOTE TO REOPEN HEARING -

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

## Buildings;

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

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

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

Adopted by the Board of Standards and Appeals, December 7, 2004.

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## 102-03-BZ

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

SUBJECT - Application April 3, 2003 - under Z.R. §72-21 to permit the proposed development of two residential buildings with underground accessory parking and an open recreation space between the two buildings, Use Group 2, located in an M3-1 zoning district, which is contrary to Z.R. §42-00.

Negative:.....0

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

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## 291-03-BZ

APPLICANT - Stuart A. Klein, Esq., for 6202 & 6217 Realty Company, owner.

SUBJECT - Application September 4, 2003 - under Z.R. §72-21 to permit the proposed residential building, Use Group 2, located on a site in that is in an M1-1 and an R5 zoning district, which is contrary to Z.R. §42-00.

PREMISES AFFECTED - 1380 62<sup>nd</sup> Street, northwest corner of 14<sup>th</sup> Avenue, Block 5733, Lot 36, Borough of Brooklyn.

## COMMUNITY BOARD #10BK

APPEARANCES -None.

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

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## 332-03-BZ

APPLICANT - The Agusta Group, for Steve Polisano, Astoria Ice Inc., owner.

SUBJECT - Application October 28, 2003 - under Z.R. §72-21 to permit the proposed addition to an existing sports complex, which does not comply with the zoning requirements for rear yard equivalent, number of required loading berths, and minimum vertical

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clearance, is contrary to Z.R. §43-28(b), §44-52 and §44-581.  
PREMISES AFFECTED - 34-38 38th Street, through block between 37th and 38th Streets, 115' north of 35th Avenue, Block 645, Lot 10, Borough of Queens.

## COMMUNITY BOARD #1Q

APPEARANCES - None.

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

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## 385-03-BZ

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

SUBJECT - Application December 12, 2003 - under Z.R. §72-21 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

## 16-04-BZ

APPLICANT - Snyder & Snyder, LLP c/o Omnipoint Communications, Inc., for Montauk NY, LLC, owner; Omnipoint Communications, Inc., lessee.

SUBJECT - Application January 27, 2004 - under Z.R. §73-30 to permit the proposed construction of a non-accessory radio tower for public utility wireless communications, at the subject premises, which requires a special permit as per Z.R. §73-30.

PREMISES AFFECTED - 186-05 120<sup>th</sup> Road, southwest corner of Farmers Boulevard, Block 12458, Lot 421, Borough of Queens.

## COMMUNITY BOARD #12Q

APPEARANCES - None.

### THE VOTE TO CLOSE HEARING-

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

Negative:.....0

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

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## 22-04-BZ

APPLICANT - Sheldon Lobel, P.C., for 2556 Miftar Corp., owner.  
SUBJECT - Application February 9, 2004 - under Z.R. §72-21 to

## APPEARANCES -

For Applicant: Joseph P. Morsellino.

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

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## 3-04-BZ

APPLICANT - Eric Palatnik, P.C., for Rushikesh Trivedi, owner.  
SUBJECT - Application January 6, 2004 - under Z.R. §72-21 to permit the proposed dental office, Use Group 6, located in an R-2 zoning district, which does not comply with the zoning requirements for floor area, open space, front and side yards and use, which is contrary to Z.R. §24-111, §22-14, §24-34 and §24-35.

PREMISES AFFECTED - 147-08 46th Avenue, between Parsons Boulevard and 149th Street, Block 5452, Lot 3, Borough of Queens.

## COMMUNITY BOARD #7

### APPEARANCES -

For Applicant: Eric Palatnik.

For Opposition: Joe Amoroso, Beverly McDermott, Mary Hogan, and Robert Tucker, KPCA.

**ACTION OF THE BOARD** - Laid over to February 8, 2005, at 1:30 P.M., for continued hearing.

permit the proposed construction of a six-story garage, plus a cellar and sub-cellar, to be occupied as an enclosed fully attended commercial parking facility, Use Group 8C, located in an R7-1 zoning district, is contrary to Z.R. §22-00.

PREMISES AFFECTED - 2556 Briggs Avenue, fronting on Briggs Avenue, Poe Place and Coles Lane, Block 3293, Lots 21 and 90, Borough of The Bronx.

## COMMUNITY BOARD #7BX

### APPEARANCES -

For Applicant: Sheldon Lobel, Burt Schoenbach, Harry Bajatari, Elysa Hwu, Jim Heineman, Steve Wygoda and Roger Sterling.

**ACTION OF THE BOARD** - Laid over to January 25, 2004, at 1:30 P.M., for continued hearing.

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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.

### THE VOTE TO CLOSE HEARING-

Affirmative: Chair Srinivasan, Vice-Chair Babbar,

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Commissioner Caliendo, Commissioner Miele and  
Commissioner Chin.....5  
Negative:.....0

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

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## 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

APPEARANCES -

For Applicant: Jordan Most.

For Opposition: Eugenia Rudmann, Linda S. Mitchell and Edward P.  
Doran.

**ACTION OF THE BOARD** - Laid over to February 1, 2005,  
Affirmative: Chair Srinivasan, Vice-Chair Babbar,  
Commissioner Caliendo, Commissioner Miele and  
Commissioner Chin.....5  
Negative:.....0

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

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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

APPEARANCES -

For Applicant: Lyra Altman.

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

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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

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

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

### COMMUNITY BOARD #15

APPEARANCES -

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING-

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.

PREMISES AFFECTED - 2822 Avenue "L", southwest corner of  
East 29th Street, Block 7646, Lot 51, Borough of Brooklyn.

### COMMUNITY BOARD #14

APPEARANCES -

For Applicant: Lyra Altman.

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

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## 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,  
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

APPEARANCES -

For Applicant: Eric Palatnik.

THE VOTE TO CLOSE HEARING-

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

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

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

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

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

**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**

APPEARANCES -

For Applicant: Lyra Altman.

THE VOTE TO CLOSE HEARING-

**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 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**

APPEARANCES -

For Applicant: Kevin B. McGrath, Matthew Hoelzli, Jack Freeman, William McQuilkin, Bob Michel and Gene Keziv.

**ACTION OF THE BOARD** - Laid over to January 26, 2005, at 10:00 A.M., for continued hearing.

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*Pasquale Pacifico, Executive Director.*

Adjourned: 4:50 P.M.

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*Pasquale Pacifico, Executive Director*